

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK CITY BAR

REPORT BY THE UNITED NATIONS COMMITTEE

RECOMMENDATIONS RESPECTFULLY SUBMITTED TO THE BIDEN-HARRIS ADMINISTRATION REGARDING ACTIONS RELATED TO THE UNITED NATIONS

INTRODUCTION

The New York City Bar Association (City Bar) through its United Nations Committee respectfully submits the recommendations described below to the administration of President Biden and Vice-President Harris (Biden-Harris Administration) for its consideration to rehabilitate the relationship between the United States and the United Nations. The United Nations Committee requests that the Biden-Harris Administration take concrete steps to address the following: (1) restore the United States' leadership position at the United Nations; (2) make the achievement of Sustainable Development Goal (SDG) 16 a priority of the administration; and (3) adhere to its legal and financial obligations regarding international agreements that relate to the United Nations system.

The Biden-Harris Administration has the difficult task of repairing the standing of the United States on the global stage following the previous four years. This effort should begin by restoring its position within the United Nations system, but the United States must go further by leading an effort to create and maintain a multilateral system that is able to confront the global challenges of the 21st century.

RECOMMENDATIONS

- 1. Restore the United States' position of leadership at the United Nations and commit to work in the spirit of multilateralism, including by rejoining United Nations institutions and treaties, with a focus on using United Nations bodies and mechanisms to resolve international disputes, protect human rights, and promote the rule of law.**

Historically, the United States has been a leading proponent of the global multilateral system since the inception of the United Nations in 1945. The United States has furthered its interests by supporting a rules-based international order, with the United Nations serving as a foundational component of such an order. During the previous administration, the United States undermined its standing on the global stage by withdrawing from United Nations mechanisms

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

and United Nations-supported treaties. More specifically, the United States withdrew from the United Nations Human Rights Council, the World Health Organization, and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The United States further eroded its global leadership position by withdrawing from United Nations-supported treaties, including the Paris Climate Accord and the Joint Comprehensive Plan of Action (JCPOA), as well as disengaging with the United Nations-related mechanisms, including the International Criminal Court (ICC).

The City Bar and its United Nations Committee believe these multilateral institutions, while imperfect, represent the most appropriate and promising institutions to resolve international disputes; protect human, economic, and social rights; and promote the rule of law on the global stage. The United Nations Committee welcomes the steps taken thus far by the Biden-Harris Administration to signal that “it is back” on the international stage, most notably by recommitting to the Paris Climate Accord, rejoining the World Health Organization, becoming an observer state to the Human Rights Council, and removing hostile sanctions against senior staff members of the ICC. These were necessary first steps, but more must be done to restore the United States’ leadership role at the United Nations and within the multilateral system more broadly.

The United States is right to highlight the imperfections of the United Nations system, its subsidiary organs, and United Nations-related institutions; however, withdrawal and disengagement will not result in enhancing the efficacy of these institutions. The United States should rejoin UNESCO at the earliest date possible, and when feasible, it should seek to become a full member of the Human Rights Council, an opportunity which will arise at the end of 2021 when several current members vacate their seats on the Human Rights Council. Reforming these institutions to more adequately protect human rights and promote the rule of law around the world can only be done when the United States undertakes a leadership role within these bodies. Furthermore, while ratifying the Rome Statute and becoming a member state of the ICC may be politically infeasible, supporting the work of the ICC furthers the interests of the United States by holding those responsible for the most serious of international crimes accountable.

Merely returning the United States to its status quo position within the United Nations and the multilateral system prior to the previous administration will be insufficient to address emerging and constantly evolving global challenges. The United States must seek to use its position of leadership within the United Nations to catalyze reform and evolution of the United Nations system. Reforming the United Nations system to address current and future global challenges is an undertaking that the United States and the international community must engage in on an ongoing basis over the coming years and decades. The United States should use the 12 principles contained in the Ministerial Declaration on the Commemoration of the 75th Anniversary of the United Nations¹ as a framework that will guide the evolution of the United Nations system. The principles contained in the declaration are the following: Leave no one behind; Protect our planet; Promote peace and prevent conflicts; Abide by international law and ensure justice; Place women and girls at the center; Build trust; Improve digital cooperation;

¹ See, <https://www.un.org/pga/74/wp-content/uploads/sites/99/2020/06/200625-UN75-highlight.pdf>. (All links last visited March 22, 2021.)

Upgrade the United Nations; Ensure sustainable financing; Boost partnerships; Listen to and work with youth; and Be prepared. These 12 principles provide a solid foundation to guide efforts to improve the United Nations system.

2. Make SDG 16, which promotes peace, justice and strong institutions, a priority SDG for the United States, as it facilitates the achievement of the other SDGs and furthers the foundational principles of the United Nations Charter.

The SDGs are 17 interlinked global goals created in 2015 by the United Nations General Assembly to be a “blueprint to achieve a better and more sustainable future for all.”² The SDGs were adopted in 2017 through a United Nations General Assembly Resolution. The Resolution identifies specific targets for each goal, along with indicators to measure progress, with the target of these goals to be met between 2020 and 2030 (the 2030 Agenda).³

SDG 16 aims to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”⁴ The objective of SDG 16 is to promote peaceful societies at national levels, as well as at the international level, with the goal of permitting people to be free from all forms of violence. SDG 16 has 12 targets,⁵ each with 23 indicators.⁶ According to the United States’ SDG tracker,⁷ only six of the indicators have been addressed.⁸ The data on those six indicators have not been updated since 2018. The United States should review and update the data for all the indicators.

The United States should make attaining progress on SDG 16 a priority in its approach to domestic policy, its work with the United Nations, and its support of international development. In order to achieve the objectives of SDG 16, governments, civil society and communities must work to reduce violence, deliver justice, combat corruption and ensure inclusive participation in

² United Nations (2017) Resolution adopted by the General Assembly on 6 July 2017, Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development (A/RES/71/313), <https://undocs.org/A/RES/71/313>.

³ United Nations (2017) Resolution adopted by the General Assembly on 6 July 2017, Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development (A/RES/71/313); SDG Indicators - Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development," *United Nations Statistics Division (UNSD)*, <https://unstats.un.org/sdgs/indicators/indicators-list/>.

⁴ See, <https://sdgs.un.org/goals/goal16>.

⁵ See, <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-16-peace-justice-and-strong-institutions/targets.html>.

⁶ Targets are sub-categories of each SDG. In total there are 169 targets under all 17 SDGs. The global indicator framework was developed by the Inter-Agency and Expert Group on Sustainable Development Goals Indicators. It is used to follow-up on and review the Sustainable Development Goals and targets. It is also used in the Secretary-General’s annual progress report on the SDGs.

⁷ The SDG tracker is the official website of the United States of America used for providing information on the United States National Statistics for the United Nations Sustainable Development Goals. It is developed in collaboration with the United States Office of Management and Budget, Office of Information and Regulatory Affairs; the United States Department of State, Office of International Organizations; the United States General Services Administration; and the United States Office of Science and Technology Policy.

⁸ See, <https://sdg.data.gov/peace-and-justice-strong-institutions/>.

government and society. In 2019, 100 civilians per day were killed in armed conflict around the world and 79.5 million people fled their homes because of persecution and conflict, the highest recorded numbers ever.⁹ This instability threatens international security and harms the national security of the United States. Thus, the United States should seek to promote access to justice and strong institutions abroad, which not only supports peace within and among the nations in the international community but also supports and protects United States security interests.

In addition to enhancing national and international security, prioritizing SDG 16 can, by extension, help the United States facilitate progress on the other 16 SDGs. Peaceful societies with well-functioning institutions and access to justice for all create an environment that permits progress on all the SDGs. While we urge the United States to make progress on SDG 16 a priority, we also urge the United States to support the achievement of all 17 of the SDGs and the objectives of the 2030 Agenda. The objectives of SDG 16 support the foundational principles of the United Nations, including protecting human rights and resolving international disputes through peaceful means.

3. Restore United States credibility on the global stage by complying with treaty obligations—including legal obligations under the United Nations Headquarters Agreement and financial obligations under the UN Charter.

In order to restore its credibility on the international stage, it is vital that the United States adhere to its legal and financial obligations under international agreements. This includes adherence to such obligations that relate to the United Nations, including under the United Nations Headquarters Agreement (Headquarters Agreement); and its financial obligations under the United Nations Charter, including payment of financial arrearages for the UN system's activities, such as UN peacekeeping missions.

The United States must adhere to its legal obligations under the Headquarters Agreement, including by issuing, in a timely manner, entry visas to representatives from United Nations member states, United Nations bodies, and eligible civil society organizations who are engaged in activities at the United Nations headquarters in New York City.¹⁰ As in-person meetings at the United Nations headquarters begin to resume, it will be crucial that the United States process requests for entry visas to engage in business at the United Nations headquarters in a good faith and timely manner, irrespective of the US government's views or relationships with particular leaders or governments of other countries. The proper functioning of the principal organs of the United Nations, most notably the General Assembly and the Security Council, require the participation of representatives from United Nations member states, United Nations bodies, and eligible civil society organizations.

⁹ *Peace, Justice, and Strong Institutions: Why They Matter*, <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-16-peace-justice-and-strong-institutions.html>.

¹⁰ On February 26, 2020, the City Bar's United Nations Committee submitted a letter to then-Secretary of State Michael Pompeo and then-United Nations ambassador Kelly Craft, calling on the United States to adhere to its legal obligations under the United Nations Headquarters Agreement. The letter can be found here: https://s3.amazonaws.com/documents.nycbar.org/files/2020644-UNHQAgreementFINAL_2.26.20.pdf.

The United States entered into the Headquarters Agreement on November 21, 1947, and the United States codified it into federal law through the enactment of Public Law 80-357 on August 4, 1947. The Headquarters Agreement, and Public Law 80-357, create clear legal obligations for the United States as the host country of the United Nations. Under Section 11 of the Headquarters Agreement, “The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of: (1) representatives of Members or officials of the United Nations, or of specialized agencies as defined in Article 57, paragraph 2, of the Charter, or the families of such representatives or officials.” Section 11 of the Headquarters Agreement prohibits the United States from creating barriers for representatives from Member States to travel to and from the headquarters district.

Anticipating that the state of relations between the government of the United States and the governments of other Member States could prevent the proper functioning of the United Nations, the Headquarters Agreement expressly proscribes the United States from failing to adhere to its legal obligation to permit unimpeded transit to the headquarters district to representatives from Member States based on its relations with other governments. Section 12 of the Headquarters Agreement states, “The provisions of Section 11 shall be applicable irrespective of the relations existing between the Governments of the persons referred to in that section and the Government of the United States.”

Additionally, the Headquarters Agreement expressly states that the issuance of visas by the United States should not be unduly delayed. Section 13 of the Headquarters Agreement states, “Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such a manner as to interfere with the privileges referred to in Section 11. When visas are required for persons referred to in that section, they shall be granted without charge and as promptly as possible.” While the Headquarters Agreement does not specify the time requirement for the United States to process Member State visa requests, the United States is obligated to interpret and implement the Headquarters Agreement in good faith. Common Article 31.1 of both the Vienna Convention on the Law of Treaties and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations establish that a “treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context in light of its object and purpose.”¹¹ The United States must make a good faith effort to process visa requests by all Member States in a timely manner, so as to facilitate the proper functioning of the United Nations.

Member States have asserted that the United States has imposed travel restrictions on their representatives that violate the Headquarters Agreement, including restricting travel to within a 25-mile radius from a designated point in the center of Manhattan, restricting certain representatives from the Islamic Republic of Iran to travel within a 3-mile radius from their

¹¹ The United States became a signatory to the Vienna Convention on the Law of Treaties on April 24, 1970, and recognizes that parts of the Convention constitute customary law binding upon all nations, even though the United States has not thus far ratified either Convention. See, “Vienna Convention on the Law of Treaties” available at the U.S. Department of State, Office of the Legal Adviser, Treaty Affairs, Frequently Asked Questions (archived content), <https://2009-2017.state.gov/s/l/treaty/faqs/70139.htm>. The United States became signatory to the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations on June 26, 1987, which reproduces Article 31 of the prior convention unchanged.

places of residence, and restricting the ability of certain representatives from Cuba to travel outside of Manhattan.¹² The United Nations Committee acknowledges that nothing in the Headquarters Agreement explicitly prevents the United States from imposing geographic travel restrictions on representatives of Member States, so long as those restrictions do not impede the transit of such representatives to and from the headquarters district. However, the United States does have an obligation to construe the Headquarters Agreement in a manner that facilitates the business of the United Nations. Section 27 of the Headquarters Agreement states, “This agreement shall be construed in the light of its primary purpose to enable the United Nations at its headquarters in the United States, fully and efficiently, to discharge its responsibilities and fulfill its purpose.” In order to fulfill the spirit, if not the letter, of the Headquarters Agreement, the United States should refrain from imposing restrictions on travel outside the headquarters district and its immediate vicinity for representatives from Member States, except when doing so is necessary to safeguard the national security of the United States.

The United Nations bestowed a great privilege and responsibility upon the United States in selecting it as the host of the United Nations headquarters and seat of its principal organs. The United States has generally fulfilled its obligations as the host country in a manner that reflects the values of the United States, as a champion of democracy and the rule of law as well as a steadfast promoter of the peaceful resolution of disputes through diplomatic means. At a time of heightened geopolitical tensions around the world, supporting the purpose and principles of the United Nations, including upholding the United Nations headquarters as a “center for harmonizing the action of nations in the attainment of these common ends,”¹³ is critical to maintaining international peace and security.

The United States can also bolster its credibility on the international stage by fulfilling its financial obligation in funding the United Nations. The United States is the largest financial contributor to the United Nations system, contributing roughly \$10 billion in 2018.¹⁴ However, the previous administration, in pursuit of its America First platform, failed to live up to its financial contribution obligations. Most notably, the United States fell into arrears regarding its financial support of United Nations Peacekeeping. Currently, the United States’ accumulated arrearages for United Nations Peacekeeping has surpassed \$1 billion.¹⁵ United Nations Peacekeeping operates 13 missions around the globe in an effort to assist countries in navigating the difficult path from conflict to peace. While the financial obligations of the United States in funding United Nations Peacekeeping are considerable, they pale in comparison to the burden the United States would be required to shoulder in the absence of these peacekeeping missions. These missions operate in the most difficult conditions around the globe and their efforts reduce and prevent conflict and promote international stability. It is difficult to quantify the benefits that come from United Nations Peacekeeping missions, but it is clear that United Nations

¹² See, the Report of the Committee on Relations with the Host Country from the 74th session of the United Nations General Assembly, Chapter III. <https://undocs.org/en/A/74/26>.

¹³ United Nations Charter, Chapter I, Article 1(4).

¹⁴ See, <https://www.cfr.org/article/funding-united-nations-what-impact-do-us-contributions-have-un-agencies-and-programs>.

¹⁵ See, <https://www.stimson.org/2020/money-matters-using-u-s-diplomacy-to-solidify-funding-for-un-peacekeeping/>.

Peacekeeping missions help avoid a host of threats to international instability, including large displacements of people, mass atrocities, sexual and gender-based violence, and interstate conflict, among others. The United States is able to avoid directly involving itself in conflicts and potential conflicts around the world through its financial contributions to support the mission of United Nations Peacekeeping.

The UN Committee appreciates your consideration of these recommendations and hopes they will prove useful as the United States reasserts itself as a leader in promoting a rules-based order on the international stage.

United Nations Committee
Clayton T. Cheney, Chair

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