

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

NEW YORK CITY BAR

PRESENTATION OF SHEILA S. BOSTON, NEW YORK CITY BAR ASSOCIATION PRESIDENT

CONFERENCE HOSTED BY INTERNATIONAL ASSOCIATION OF LAWYERS: MAKING THE RULE OF LAW UNDERSTOOD AND VALUED

October 29, 2021

Greetings! I'm Sheila Boston, President of the New York City Bar Association, and I am delighted to participate in this important program, "Making the Rule of Law Understood and Valued- UN, SDG 16". I am honored and humbled to be representing the City Bar, which I call the "Bar of Hope" because these topics are so central to the legal profession throughout the world and, frankly, we need to turn the megaphone up a few notches. Thank you to the International Association of Lawyers for shining a spotlight on these issues and for giving me that megaphone.

I'm going to talk about three things – the work of our UN Committee with respect to SDG 16; the work of our Task Force on the Independence of Lawyers and Judges; and the work of our Rule of Law Task Force. I want to spread the word about this work for two reasons: (1) to hopefully inspire other groups to establish similar working groups or committees within your own organizations; and (2) to publicize the importance of the issues about which they have been most vocal.

I. FIRST, SDG-16

In a [transition memo](#) in March 2021, the City Bar's United Nations Committee urged the Biden Administration to make Sustainable Development Goal 16—which promotes peace, justice and strong institutions—a priority for the United States, as it facilitates the achievement of the other SDGs and furthers the foundational principles of the United Nations Charter.ⁱ

The way I understand the SDG's, they were adopted by the UN General Assembly in 2017 in order to "achieve a better and more sustainable future for all."ⁱⁱ That seems like a goal we should all be able to get behind. And we don't have the luxury of time, as our younger generations seem to inherently understand. The Resolution has a target that these goals be met between 2020 and 2030.ⁱⁱⁱ

Specifically, 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."^{iv} Again, something I think we should all be able to get behind, even if it's hard work – and we know it's hard work because even when we agree on a goal, we don't always agree on the best way to get there.

So, the City Bar has urged the United States government to be a leader here, to 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. Why is this so important? One data point astonished me: 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.^v This kind of instability

threatens international security *and* harms the national security of the United States. That's where the US policymakers can find consensus – achieving the goals set out by SDG 16 not only supports peace within and among the nations in the international community, but also supports and protects our own security interests.

And, of particular relevance to lawyers, one of the objectives of SDG 16 is to resolve international disputes through peaceful means.

II. THE IMPORTANCE OF AN INDEPENDENT SYSTEM OF JUSTICE

When we talk about resolving disputes peacefully, I think we can all agree that the hallmark of that process is an independent judicial system. The committee that focuses on this issue at the City Bar is called the Task Force for the Independence of Lawyers and Judges. The Task Force applies the [United Nations Basic Principles on the Roles of Lawyers](#) to increase awareness in the legal community and the public at large about the importance of the independence of lawyers and judges to the maintenance of the rule of law in civil society.^{vi} The Task Force also advocates on behalf of lawyers and judges who are threatened or persecuted by governments, or others, for discharging their legal responsibilities or pursuing their professions.

Monitoring and speaking out about infringements of judges and lawyers' abilities to perform their professional activities around the world is no small undertaking. In the four years since its founding, the Task Force has issued nearly 40 statements and reports in defense of lawyers and judges' independence in performing their professional duties. These include letters decrying everything from the intimidation to the detention to acts of violence against lawyers and judges in:

- [Tanzania](#)^{vii}
- [Iran](#)^{viii}
- [Hong Kong](#)^{ix}
- [Kenya](#)^x
- [Afghanistan](#)^{xi}
- [Northern Ireland](#)^{xii}
- [Mexico](#).^{xiii}

Likewise, the Task Force, typically in conjunction with our Task Force on the Rule of Law, has not been shy about speaking out on numerous occasions against actions by the U.S. government that undercut the independence of judges and lawyers (both abroad and domestically). Multiple statements include:

- [Opposing](#) US Sanctions on persons working with or for the International Criminal Court - specifically, [sanctions against](#) ICC Prosecutor Fatou Bensouda and others in response to the ICC's investigation into the situation in Afghanistan, including potential crimes by U.S. personnel;^{xiv}
- [Condemning](#) statements by Trump Administration that were inapposite to the rule of law and judicial independence in Poland;^{xv}

- [Supporting](#) steps to strengthen, not weaken, America’s Immigration Court System, including by establishing immigration courts as independent Article 1 courts;^{xvi}
- [Expressing](#) concern about a speech by then-Attorney General Jeff Sessions decrying “judicial encroachment” and stating that judges who “subject” the executive branch to discovery are acting improperly, making them “fairly subject to... calls for their replacement”;^{xvii}
- [Calling](#) attention to comments made by elected and appointed officials that denigrate our nation’s judges; in particular comments made by Senator Charles Schumer of New York, and urging all elected and appointed officials to avoid using inflammatory and intimidating language when speaking about the judiciary;^{xviii}
- [Expressing](#) concerns regarding reports in the United States of concerted efforts by police forces to target legal observers during the course of nationwide protests against police brutality and in support of the Black Lives Matter movement;^{xix} and
- [Raising](#) concerns about certain actions and statements of then-Attorney General Barr which had the effect of politicizing the Department of Justice.^{xx}

And, we haven’t let up since the Biden Administration began. In recent months, the Task Force has continued to shine a light on the importance of judicial and lawyer independence, for example, [urging](#) the incoming administration to:^{xxi}

- (1) prioritize measures that will restore the independence of the Department of Justice as an agency that serves the public;
- (2) restore an appropriate use of the presidential pardon power;
- (3) amend the National Emergencies Act to establish better checks and balances between the Executive and Legislative Branches;
- (4) close the military commissions at Guantanamo Bay and transfer those cases to Article III courts; and
- (5) rescind the sanctions imposed on International Criminal Court officials.

Finally, most recently, we publicly [condemned](#) the Biden Administration’s treatment of Haitian migrants at our southern border.^{xxii}

Which brings me to the final segment of my talk:

III. THE RULE OF LAW IN THE US – THE WORLD IS WATCHING

My term as President of the New York City Bar Association has coincided with a global pandemic and shutdown; national protests against the police and the emergence of the Black Lives Matter movement; and a period of time during which we were not entirely certain that the US would peaceably transfer power from one President to another – a first in my lifetime. It has been a rocky road and in giving this talk, I am acutely aware that the first part of it discusses the importance of the rule of law around the world; but here, in this last part, I need to talk about our problems at home.

Because, among the lessons the pandemic has taught us is the impossibility of living in isolation from the rest of the world. Threats to the rule of the law in the United States are there on display for the world to watch, and these threats spread like viruses too if unchecked. Wherever they occur, human rights abuses, gender-based violence, economic privation, migration, disease, climate change, and mob violence are all threats to the rule of law and the social contracts that serve to bind our nations and our global community together.

With this in mind, the City Bar is trying to stay vigilant and vocal in the United States and we are urging lawyers to lead the way. And given what we've been through, voting rights and the protection of free and fair elections *has to* become a top priority if we want to protect our democratic institutions and the rule of law.

Some bar associations balk at this idea, saying it's "too political". I firmly disagree. As a bar association, we are committed to remaining non-partisan when it comes to supporting these principles. From the time leading up to the November 2020 elections, through the January 6 riots at the Capitol and continuing through today, we have issued statements, conducted programming, and issued calls to action that focus on the actions being taken and words being spoken, *not* on the political party in power.

With your continued indulgence, I'd like to summarize some of the statements we issued because I think they are important principles undergirding the rule of law, but also, because they show how important it is for lawyers to be vigilant and engaged on these issues, no matter their political party or the area of law in which they work. Bar associations can and should be helping lawyers to play this civic role.

In summary...

First, on November 18, two days after the Presidential election, when we knew we were facing a long few months ahead of contests, challenges and false rhetoric, I issued a [statement](#) on Lawyers' and Public Officials' Obligations During the Presidential Transition Period.^{xxiii} I urged lawyers everywhere, whether they were in private practice, sitting as judges of state or federal courts, or serving as state or federal legislators, to carry out their duties with due respect for the principles of law that are the foundation of our democracy. This duty includes preserving the central role that free and fair elections play in our society.

On December 24, I issued a second [statement](#), calling on all American Lawyers to Support the Rule of Law.^{xxiv} Cataloguing the dangerous events that had taken place over the prior month which falsely called into question the legitimacy of the Presidential election result, despite all evidence to the contrary, I applauded the bravery of the public servants, election officials, judges and outspoken lawyers – of both political parties – who were trying to beat back the rhetoric and restore the public's confidence in the electoral process. I called upon our fellow members of the bar to "step up, to speak out and to act responsibly in the best traditions of our profession." I warned, "If we fail to do so, there is no guarantee that our democracy, based upon the rule of law, will endure for future generations."

And then came the riots at the US Capitol on January 6. Words cannot adequately express my emotions on that day. But, with my City Bar hat on, a mere five days later, on January 11, 2021, I approved a [statement](#) calling for the removal of the President for betraying his oath to the American people.^{xxv} In addition to discussing the "internal wounds" of that day, I said "our

reputation around the world as a nation governed by law and not by would-be tyrants has been deeply damaged.”

As you know, President Biden was ultimately sworn in, but the repercussions of events leading up to and following the election are still palpable. As you also know, Americans are deeply divided on what the proper national response should be to what occurred, including with respect to the role lawyers played in those events. Of particular note, we did issue a [statement](#) supporting the New York Court System’s investigation of grievance complaints filed against former New York City Mayor and Presidential lawyer Rudy Giuliani, based on his actions in court challenging the election results, and his actions that contributed to the January 6 riot.^{xxvi} The Court in New York took the extraordinary step of suspending Mr. Giuliani’s law license pending its investigation, saying it was doing so in order to protect the public interest.

Remarkably, state legislatures are now passing dozens of new laws which will make it harder to vote and, of great concern, will empower legislators to override duly appointed election officials and interfere with the certification of election results. In the face of these ongoing actions, our Rule of Law Task Force and Election Law Committee issued an urgent [report](#) and call to action, entitled *The Consent of the Governed: Enforcing Citizens’ Right to Vote*.^{xxvii} We are in the process of spreading the word far and wide to bar associations, law schools, and law firm leaders across the country in an effort to inspire the legal profession to become more vigilant in its defense of democracy.

I say all of this to underscore how important it is for lawyers around the world, including on their own domestic fronts, to be aware of how quickly threats to the rule of law build upon one other and create a domino effect. I think of this nearly every day as we look forward to our next round of elections in the United States. I pledge that the City Bar will remain vigilant in its protection of voting rights, free and fair elections, the rule of law, an independent judiciary and our democratic institutions. I hope that my sister and brother bar associations will do the same.

Because, in the end, if we can’t fix our own house, can we truly help to protect and advance these principles anywhere else?

October 2021

Ms. Boston expresses her thanks and gratitude to the chairs of the Task Force on the Independence of Lawyers and Judges (Christopher Pioch and Jessenia Vazcones-Yagual); the Task Force on the Rule of Law (Stephen L. Kass); and the United Nations Committee (Clayton T. Cheney).

ENDNOTES

ⁱ Recommendations Respectfully Submitted to the Biden-Harris Administration Regarding Actions Related to the United Nations,” New York City Bar Association, March 29 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/united-nations-biden-harris-transition> (All sites last visited Nov. 4, 2021).

ⁱⁱ 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>.

ⁱⁱⁱ 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/>.

^{iv} See <https://sdgs.un.org/goals/goal16>.

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

^{vi} Basic Principles on the Role of Lawyers, United Nations Human Rights Office of the high commissioner, <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

^{vii} *See, e.g.*, Letter Urging Action to Protect Lawyers, Speech and Press Freedoms in Tanzania, New York City Bar Association, Nov. 17, 2017, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-urging-action-to-protect-lawyers-speech-and-press-freedoms-in-tanzania>. In addition to the letters cited in notes vii-xiii, the City Bar issued similar letters and/or statements with respect to the treatment of lawyers and human rights defenders in the Republic of the Congo, China, Philippines, Turkey and Colombia.

^{viii} Statement Urging Release from Prison of Nasrin Sotoudeh and Others as the Islamic Republic of Iran Marks Nowruz, New York City Bar Association, March 19, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/statement-urging-release-from-prison-of-nasrin-sotoudeh-and-others-as-the-islamic-republic-of-iran-marks-nowruz>

^{ix} Grave Concern Regarding China's Proposed National Security Legislation for Hong Kong, New York City Bar Association, May 27, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/grave-concern-regarding-chinas-proposed-national-security-legislation-for-hong-kong>

^x Letter to President Uhuru Kenyatta on Judicial Independence in Kenya, New York City Bar Association, Sept. 22, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-president-uhuru-kenyatta-on-judicial-independence-in-kenya>

^{xi} City Bar Condemns Assassinations of Prosecutors, Judges, and Court Staff in Afghanistan, New York City Bar Association, April 07, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/city-bar-condemns-assassinations-of-prosecutors-judges-and-court-staff-in-afghanistan>

^{xii} Statement of the New York City Bar Association Regarding the Most Recent Refusal of the United Kingdom to Hold a Public Inquiry into the Patrick Finucane Case, New York City Bar Association, Dec. 14, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/refusal-to-hold-a-public-inquiry-into-the-patrick-finucane-case>

^{xiii} Statement of the New York City Bar Association on the Mexican President's Accusations of Treason Toward Attorneys, New York City Bar Association, March 11, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/mexican-presidents-accusations-of-treason-toward-attorneys>

^{xiv} Statement Opposing U.S. Sanctions on Persons Working with or for the International Criminal Court, New York City Bar Association, July 29, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports->

[listing/reports/detail/opposing-sanctions-on-international-criminal-court](#); Statement Condemning the Implementation of Sanctions against Senior Staff of the International Criminal Court, New York City Bar Association, Nov. 30, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/condemning-the-implementation-of-sanctions-against-senior-staff-of-the-international-criminal-court>

^{xv} Letter to Congressional Leaders on Judicial Independence, Separation of Powers and the Rule of Law in Poland, New York City Bar Association, Sept. 14, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-congressional-leaders-on-judicial-independence-separation-of-powers-and-the-rule-of-law-in-poland>

^{xvi} Report on the Independence of the Immigration Courts, New York City Bar Association, Oct. 21, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/independence-of-us-immigration-courts>

^{xvii} City Bar Supports Independence of Judiciary in Response to Attorney General Sessions’ Complaint about “Unacceptable” Rulings,” New York City Bar Association, Oct. 30, 2018, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/city-bar-supports-independence-of-judiciary-in-response-to-attorney-general-sessions-complaint-about-unacceptable-rulings>

^{xviii} Statement by City Bar President Roger Juan Maldonado on Comments by Elected and Appointed Officials that Denigrate or Threaten Judges, March 5, 2020, <https://www.nycbar.org/media-listing/media/detail/statement-by-city-bar-president-roger-juan-maldonado-on-comments-by-elected-and-appointed-officials-that-denigrate-or-threaten-judges>

^{xix} Detention of Legal Observers, New York City Bar Association, June 17, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/detention-of-legal-observers>

^{xx} Request for Formal Congressional Inquiries into Conduct of Attorney General William P. Barr, New York City Bar Association, Jan. 08, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/request-for-formal-congressional-inquiries-into-conduct-of-attorney-general-william-p-barr>

^{xxi} Recommendations Respectfully Submitted to the Biden Administration Regarding Principal Actions After Inauguration Related to the Rule of Law, New York City Bar Association, Jan. 13, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/rule-of-law-biden-harris-transition-recommendations>

^{xxii} Statement on Haiti and Haitian Migrants by New York City Bar Association President Sheila S. Boston, New York City Bar Association, Sep. 24, 2021, <https://www.nycbar.org/media-listing/media/detail/statement-on-haiti-and-haitian-migrants>

^{xxiii} Statement on Lawyers’ and Public Officials’ Obligations During the Presidential Transition Period, New York City Bar Association, Nov. 18, 2020, <https://www.nycbar.org/media-listing/media/detail/lawyers-and-public-officials-obligations-during-the-presidential-transition-period>

^{xxiv} New York City Bar Association Calls on American Lawyers to Support the Rule of Law, New York City Bar Association, Dec. 24, 2020, <https://www.nycbar.org/media-listing/media/detail/calling-american-lawyers-to-action-support-the-rule-of-law>

^{xxv} Statement of the New York City Bar Association Calling for the Removal of Donald J. Trump as President, New York City Bar Association, Jan. 11, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/calling-for-the-removal-of-president-trump-election-fraud>

^{xxvi} Statement of New York City Bar Association Concerning Grievance Complaints Filed Against Rudolph Giuliani, New York City Bar Association, March 02, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/grievance-complaints-filed-against-rudolph-giuliani>

^{xxvii} The Consent of the Governed: Enforcing Citizens’ Right to Vote, New York City Bar Association, Sept. 16, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/american-right-to-vote-election-reform-laws>