

BAR ASSOCIATIONS IN THE UNITED STATES AND THE UNGPs: A UNIQUE WINDOW OF OPPORTUNITY

The Vance Center for International Justice, a non-profit program of the New York City Bar Association, submits this paper in response to the UN Business and Human Rights Working Group’s call for input to commemorate the 10-year anniversary of the adoption of the UN Guiding Principles on Business & Human Rights (UNGPs). This paper presents the experience of the Vance Center and the New York City Bar Association in engaging with the UNGPs. It offers this experience as a roadmap for other bar associations similarly to recognize either the UNGPs specifically or the standards espoused by the UNGPs generally. We conclude with recommendations for increased cooperation and collaboration to secure greater engagement on BHR by bar associations in the United States.

The Role of Lawyers in Business and Human Rights

Since the United Nations Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights (UNGPs) in 2011, it has been widely acknowledged that lawyers play a crucial role in Business and Human Rights (“BHR”). Indeed, lawyers are in a unique position to advise corporate clients on the legal human rights consequences of their actions, both in terms of binding legal obligations and non-binding obligations arising from international law (such as the UNGPs). The lawyer’s role as a trusted advisor has become even more important as several BHR principles have been enshrined into domestic and regional regulations, a trend that is expected to grow. The United Nations Working Group on Business and Human Rights and the Office of the High Commissioner for Human Rights (OHCHR) have recognized the integral role that lawyers, in particular business lawyers, play with respect to the implementation of human rights due diligence as required by the UNGPs.¹ The UN Working Group has also recommended that law firms and bar associations “integrate human rights risk management in line with the Guiding Principles as a core element of the role of business lawyers”.² In addition, the OHCHR recommends that lawyers “be educated on business and human rights generally, and human rights due diligence [as defined in the Guiding Principles] and legal liability specifically.”³

Despite the widely acknowledged role of lawyers in implementing the UNGPs, in the United States, the legal profession’s engagement with the UNGPs has been limited. A study conducted by the Vance Center⁴ shows that, ten years after the adoption of the UNGPs, very few state and local bar associations

¹ Functions that are potentially relevant to human rights due diligence include legal among others. See UN General Assembly, *Companion Note II to the Working Group on Business and Human Rights’ 2018 Report to the General Assembly A/73/163: Corporate human rights due diligence – Getting started, emerging practices, tools and resources*, Version 16.10.2018 available at: <https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf>. The Working Group has also stated that “[b]usiness lawyers — both in-house counsel and external firms — have a unique position for shaping the path an enterprise may take with regards to effective human rights due diligence.” UN General Assembly, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the General Assembly*, 16 July 2018, A/73/163, at paragraph 41, available at: <https://undocs.org/A/73/163>.

² UN General Assembly, *Companion Note II to the Working Group on Business and Human Rights’ 2018 Report to the General Assembly A/73/163: Corporate human rights due diligence – Getting started, emerging practices, tools and resources*, at p. 20.

³ This can be done through the inclusion of these topics in law school curricula, continuing legal education and professional development courses, and practitioners’ guidance. UN Human Rights Council, *Improving accountability and access to remedy for victims of business-related human rights abuse: The relevance of human rights due diligence to determinations of corporate liability: Report of the United Nations High Commissioner for Human Rights*, 1 June 2018, A/HRC/38/20/Add.2, at paragraph 36, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/20/Add.2.

⁴ The Cyrus R. Vance Center for International Justice is a non-profit program of the New York City Bar Association bringing together leading law firms and other partners worldwide to pioneer international justice initiatives and provide pro bono legal representation to social justice NGOs.

in the United States have engaged with the UNGPs⁵. While, at the State level, several bar associations have taken steps to provide BHR training and resources, only the New York City Bar Association has formally endorsed the UNGPs. Overall, with the exception of the State Bar of Texas⁶ and the New York City Bar Association, engagement by state and city bar associations in the United States has been limited.

The Vance Center Business and Human Rights Initiative

[The Cyrus R. Vance Center for International Justice](#) is a non-profit program of the New York City Bar Association bringing together leading law firms and other partners worldwide to pioneer international justice initiatives and provide pro bono legal representation to social justice NGOs. In 2015, the Vance Center's [Human Rights and Access to Justice Program](#) launched a Business and Human Rights Initiative ("the Initiative"), grounded in the UNGPs. Through the Initiative, the Human Rights Program draws on the expertise of law firms in the United States and abroad to contribute to the continuing development of best practices in BHR. As part of this initiative, the Program has [advised international NGOs and organized conferences on these issues](#).

The Vance Center's BHR initiative in February 2018 convened the New York City Bar Association's first Continuing Legal Education (CLE) program on BHR "[Business and Human Rights – What Do They Mean for Lawyers?](#)" bringing together law firms and NGO practitioners. The enthusiastic response to the first BHR CLE showed a willingness on the part of the legal community to learn more about BHR, an area with which most lawyers were previously only vaguely familiar. The Vance Center had already observed, in its work with law firms as part of the BHR Initiative, an increased interest for better understanding of the UNGPs and their implications for the legal profession. We also observed that lawyers and law firms in the United States were lagging behind their European counterparts on BHR. As a program of the New York City Bar Association, we resolved that there was a role for the City Bar to play in meeting this demand. When our research revealed that there was little engagement on BHR at other bar associations throughout the United States, it was clear that the City Bar had a unique opportunity to lead the way on engagement with the UNGPs. Not only was the City Bar located in the world's greatest business hub, it also runs several human rights oriented programs, including the Vance Center and its BHR initiative. The City Bar's membership similarly reflects its relevance to both business and human rights; it is made up of both business and public interest lawyers. The Vance Center's BHR initiative therefore proposed, and the City Bar agreed, to establish a working group to: (1) consider whether the City Bar should formally endorse the UNGPs; and (2) if so, to develop and implement a strategy to educate and engage the legal community and the broader public with regard to business and human rights (BHR).

⁵ The research was conducted in 2019 and updated in 2021. The research is on file at the Vance Center and available upon request; The American Bar Association (ABA) endorsed the UNGPs in 2012. In 2015, the ABA initiated and signed on to – together with several other national bar associations – a "[Joint Declaration of Commitment on Business and Human Rights](#)".

⁶ The State Bar of Texas International Law Section has an International Human Rights Committee, established in 2015, which provides information and guidance to lawyers whose clients are involved in international business and who may encounter the human, legal, and reputational risk associated with the violations of internationally recognized human rights.⁶ In a paper on the [Impact on International Commercial Law Practices by the New Ethics of Human Rights](#)" (2016), the Committee noted the importance of the UNGPs. The State Bar of Texas has also issued advice to members to consider the implications of BHR and UNGPs in the course of their professional responsibilities.⁶ It has commissioned advice from the University of Texas Human Rights Clinic on possible amendments to the Texas 28 Disciplinary Rules of Professional Conduct to better align them with the UNGPs.⁶ The IHR Committee maintains a web-based resource library which refers to the UNGPs as general guidance for members of the State Bar of Texas. However, the Committee does not appear to have formally endorsed the UNGPs.

The New York City Bar Association's Endorsement of the UNGPs and Business and Human Rights Working Group

In August 2019, then New York City Bar Association President Roger Maldonado established the [Business and Human Rights Working Group](#). To achieve an appropriately inclusive perspective, the working group is comprised of members from various committees of the New York City Bar Association with expertise in international human rights as well as business lawyers and practitioners from a range of legal communities including, but not limited to, academia, in-house counsel, non-profit organizations, foreign New York-based lawyers, and private firms. The Working Group is co-chaired by [Irit Tamir](#), Director of Oxfam's Private Sector Department, and [Viren Mascarenhas](#), a partner in King & Spalding's New York office. The Vance Center's Human Rights Program is coordinating the Working Group. An Advisory Committee composed of [experts](#) in the field of Business and Human Rights across several industries and countries provides strategic guidance to the Working Group.

In the first phase of its mandate, the Working Group set out to consider whether the City Bar should formally endorse the UNGPs. It ultimately proposed, and the City Bar approved, a [policy statement](#) on Business and Human Rights. In the statement, the first of its kind by a local bar association in the United States, the New York City Bar Association endorsed the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Acknowledging New York City's role as a hub for global business and the impact that business decisions in New York have both locally and globally on human rights, the City Bar, through the policy statement, also resolved to adopt a strategy to guide the legal profession to consider the growing impact of commercial activities on human rights, environmental sustainability, and the rule of law, when serving as advisor to their clients.

Currently in the second phase of its mandate, the City Bar BHR Working Group is developing a strategy to implement the Policy Statement, including educating and engaging the legal community and the broader public with regard to BHR. The Working Group is focusing particularly on providing guidance for engagement with the UN Global Compact and Human Rights and the Environment.

Conclusion and Recommendations

Given their positions of influence in legal and business communities and the important role of lawyers in promoting BHR principles, bar associations should consider endorsing the UNGPs. Each association should pursue an approach that is appropriate to the manner in which the respective association regulates or represents the profession. One approach is direct endorsement of the UNGPs, as followed by the New York City Bar Association.

In the United States, given the limited engagement of the legal profession with the UNGPs, more needs to be done to educate the legal community on the importance of the UNGPs and BHR more generally. Bar associations have a major role to play in bringing their members up to speed on this important and fast growing area of the law. At a minimum, bar associations should actively encourage understanding and implementation of the UNGPs through conferences, regional initiatives, and training programs. In such cases, it is recommended that bar associations look to engage directly with their members by way of working groups or training programs, in order to encourage a deeper understanding and adherence to the standards established by the UNGPs.

It is clear that the global trend is moving towards the recognition and endorsement of the UNGPs and the standards enshrined therein. Given their role in either formally regulating the legal profession or providing advocacy and a unified voice as well as enforcing ethical standards, bar associations have a major role to play in educating and mobilizing the legal profession around BHR. Bar associations across the United States should pursue increased cooperation and collaboration to benefit from early experiences of engagement with the UNGPs such as the examples of the New York City Bar Association and the Vance Center where such initiatives already exist.