

# HUMAN RIGHTS ADVOCATES

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## Human Rights Advocates Annual Meeting

By Nicole Phillips

Human Rights Advocates held its Annual Meeting on April 29 at Golden Gate School of Law. Chair Julianne Traylor welcomed everyone and reviewed the events of the previous year. The following Board Members were elected: Cindy Cohn, Connie de la Vega, Michelle Leighton, Conchita Lozano-Batista, Nicole Phillips, Julianne Cartwright Traylor, and Anne Wagley.

Treasurer Anne Wagley circulated HRA's Annual Financial Report for 2003. HRA received donations last year from Frannie Newman and Edith Coliver's estate. The Board was grateful for the donations and noted the significant amount of work accomplished within HRA's very small budget.

Board Member Connie de la Vega presented an overview on the structure of the United Nations and introduced the members who participated at the Commission on the Status of Women (CSW) and Commission on Human Rights (CHR). This year three HRA members participated at the CSW, as Edith Coliver interns from University of San Francisco School of Law (USF). Eighteen members participated at the CHR, including eight Frank C. Newman interns from USF and five from UC Berkeley. Connie highlighted the success HRA's members had this year, particularly with their oral interventions and lobbying country delegates.

The following participants presented on the subject matter of their interventions and success of their advocacy at the CSW and CHR this year: Chelsea HaleyNelson (trafficking), Nikki Belushko (the illicit transfer of toxics), Jacqueline Brown (trafficking), Sara Canepa (juvenile death penalty), Adam Levin (right to development and water), Jennifer Naegele (toxics and the right to water), Jeanna Steele (arbitrary detention), and Babak Yousefzadeh (life without parole). Connie reported

on Adam Day's experiences at the CHR on the Death Row Phenomena.

Board Member Michelle Leighton spoke on her work regarding corporate accountability at the Sub-Commission on the Promotion and Protection of Human Rights and the CHR, including a resolution regarding the development of a set of norms to identify human rights for transnational corporations. Conchita Lozano-Batista presented on her experience at the CHR in follow-up to her work with migrant workers' rights. Some of HRA's co-sponsors and supporters of the Annual Meeting and HRA's activities introduced themselves and their organizations. Among them were Advisory Board Member Rita Maran (the UN Association of East Bay and San Francisco), Advisory Board Member Sandy Coliver (the Center for Justice and Accountability), and Erin Callahan (Amnesty International, Violence Against Women Campaign).

At the close of the meeting, Connie announced that Frannie Newman offered a public appreciation to the Frank C. Newman interns for their work at the UN. Julianne thanked HRA's members and supporters for their hard work this year.

## United Nations

By Connie de la Vega

Human Rights Advocates members participated at the UN Commission on the Status of Women (CSW) and the UN Commission on Human Rights (CHR), the latter in record numbers. In March, two students from the University of San Francisco School of Law (USF) participated as Edith Coliver Interns at the CSW in New York: Kristin Elsasser, and Chelsea HaleyNelson. They were assisted by former Intern Connie Cabello. In late March and April, fourteen Frank Newman Interns participated at the CHR in Geneva: Jennifer Arterburn, Nikki Belushko, Jacqueline Brown, Sara Canepa, Jean Covington, Jennifer Naegele, Jeanna Steele, and Babak Yousefzadeh from USF; Adam Day, Jay Kalinski, Lynsay Skiba, and Sarah

Williams from Boalt Hall; Adam Levine from UC Berkeley School of Public Health; and Sangeeta Chowdhry from Bay Area International Development Organization. They were supervised by Board Members Connie de la Vega and Michelle Leighton and Conchita Lozano a former Intern, who was recently elected to the Board. Students also met with International Advisory Board Members Cruz Melchor Eya Nchama and Virginia Leary. The students' reports on their work follow below. Overall their work was well received and the delegates found them helpful. Documents cited in their articles can be found at the UN web site: [www.unhchr.ch](http://www.unhchr.ch).

The participation by the United States delegation at the meetings again merits mentioning due to its less than cooperative stance on many issues. The United States cast the sole no vote on substantive resolutions such as on the rights to food, cultural rights, health, forced evictions, rights of the child, discrimination,<sup>1</sup> as well as several country resolutions, including one on the increasing human rights violations in Sudan. Particularly troubling was its continued unsuccessful attempts to remove the language regarding the prohibition against executions of persons committing crimes when they were under 18, which served to highlight the fact that it may now be the sole violator of that norm. Its isolation on an increasing number of issues, especially those related to economic, social and cultural rights will make it more difficult for it to be an effective advocate for human rights. Again, this was reflected in the briefing sessions that the

<sup>1</sup> Right to Food, U.N. GAOR, Comm'n on Human Rts., 60<sup>th</sup> Sess., U.N. Doc. E/CN.4/RES/2004/19 (2004); Promotion of the enjoyment of the cultural rights of everyone and respect for different cultural identities, U.N. GAOR, Comm'n on Human Rts., 60<sup>th</sup> Sess., U.N. Doc. E/CN.4/RES/2004/20 (2004); The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, U.N. Doc. E/CN.4/RES/2004/27 (2004); Forced Evictions, U.N. GAOR, Comm'n on Human Rts., 60<sup>th</sup> Sess., U.N. Doc. E/CN.4/RES/2004/28 (2004); Rights of the Child, U.N. GAOR, Comm'n on Human Rts., 60<sup>th</sup> Sess., U.N. Doc. E/CN.4/RES/2004/48 (2004); Resolution on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, U.N. GAOR, Comm'n on Human Rts., 60<sup>th</sup> Sess., U.N. Doc. E/CN.4/RES/2004/87.

delegation held for non-governmental organizations that were not well attended.



At the Palais des Nations, Geneva. Standing: Linsay Skiba, Jacqueline Brown, Jean Covington, Nikki Belusko, Connie de la Vega, Jeanna Steele. Kneeling: Sarah Canepa, Jennifer Naegele .

Those NGOs that did attend but did not support the positions of the delegation were rebuffed. Also, its lack of influence was again seen in the failure to call for a vote on its resolution on human rights in China. (The no action motion on that resolution passed by a vote of 28-16-9.) Many of the positions taken by the U.S. delegation were contrary to the views of the American public. One example is that while 69% of those polled in the U.S. are opposed to the juvenile death penalty, the Government continues to actively oppose the international prohibition against it. Unless more Americans take interest in the U.N. meetings on human rights, it is likely that the U.S. delegation will continue to pursue matters contrary to the views of the American public.

## **The Role of Men and Boys in the Trafficking of Women and Children**

By Kristen Elsasser

This past spring, I, along with Chelsea Haley Nelson, attended the 48<sup>th</sup> Session on the Commission of Women (CSW) in New York. We began our process of attending the Commission in February by submitting a written statement to the Commission on the two thematic issues of the 48<sup>th</sup> Session, and providing corresponding recommendations. (E/CN.6/2004/NGO/25) I had my focus set on one of the two thematic issues: The Role of Men and Boys in Achieving Gender

Equality. Within this issue, I specifically worked on and researched the role of men and boys as the demand in the trafficking of women and children for means of sexual exploitation, primarily forced prostitution. Although men and boys are the demand within the trafficking industry, they are rarely called upon to participate in eliminating the trafficking crisis happening around the world.

According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, “‘trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).)

In 2003, it was estimated that 800,000 to 900,000 persons are trafficked across international borders each year. (*Trafficking Watch*, Issue No. 2, Fall 2003, p. 2.) However, while at the CSW I was told that the number of trafficking victims each year is closer to 4 million. Surprisingly, a very large part of the demand in the trafficking of women and children comes from UN personnel and peacekeepers. For example, in Cambodia, 22,000 U.N. Transitional Authority of Cambodia troops created a prostitution industry by recruiting Vietnamese women by the truckloads and bringing them into Cambodia. (Isabelle Talleyrand, *Note: Military Prostitution: How the Authorities Worldwide Aid and Abet International Trafficking in Women*, 27 Syracuse J. Int’l L. & Com. 151 (Winter 2000).) In Bosnia, the sex-slave industry was almost non-existent until the Dayton accord was signed in 1995 and 50,000 U.N. peacekeepers, primarily male, moved in. Once the peacekeepers arrived, hundreds of brothels appeared filled with women and children who had been trafficked in from neighboring countries. (*Id.*)

However, there has never been an international monitoring mechanism focusing on trafficking—meaning no one is out there holding anyone accountable for these crimes. For this reason, I took my research with recommendations to the CSW to lobby delegates to include in the outcome document language on trafficking, and to recommend that a monitoring mechanism in the form of a Special Rapporteur on Trafficking be created. The outcome document was then voted on by the delegations at the end of the 2 weeks, and the agreed upon conclusions was sent to ECOSOC, and additionally was handed out a few weeks later in Geneva at a trafficking panel being held at the Commission on Human Rights.

Once in New York, Chelsea and I spent a day meeting with representatives from non-governmental organizations from all over the world, discussing subtopics under the two thematic issues and what the NGOs would like to see the accomplished in this session. We then turned to lobbying the delegates, which involved approaching the delegates at appropriate times and talking with them about our research and the incredible need for a Special Rapporteur on Trafficking. In all, we lobbied forty-nine delegates, most of which were very receptive to our ideas. Additionally, I was able to make a 2 minute oral intervention during the expert panel on the Role of Men and Boys in Achieving Gender Equality, which was received amazingly well by both the delegates and the NGO representatives.

Our second week at the CSW was spent observing the delegates arguing over specific language they each wanted to see in the outcome document. The interventions made during the informal negotiations included many debates such as “the US would like it to read ‘reiterates’”, “Canada would like to see both ‘reiterates and reconfirms’”, and “the EU thinks it should read ‘reiterates, reconfirms and recalls’”. The CSW, after hours of debate, was successful in eventually agreeing to a final document on the Role of Men and Boys in Achieving Gender Equality. This final document does include a paragraph on trafficking and the need to address the demand side of it, which was a success in our eyes. Unfortunately, there was nothing included in the agreed conclusions about the need to create or implement a monitoring mechanism for trafficking. However, please see the article on Agenda Item 12 of the

Commission on Human Rights for a follow up to our request for a Special Rapporteur on Trafficking.

Attending the 48<sup>th</sup> Session on the Commission on the Status of Women was an extremely valuable educational and professional experience, and an unequalled opportunity for a law student to be fully involved in the UN and the international community.

## **Women's Equal Participation in Peace Processes**

By Chelsea Haley Nelson

This past March, I attended the 48<sup>th</sup> session of the Commission on the Status of Women in New York. My work primarily focused on how the trafficking of women and children is perpetuated by excluding women's equal participation in conflict prevention, management and conflict resolution and in post conflict peace-building.

In 2000, the United Nations Security Council passed Resolution 1325<sup>2</sup> (UNSC 1325) in response to the growing recognition that armed conflict around the world had a disparate impact on women and children. The mandate called for the equal participation of women in all aspects of peace processes, including negotiations leading up to peace agreements, participating in drafting of peace accords, and in post-conflict reconstruction period implementation.

My research showed that trafficking for purposes of sexual slavery in times of internal and international conflict. The chaos of conflict raises women's vulnerability to be trafficked into brothels, sex camps and private arrangements of sexual slavery. The complicity of local police, military and UN peacekeeping forces perpetuates. Warring factions include blanket impunity agreements into peace accords in order to start the post-conflict period "with a clean slate". These provisions relieve all accountability for traffickers and leave women without legal redress for the sexual exploitation they experience. Peace accords also do not provide for implementation of new laws directed at protecting women's physical security or freedom of movement in the post conflict society.

My lobbying efforts sought to highlight the issue of trafficking in the context of armed conflict as a disproportionate impact of war against which UNSC 1325 was adopted to counter. Exclusion of women from various levels of peace processes has continued despite enactment of UNSC 1325. This exclusion serves to perpetuate trafficking of women. To combat this, we recommended implementation of an international monitoring mechanism specifically to address trafficking, namely appointment of Special Rapporteur on Trafficking.

In addition, we recommended that UN peacekeeping commanders hold their soldiers accountable for trafficking, including strict adherence to clear codes of conduct that protect the physical security and ensure the freedom of movement of women and children. And finally, that member state parties to peace accords: include women in negotiations for peace; refrain from including amnesty provisions for sexual exploitation into accords; and include a commitment to adopt and implement standards to eliminate trafficking of women and children.

I was able to make an oral intervention the second day during an Expert Panel discussion on my thematic topic. The expert panelists acknowledged that international community must work against trafficking, taking the problem beyond mere policies to specific commitments for action. The suggestion for establishment of a post of Special Rapporteur on Trafficking was noted.<sup>3</sup> Afterwards, many NGO representatives thanked us for calling for an international response to the growing issue. A few delegates, including Norway and South Africa, requested my research and the specific language I had drafted so they could propose its inclusion into the agreed conclusions on the thematic topic.

In further lobbying efforts, we discovered that the US delegation was working in private negotiations to keep all references to trafficking out of the final agreed conclusions. However, publicly the US held a panel discussion on how much progress the current administration has made to combat global trafficking.

In total, we lobbied approximately 49 delegations directly, many of whom proposed a

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<sup>2</sup> S/RES/1325 (2000).

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<sup>3</sup> E/CN.6/2004/CRP.9.

portion or all of my recommendations, including: Canada, New Zealand and Norway, South Africa, the EU and Switzerland.

The CSW agreed conclusions on women's equal participation in peace processes were adopted by consensus on March 12, 2004. Ultimately, the conclusions highlight a need to strengthen accountability and international monitoring mechanisms and call for measures to prevent trafficking of women. Specifically, the measures call for "protection and security of women's freedom of movement and physical security", calls on "governments and relevant actors to peace processes to fulfill their monitoring, accountability and reporting obligations", and for "measures to prevent and prosecute gender based violence, including sexual violence against women and children, especially trafficking of women and girls."<sup>4</sup>

I would like to thank Professor de la Vega and Human Rights Advocates for the opportunity to attend the Commission on the Status of Women. The experience was a practical view of the internal work of the United Nations and a chance to influence issues of relevance to women and children around the world. Most importantly, it reaffirmed to me the continuing importance of the global dialogue on women's rights.

## **The Juvenile Death Penalty and Life Without the Possibility of Parole**

By Sarah Canepa, Babak Yousefzadeh

This year, at the commission we addressed the issues of the juvenile death penalty and life without the possibility of release for juvenile offenders under agenda item #13 the rights of the child and agenda item #11, the administration of justice.

### **Juvenile Death Penalty**

On the issue of the juvenile death penalty, the world has come very close eliminating the practice. The United States now remains the only country in the world to officially carry out the practice. The prohibition of this practice has risen to the level of *jus cogens* because it is general

international law; accepted by a large majority of states as a whole; immune from derogation; and modifiable only by a new norm of the same status. The Inter-American Commission on Human Rights in October 2002 found that the juvenile death penalty has risen to the level of *jus cogens*. (See: Report No. 62/02, Case No. 12.285, *Domingues v. United States*, ¶ 84-85 (2002). Since their initial decision, the Inter-American Commission on Human Rights come to the same conclusion in three additional cases: *Napoleon Beazley v. United States*, Inter-American Commission on Human Rights, Report No. 101/03, Merits Case 12.412, December 29, 2003; *Gary Graham v. United States*, Report No. 97/03, Case No. 11.193, December 29, 2003; *Douglas Christopher Thomas v. United States*, Report No. 100/03, Case No 12.240, December 29, 2003.

The United States Supreme Court has granted certiorari to *Simmons v. Roper*, 112 S.W.3d 397 (Mo. 2003) *cert. granted*: 124 S. Ct. 1171(2004), wherein the Missouri Supreme Court had found that the practice violates the 8<sup>th</sup> amendment of the constitution. The Court noted the international community's opposition to the practice and cited the U.N. Convention on the Rights of the Child. The progress in the international community and the work of the United Nations Commission on Human Rights have been instrumental in assisting change in the United States.

Prior to attending the Commission, we submitted a written statement on the juvenile death penalty, life without the possibility of release, and child labor (E/CN.4/2004/NGO/96). This year while attending the 60<sup>th</sup> session of the Commission, we were able to monitor the language of the resolution on the Rights of the Child, addressing the juvenile death penalty. Due to our previous year's efforts, many of the delegates supported the language from last year and where more than willing to make sure it remained the same (E/CN.4/RES/2004/48). Initially we had hoped to lobby for a separate resolution targeting the juvenile death penalty. However, we were told that a separate resolution would not be possible – the delegates were concerned this would allow the possibility of other issues to also receive a separate resolution. We were also told that there would be no changes to the rights of the child resolution.

<sup>4</sup> advanced unedited version available at:  
<http://www.un.org/womenwatch/daw/csw/csw48/ac-wp-auv.pdf>

During the drafting meetings, delegates from the United States continually tried to change the language, however no change ultimately took place and the resolution went to a vote, where the United States was the sole vote against the entire resolution. Last year the U.S. was the only country to vote against the paragraph regarding the juvenile death penalty, however the rest of the resolution passed by consensus. In U.S.'s statement regarding the vote this year, they requested that the process for drafting be changed to increase transparency in the process of drafting the resolution (*See: Commission on Human Rights Adopts Resolutions on Rights of Women and Children, Specific Groups, Indigenous Issues, April 20, 2004, available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/NewsRoom?OpenFrameSet>*). This comment seemed out of place due to the fact that the drafting of the Rights of the Child held the most open sessions for draft resolution meetings. If anything, this resolution was more transparent than most such as the resolution on the responsibilities of transnational corporations and related business enterprises with regard to human rights.(E/CN.4/2004/RES/L.73/Rev.1)

At the Commission we also spoke to the countries that had executions in the last year. Iran executed one juvenile in January. We were told by the delegate from Iran that there is legislation that is close to finalization which would ban the execution of youth offenders under the age of 18. China also executed one juvenile last year, even though it has banned the practice. Our information prior to attending the Commission found that the execution took place due to a problem verifying the age of the offender. When we spoke to the delegate from China, he did not seem very well informed on the issue and reassured us they didn't execute the juveniles until they were over 18, and in most cases the sentence was commuted to a lesser imprisonment. When we spoke to the delegate from United States he gave us a similar answer, that they don't execute juvenile offenders until they were over 18, which is a stark mischaracterization of the international standards which prohibit the execution of anyone committing a crime under the age of 18.

Finally, on the same day as the tenth remembrance of the Rwanda genocide, the statements for the rights of the child agenda was discussed on the floor. Norway made a strong statement for all governments to eliminate the

juvenile death penalty. Iran stated that there were in the process of passing legislation to ban the juvenile death penalty. Later in the day we gave and oral intervention on the juvenile death penalty and life with out the possibility of release for juvenile offenders. Over all our experience at the commission was very productive on this issue.

### **Life Without the Possibility of Release**

This year, for the first time, the Clinic raised the issue of imposing life sentences without the possibility of release or parole on youth offenders (hereafter LWOP). The Convention on the Rights of the Child, the same authority that prohibits the juvenile death penalty, also clearly prohibits the practice of imposing LWOP on youth offenders. Further, annual resolutions for at least the past decade, as well as various guidelines, condemn the practice of giving juveniles life sentences without any possibility of release. Finally, most of the same reasons that make the juvenile death penalty a human rights violation apply to LWOP for juveniles. However, unlike the juvenile death penalty, the issue of LWOP for youth offenders has received very little attention nationally or internationally. Internationally, the issue is rarely discussed, because preliminary research suggests that no other country in the world engages in the practice, and it is therefore not afforded much attention.

On a national level, the issue is not discussed because it is simply assumed that there is nothing wrong with the practice. The practice of imposing LWOP on youth offenders has been upheld indirectly by the United States Supreme Court and directly by the 9<sup>th</sup> Cir. LWOP is often seen as a more humane alternative to the juvenile death penalty, and it is routinely argued as the reason the juvenile death penalty should be abolished. Proponents of this argument often maintain that there is no reason to execute youth offenders, when we can simply lock them up for ever.

The depth of this problem becomes evident when we consider that U.S. correctional facilities today hold an estimated several thousand individuals who received life sentences without the possibility of parole as juveniles – in direct contravention of international law.

Since this was the first year we addressed life without the possibility of release for juvenile offenders, our main goal was to bring attention to the issue and distribute information on the subject. We introduced this issue to many of the delegates, and discussed the possibility of getting some language sponsored for next year's resolutions. We wrote a research paper on the issue which we distributed to many of the delegates. We also monitored the language on the Administration of Justice resolution under agenda item #11 which is the only resolution which addresses the issue. The language on the issue remained strong in the resolution this year. We hope expand on this issue next year and push for more language not only in the Administration of Justice resolution, but also in the Rights of the Child resolution.

We would like to thank Professor de la Vega and Human Rights Advocates for the opportunity to attend the Human Rights Commission. Overall, our experience at the United Nations was an invaluable one. We not only enhanced our advocacy and lobbying skills but learned about the inner workings of the Commission, the voting process and the impact NGO's can have in improving human rights.

## **Arbitrary Detention**

By Jeanna Steele, Jean Covington, Lynsay Skiba

Our work this semester focused on the arbitrary detentions in Guantánamo Bay and the anti-terrorism legislation and security measures worldwide emerging from the global "War on Terror." Some of these measures violate civil liberties, procedural safeguards and have been used to silence political dissent.

Our work on the arbitrary detention resolution specifically sought to include language on the right of detainees to judicial review without delay. The final draft of the resolution included this language and was adopted by consensus. We were also able to lay a foundation for next year when we hope the resolution will reflect the link between torture, discrimination and arbitrary detention. To this end we lobbied 23 of the 53 delegations, speaking with them and giving them copies of our research that reflected this link. In the process of lobbying the national delegate in charge of the proposed resolution language, we were able to observe first hand the way that international

human rights obligations impact on international politics and vice versa. It was clear, for example, that we needed to keep our language broad and general enough to avoid alienating key delegations and cutting against support for the resolution. (See E/CN.4/RES/2004/39)

Our oral intervention highlighted the story of Maher Arar who was seized by U.S. immigration officials at Kennedy International Airport in New York because his name had come up on an international watch list for possible terrorists. Maher Arar was about to change planes on his way home to Canada after visiting his wife's family in Tunisia when he was pulled aside for questioning. As he passed through immigration, solely to reach his connecting flight, authorities pulled him aside, denied his requests for a lawyer and to call his family, interrogated him at length and ultimately accused him, on secret evidence, of being a member of a terrorist organization. His family did not have any information about his whereabouts.

The Convention Against Torture absolutely prohibits not only torture itself but also sending any person to a country where there is a substantial basis for believing that he will be tortured. This prohibition is not excusable for a state of war, for a public emergency, or for any other exceptional circumstance

Allegations of torture have also been made by detainees imprisoned as suspected terrorists at Guantánamo Bay. In March 2004, a former detainee reported being beaten, humiliated and interrogated for 12 hours. As yet, these detainees have not been formally charged, do not have access to judicial process, and continue to be held indefinitely and almost entirely incommunicado.

The International Committee of the Red Cross has also voiced strong apprehension about the mental welfare of the prisoners based on 32 suicide attempts by 21 detainees. The high incidence of such events, as well as the number of detainees being treated for clinical depression is a direct result of the uncertainty of their situations.

Other encroachments of the rights guaranteed under international law have begun to appear in governmental policies. The Covenant on Civil and Political Rights provides for recognition of the right of peaceful assembly and the right to hold opinions without interference. But recent

policies adopted in the U.S. place these rights in jeopardy. For example, when President Bush travels to communities around the U.S., local police set up “free speech” or “protest zones,” where those voicing opposing views are quarantined.

The U.S. and other countries have also passed legislation that threatens basic civil liberties guaranteed under domestic and international law. Under the amended definition of “domestic terrorism” in the PATRIOT Act, for example, legitimate protest activity could result in conviction on terrorism charges. We were able to distribute information about these practices to many delegates through our oral intervention, long report and short summary.

Attending the Commission has shown us that the pressure exerted on countries through this process does have an effect. It has also demonstrated that upholding and strengthening international human rights and humanitarian law has never been more important, especially given the current administration’s machinations to the contrary. If there is any doubt about the importance of international law, it is proven by the lengths to which countries like the U.S. and China will go to eliminate rights-expanding language in the Commission’s resolutions. The Frank C. Newman Internship Program gives students the opportunity to continue to work to create and maintain international law—law on which we, as American lawyers, may need to increasingly rely, as other rights in our country are gradually chipped away. It also gives students a rare opportunity to apply what they have learned in law school at an impressive institution with impressive people. Thank you for this opportunity.

## **Protecting the Human Right to Water**

By Jay Kalinski

For my internship project, I chose to write my research paper on water privatization schemes and their effects on human rights as related to Agenda Item Seven – the Right to Development.

In preparation for attending the UN Human Rights Commission in March, I authored a Background Report on Water Privatization and its Effects on Human Rights. Additionally, I coauthored (1) the final HRA Written Intervention on the Right to Development, (2) the HRA Position

Statement on the Right to Water, and (3) the Oral Intervention on the Right to Development.

Adam Levine, Sarah Brown and I were the HRA interns working together on Agenda Item Seven – The Right to Development. The Background Report I authored was combined with the papers written by Adam Levine and Sarah Brown to form the HRA Written Intervention on the Right to Development. The HRA Position Statement on the Right to Water was a two-page summary of the right to water background reports by Adam Levine and me, and the Oral Intervention was a collaboration by all three of us.

At the beginning of the Session, our goals were to educate the various delegations about the importance of the right to water and its link to the right to development, and to insert the right to water into the language of the Right to Development Resolution authored by Malaysia.

### **The Right to Development Resolution**

Immediately after arriving at the Commission, we sought to obtain the Report of the Working Group on the Right to Development that had met two weeks before the Commission meeting began. Fortunately, we successfully obtained a draft of the report from a UN Secretariat employee before the report was officially available. From the report and from discussions with members of various delegations, we learned that Malaysia was carrying the Right to Development Resolution on behalf of the Non Aligned Movement (hereinafter “NAM”).

Thus began our lobbying efforts with respect to Malaysia. Initially, the Malaysian Ambassador told us that the NAM members were very close to agreement on the current document and inserting our language would complicate their consensus building efforts. However, the Ambassador told us that he would make sure that the right to water would be inserted into the resolution next year.

The resolution, when it was finally made available, called for the creation of a “high level task force” to determine the current obstacles to fulfilling the right to development and to determine the best practices available to deal with those problems. The resolution made no mention of specific issues or rights to be examined by the new

task force. We were able to extract a promise from the Malaysian Ambassador that, when the task force is created, he will suggest the right to water as one of the issues to be examined first.

Accordingly, our efforts at inserting the right to water into the Right to Development Resolutions were a partial success. Although the right to water was not specifically mentioned in the text of the Resolution, we were assured that language on the right to water would be included next year and that the right to water would be one of the first issues taken up by the high level task force on the right to development.

### **The Oral Intervention on the Right to Development**

After getting our bearings at the Commission, several things became clear with respect to our oral intervention. First, after discussions with several delegations and with other NGOs, it became evident that lobbying at the Commission and getting rights protected is an incremental process—very rarely does the Commission recognize a new right immediately. Second, we noticed that the best interventions were those that contained specific recommendations that the Commission could act on, not sweeping generalizations that did not provide anything concrete for the Commission to consider.

Accordingly, Adam, Sarah, and I decided to rewrite our oral intervention with the help of our HRA supervisor, Michelle Leighton, to make it more effective considering what we had learned. We therefore removed some of the generalized aspirational language and replaced it with specific recommendations that could be implemented by the Commission in drafting the Right to Development Resolution. In particular, we urged the Commission to create the aforementioned high level task force, and then we further urged that the new task force adopt the right to water as one of the first issues it examines under its mandate.

I delivered the oral intervention in front of a packed house of 190 delegations (the Special Session on Israel's Assassination of the Hamas leader followed almost immediately after my speech). Our oral intervention was so well-received that I was approached afterwards by a member of the UK delegation who told me that they were particularly impressed by my speech.

In the end, our oral intervention was very effective due to our reedit and the fact that we had such a large audience of delegates.

### **The Right to Food Resolution**

Having not fully accomplished our goals under the Right to Development Resolution, Adam and I sought another resolution where we could insert language on protecting the right to water. After discussions with various delegations and research conducted at the Commission, we determined that our best chance was the Right to Food Resolution being carried by Cuba.

Thanks in no small part to the diplomatic skills of our HRA supervisor, Michelle Leighton, we were able to set up a face-to-face meeting with the Cuban Ambassador. In preparation for this meeting, we drafted language regarding the right to water using last year's Right to Food Resolution as a base. During our meeting with the Ambassador, we explained the importance of protecting the right to water and its link to the right to food. At the end of our meeting, the Cuban Ambassador agreed to adopt our language into the Right to Food Resolution Cuba would present and promised us that he would fight to keep our language in the Resolution through its vote before the Commission.

At this point, our time at the Commission was finished and we had to depend on the next round of HRA interns to ensure that Cuba and Malaysia kept their words.

### **Final Accomplishments**

I am happy to report that we have some actual accomplishments to show for our efforts. First, although we did not get the right to water inserted into the Right to Development Resolution, we have been promised that it will be included next year. Moreover, the Malaysian Ambassador himself promised that Malaysia would recommend that the right to water be among the first issues addressed by the new high level task force. Second, we succeeded in getting the right to water included in the Right to Food Resolution. I am very happy to report that our language on the right to water was included in the final version of the Right to Food Resolution that was passed by the Commission. Here, a special thanks is owed to HRA interns Jennifer Naegele and Adam Day for following up with Cuba on our behalf. Third,

thanks to our lobbying efforts and oral intervention, we were able to educate many delegations about the importance of protecting the right to water and its link to other basic human rights.

My involvement with HRA and the UN Human Rights Commission has been an invaluable learning experience for me, and I would sincerely like to thank HRA for this wonderful opportunity. I believe that through our efforts at the Commission this year, we have won small, but important victories for all people who are denied their right to water. By raising awareness of the importance of the right to water and by getting it included in the Right to Food Resolution, we have helped the Commission take another step towards recognizing the right to water as a fundamental human right. Hopefully, this will in turn move the world closer to ensuring the right to water is protected for everyone.

## **Child Soldiers**

By Sarah Williams

The experience of attending the 60th Session of the Human Rights Commission was a very important and exciting one for me. I am a British lawyer studying international conflict resolution and since my specific area of research is the interaction between international law and international relations; to see the collision between the two that is the Human Rights Commission was absolutely invaluable. I enjoyed the experience tremendously and now feel that I have the confidence to attend any similar international/UN conference and to know how to maximize the chances of achieving my objectives.

I took up the issue of child soldiers and linked with Jay Kalinski and Adam Levine to intervene on Item 7, the Right to Development. As Jay and Adam were working on the Right to Water, this was a slightly unusual fit. Although most countries in which children are participating in armed conflict are designated Less Developed Countries by UNDP and research is showing more and more clearly that the issue of child is intrinsically linked to development, the difficulty that I had was that the right to development is not sufficiently evolved for countries to even begin to consider articulating a niche issue like child soldiers within the resolution. The right is still at the stage of broad generalizations and I very quickly realized that there would be no possibility

for me to achieve the incorporation of any of my suggested wording for resolutions. I therefore had to switch horses mid-race, to Item 13, Rights of the Child which put me at something of a disadvantage.

There was a composite NGO proposal on Item 13 which had already been negotiated between the participating NGOs so there was no possibility for me to have an input into that. The only chink was either to lobby the Africa Group which was submitting a resolution on child abduction or to try to influence the wording of the main resolution on this item that was being drafted by GRULAC and negotiated with the EU. With regard to the Africa resolution, I lobbied all the African governments but found the South African delegation to be responsive. However, I encountered the problem that the main decision-maker on the issue was not yet at the conference. I tried to communicate with her directly but with no luck. With regard to the GRULAC resolution, I had meetings with the UK and Irish delegates and lobbied the delegates of Ecuador, Argentina, Costa Rica, Brazil, Peru and Nicaragua at which I argued for the incorporation of wording which recognized that prevention of the phenomenon of child soldiers required addressing the right to development of individuals in countries affected or potentially affected by armed conflict. I found the people I had to deal with sympathetic and interested in the issues but unfortunately, it was only at the end of my stay that I got to the point of being shown the wording of the draft. This meant I was not there to lobby for the wording that I would have had the best possibility of getting incorporated into the resolution. I tried to continue the work by email after I had left but failed to get any real response. There was wording included within the resolution relating to education as a means of rehabilitating children in armed conflict, which was presented to me while I was at the commission as something of a concession to my request, but to be frank, that wording would have been added regardless.

In terms of furthering the cause, I feel that some of the conversations I had with other NGOs and with delegations were useful in getting them to think about the developmental connections with the issue of children in armed conflict. The international effort thus far has been very much focused on building protection under international law and in looking at demobilization, disarmament and reintegration issues. If I were to attend next

year, or if someone else were to take this issue, then, with a good strategy, there is an excellent prospect of success.

In terms of my own education on the issue of child soldiers, I have been very affected by exposure to the terrible injustices suffered by children in armed conflict. I feel committed to continue working in this area, both in my studies and hopefully, during my career. Since returning from the Commission, I have given a lecture on child soldiers at International House as part of the Globalization Series and have also run two workshops for high-school age children at the request of Youth Philanthropy Worldwide.

I would like to take this opportunity to thank Human Rights Advocates and all its committed board members for allowing me to participate in this wonderful internship program. Truly, it has been one of the best experiences of my academic life and has strengthened my commitment to work within the field.

## **The Impact of Poverty and Military Forces in the Supply and Demand Sides of Trafficking**

By Jacqueline Brown Scott

Attending the 60<sup>th</sup> Session of the Commission on Human Rights this April was a truly invaluable opportunity. I am grateful to Connie de la Vega, Human Rights Advocates, and U.S.F. School of Law for this unique opportunity.

My work this semester focused on two issues related to the trafficking of women and girls into the commercial sex trade: the role that military forces play in the demand side of trafficking and the connection between poverty and the supply side of trafficking. Prior to attending the Commission, I prepared and submitted a written statement highlighting these issues. (*See E/CN.4/2004/NGO/95*). I also researched and prepared a longer report expanding on these issues which I circulated at the Commission.

The link between military forces and the demand side of trafficking is well-illustrated by recent events in Korea, where up to 8,500 Philippine and Eastern European women served as replacements for local Korean prostitutes. The majority of these foreign women were in fact

trafficked into Korea on special “entertainment visas” provided by the South Korean government. The women were tricked—only realizing that they would be forced to work as prostitutes after they arrived in Korea. Among the 4,735 foreign female workers holding E-6 visas, 4,234 were working as sex workers at clubs and hotels reserved exclusively for U.S. servicemen. While the entertainment visas are no longer being issued, this is a clear example of the significant impact military forces have on the trafficking of women.

This problem is not limited to U.S. servicemen, nor to national militaries. For instance, in December 2002, ten French NATO peacekeepers in Bosnia were found in a club from which NATO barred troops because it was believed to be part of a women-trafficking network. Similarly, trafficking in Bosnia flourished in 1995 with the signing of the Dayton Peace Accords. The demand for sex trafficking will continue to rise if governments cannot control their own armed forces and personnel.

In addition to focusing on demand, my work also emphasized the urgency in connecting poverty and the supply side of trafficking. Poverty is one of the most significant factors contributing to a woman’s risk of being exploited by commercial traffickers. I researched the impact of global financial and development policies, such as structural adjustment programs (SAPs), on women. SAPs have forced states to reduce their spending on social welfare, education, and healthcare. The resulting pressures on families and communities often force women to bear the burden of providing for the family. This kind pressure makes women susceptible to the commercial sex trade. SAPs also lead to a shrinking of the formal economy and an increase in the informal economy, which facilitate criminal practices like human trafficking.

Before going to the Commission I wrote letters to several countries urging them to, as a first step, create a monitoring mechanism to oversee the problem of the trafficking of women and children. Shortly after I arrived, I learned about a proposal to create a new special rapporteur on trafficking. I decided to concentrate my efforts on the mandate of this new special rapporteur, or in the alternative, the mandate of the Special Rapporteur on violence against women. In my oral intervention and in lobbying, I recommended to

countries that they include language in this year's resolution asking a special rapporteur to request information from the Secretary General and national governments on methods they have taken for reducing the impact of the military on the demand side of trafficking. In addition, I lobbied for language acknowledging the impact of poverty on trafficking and urged UN bodies and governments to support local women's groups that provide microcredit and job training programs for women vulnerable to the commercial sex trade.

Ultimately the Commission approved the appointment of a new Special Rapporteur trafficking in persons, especially women and children. (See E/CN.4/RES/2004/45) However, the resolution on trafficking did not include any language concerning the military. Also, while delegations from some "developing" countries enthusiastically supported my language on poverty, this was unfortunately not enough backing to have it included this year's resolution. There is clearly more work to be done, but hopefully I laid the groundwork for next year.

## **Experience at the UN Commission on Human Rights**

By Adam Day

I went to the UN Commission in order to become acquainted with UN human rights work in general—as a potential career—and to promote a relatively new concept in international law called the "death row phenomenon." I had (and continue to have) some skepticism about the overall effectiveness of the UN Commission as a human rights tool, and one of my goals was to evaluate how NGO advocacy was received and utilized in that setting. Another goal was to establish contact with various state delegates and the Special Rapporteurs on Torture, and on Summary, Arbitrary, and Extrajudicial Execution, in order to promote my report as a collateral attack on the death penalty.

My interactions with state delegates were overwhelmingly positive. I think HRA is a very well-respected NGO at the UN, and every delegate I approached received me with respect and consideration. I had the difficult task of working on the death penalty issue (which was, in my opinion, probably not the right agenda item for my topic), and most states had already agreed to

maintain the language of the previous year in this year's resolution. However, many delegates were very receptive to my report as a source of information and were happy to speak with me about ways of using my report as an effective advocacy tool. A Mexican delegate, for example, put me in touch with all of the relevant special rapporteurs' offices and discussed how my research might aid them in their reports. By the end of the two weeks, I had spoken to over 30 state delegates, all of which took the time to discuss my relatively unheard of topic with them.

Other NGOs were also very receptive to my report, but I found my interactions with them to be less useful overall. Most of the NGO lunchtime sessions were lessons in preaching to the choir: very few state delegates attended, and most of the comments from the crowd were merely to promote a certain NGO's work in that field. The only real digressions from these comments were from the Falong Gong representatives, who commented on religious persecution regardless of the topic. However, some of the well-established NGOs (Amnesty International, for example) were very good at orienting me to the process, and they generally had more time to chat than the state delegates. I think as I become more aware of the process of advocacy at the Commission, I will be able to more effectively coordinate with NGOs—this time I felt very little coordinated effort was produced in terms of actual advocacy on the death penalty issue.

One of the highlights of the Commission was actually tracing the language in the drafting sessions. I followed the right to water, migrant workers' rights, and the death penalty through all of their drafting meetings. This is where the states really engaged each other on substantive issues, and where I thought NGOs could play a more useful role. For example, the US was constantly objecting to the inclusion of the wording "right of foreign nationals" in a resolution. Even though I was not specifically following that paragraph, I was able to engage the US and Egyptian delegate after the meeting and show how the US objection could be resolved with no substantive changes to the wording. In this respect, I feel that we operate as watchdogs on the whole process, not letting states get away with provisions that contradict previous human rights commitments—in that sense, the

drafting sessions were the most interesting and useful aspect of the Commission for me.

Finally, I spoke with the assistant to Theo van Boeven about the Special Rapporteur's mandate. She was really excited about my report and passed it on to the Special Rapporteur on Arbitrary, Summary, and Extra-judicial Execution as well. The report of the SRs are crucial to the process at the Commission, and I was very fortunate to be granted access to their offices. I am hoping to continue the good conversations I had with their offices and further promote the death row phenomenon as a collateral attack on the death penalty.

Overall, I found the experience complicated and exciting. Watching someone like Conchita talk to delegates made me realize how effective HRA can be at the Commission, and how much better I could be at the process! I am certainly looking forward to going back sometime soon, next time with lots of extra paper and a warmer jacket!

## Access to Safe Drinking Water

By Adam Levine

Access to safe drinking water remains one of the most critical global public health issues. The World Health Organization (WHO) estimates that 1.1 billion people lacked access to an improved water supply and 2.4 billion people lacked access to adequate sanitation in 2000.<sup>5</sup> Lack of adequate water, sanitation, and hygiene ranks as the third leading preventable cause of disability and death in high mortality developing countries, after malnutrition and unsafe sex.<sup>6</sup> Without meaningful action by the world community, up to 118 million people will die from water related deaths over the next 20 years, with more than 90% of those deaths occurring in children younger than five.<sup>7</sup>

In addition to being a public health issue, however, water also remains an important human rights issue. In recent years, a growing body of

international human rights law has validated the existence of a human right to water. Both the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) make explicit reference to the obligation of state parties to guarantee access to clean drinking water for women and children. In 2002, the Committee on Economic, Social, and Cultural Rights affirmed the status of water as a basic human right, stating "the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival."<sup>8</sup> Still, until recently, the United Nations Commission on Human Rights had failed to explicitly acknowledge the existence of a human right to water in any previous resolutions or decisions. This past March, at the Commission's 60<sup>th</sup> Session, my colleague Jay Kaliniski and I worked to change this unfortunate fact.

Our goal was to get the Commission to make explicit reference to the existence of a human right to water. Since an entire resolution on water is likely many years away, we worked instead to insert specific language acknowledging a human right to water into a pre-existing resolution. We began by making contact with a number of other NGOs, such as the German coalition of NGOs FES and the Committee on Housing Rights and Evictions (COHRE), both of which have experience in the issue of right to water, to find out about which states may be most supportive of our language and which states we would have to work to convince. We also solicited advice about the different resolutions being debated at the Commission into which our language might fit.

Initially, we thought that the Right to Development resolution, under Agenda Item 7, might be the best place to insert language about a right to water. Just prior to the Commission, a special Working Group on Right to Development met to outline a plan for working to mainstream the right to development. Upon arriving in Geneva, Jay and I immediately obtained a copy of the Working Group's report, hours before it was even released to

<sup>5</sup> WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation (2000). *The Global Water Supply and Sanitation Assessment 2000 Report*. World Health Organization, Geneva.

<sup>6</sup> World Health Organization (2002). *The World Health Report 2002*. World Health Organization, Geneva. p.232.

<sup>7</sup> Gleick, PH (2003). Global freshwater resources: soft-path solutions for the 21st century. *Science*; 302(5650): 1524-8.

<sup>8</sup> Committee on Economic, Social, and Cultural Rights (2002). General Comment No. 15, The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social, and Cultural Rights). 11-29 Nov 2002, Geneva. No. E/C.12/2002/11.

the public. Reading through the report, we realized that inserting right to water language in the Right to Development resolution would be difficult, since it discussed only the creation of a High Level Task Force and not any specific development rights. Still, we met repeatedly with the Ambassador from Malaysia, which was sponsoring the resolution on behalf of the Non-Aligned Movement. We were not able to get right to water language in the Right to Development resolution, but we did make important inroads with Malaysia, who encouraged us to work with them to get language inserted for next year and promised us that water would be one of the first issues taken up by the new High Level Task Force.

Moving to Plan B, we began meeting with members of the Cuban Delegation, including the Ambassador himself, regarding adding water into their Right to Food resolution. As they worried initially about losing European support for their resolution if water was added, we held a number of meetings with Ireland, which spoke for the European Union at the 60<sup>th</sup> Commission. We were able to gain European support for our language, and eventually Cuba agreed to make reference to the right to water in their Right to Food resolution. When the Right to Food resolution passed less than two weeks later by an overwhelming margin of 51-1 (with only the US opposing it), an important step was taken by the international community in increasing recognition of the human right to water.

## **Toxic Substances and Their Adverse Effects on Human Rights**

By Nikki Belushko

This past Spring Jen Naegele and myself worked on the issue of the adverse effects of the illicit transfer and dumping of toxics on the enjoyment of human rights. This topic was agenda item ten at the 60<sup>th</sup> Commission on Human Rights in Geneva, Switzerland. Attending this Commission was an extremely rewarding opportunity, and I would like to thank Connie de la Vega and Human Rights Advocates for this amazing experience.

This topic is a very important topic that I have been working on over the past two years, with this spring's work yielding a concise fifteen-page report on toxics as well as oral and written statements to the commission. (*The written*

*statement cite is E/CN.4/2004/NGO/93.*) This work on Agenda Item 10 was done in order to urge the Commission to renew the Special Rapporteur's mandate on this topic as to continue monitoring human rights in this area. We also recommended that the specific enumerated rights to water, food, housing and work be added to the mandate to draw a specific connection between toxics in the environment and how they affect human rights.

Renewal of the mandate was very important because toxic pollutants impact a wide range of human rights around the world especially in poor and developing countries who are subjected to toxics through the use of pesticides or water contamination but do not have the means to deal with the effects of these toxics. Toxics can and do affect water supplies, destroy food sources, endanger workers, contaminate property used for crops and residences, and cause devastating health consequences to the people working and living in areas affected by toxic pollutants.

Methyl Parathion is an example of a pesticide that is banned in the United States yet has been exported to poor community in Peru. It is sold in one-kilogram bags with pictures of vegetables on the bag and the toxicity level explained only in Spanish, even though most people in this village speak Quechua. This pesticide was mistakenly mixed with milk and severed to children, which resulted in the death of at least on child.

Methyl parathion is just one example of toxics affecting human rights. Other examples include aerial spraying of dangerous pesticides in Columbia to eradicate drug crops, manufacturing and using pesticides banned in developed countries – such as Paraquat – in countries including Cambodia, Vietnam, and Malaysia, and exporting electronic waste to countries –like India and China– who claim to recycle these old computers while they stockpile and leak lead and mercury into the environment. These examples have lead to the destruction of legal farming areas, forced residents to move, caused the death and illness of workers and families, caused suicide rates to increase because the chemical lead to higher rates of mental depression, caused workers to come into contact with harmful chemicals, and contaminated drinking water in poor communities.

It is for these reasons that Jen and I lobbied for the renewal of the mandate on toxics with the addition of some enumerated rights. We also encouraged the Commission to adopt the norms on business enterprises, and urged governments to ratify international agreements regulating toxics, including the Aarhus convention. The Aarhus Convention requires countries to set up tracking systems for toxics and the mandate could be useful in helping to implement this convention's pollution prevention and control mechanisms which are important in order to protect human rights. The lack of adequate tracking systems occurs not only in developing countries but in developed countries as well. For example, in April 2003 the presence of pesticides was reported in 60 drinking wells in Willamette Valley, Oregon. The research team assembled in the United States to determine the source of the contamination found that an adequate tracking system would have prevented this water contamination.

At the Commission, Jen and I worked on all of these issues through lobbying, attending meetings, giving an oral and written intervention, and supplying our reports to interested delegates. We were also involved in a meeting in honor of the current Special Rapporteur on toxics Madame Vesely. At this ceremony, Human Rights Advocates and Earthjustice honored Madame Vesely with an award for all her work over the past nine years. This ceremony was very touching and allowed us to be in close contact with Madame Vesely and several African delegations. Our reports were well received by all of them.

Our work was a success as the mandate was renewed by a vote of 38-13-2. (E/CN.4/RES/2004/17.) The mandate was renewed even though the United States, Japan and the European countries voted against it. We also learned and honed valuable advocacy, lobbying and writing skills while getting to experience an opportunity that few people will ever get to realize. I have found this experience to be amazing and am filled with gratitude for both Professor de la Vega and Human Rights Advocates.

## **Migrant Workers at the UN Commission on Human Rights**

By Jennifer Arterburn

There are an estimated 175-million migrants worldwide and an increasing number of them are in need of protection from dangerous border crossings and workplace abuses. Migrant workers are playing an increasingly important role in the economies of developed nations. Meanwhile, the same countries benefiting from their cheap labor are trying harder to keep undocumented migrants out.

Tougher enforcement on U.S. and European borders is driving a rise in the use of smugglers. It is also forcing migrants to take more dangerous routes to evade border security. A record 409 migrants died trying to cross the U.S.-Mexico border last year, while at least 200 died trying to reach the U.S. by water. By some estimates as many as 1100 migrants die each year trying to make it to Europe.

Those migrants who make it to a developed country often work under some of the worst conditions and because they fear deportation rarely report abuses. To make matters worse, the U.S. Supreme Court has made it difficult for workers to gain the protection of a union. In 2002, the court ruled in Hoffman Plastic Compounds v. National Labor Relations Board, 535 U.S. 137 (2002) that undocumented workers were barred from receiving back pay if they were fired for union activities. Since then, both the Inter-American Court of Human Rights and the International Labour Organisation have ruled that undocumented migrants must be given the same protections as citizens working legally in a country.

Against this backdrop, the rights of migrant workers held their ground and made some modest gains at this year's UN Commission on Human Rights meeting. Under agenda item 14, three separate resolutions helped advance the rights of migrant workers--Violence Against Women Migrant Workers, Human Rights of Migrant Workers, and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The resolution Violence Against Women Migrant Workers (E/CN.4/RES/2004/49) was a new resolution aimed at calling attention to continuing reports of abuses

and violence committed against women migrant workers. It takes note of the focus the Special Rapporteur on the Human Rights of Migrants placed on women migrant domestic workers. And it calls on countries to put in place laws to punish traffickers and other perpetrators of violence against women migrant workers and to provide the women with legal and consular assistance as well as temporary shelter.

Although nearly identical to last year's version, the resolution on the Human Rights of Migrant Workers (E/CN.4/RES/2004/53) did include an important phrase recognizing the Inter-American Court of Human Rights 2003 advisory opinion (mentioned above) on the rights of undocumented migrant workers to be treated the same as other workers, which HRA recommended. And it noted the rights of domestic workers in the Special Rapporteur's report.

The resolution on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (E/CN.4/RES/2004/56) was very similar to last year's resolution as well. However, it did include some slightly stronger language to encourage countries to sign the convention and recognized the creation of the Migrant Workers Convention Committee.

Additionally, a Special Rapporteur on Trafficking in Women and Girls (E/CN.4/RES/2004/45) was created. Since trafficking is closely tied to the smuggling of migrant workers over country borders, this Special Rapporteur is expected to work with the Special Rapporteur on the Human Rights of Migrants to call attention to and report on the problem. All four of these resolutions passed by consensus.

HRA's other lobbying efforts on migrants included, making an oral intervention to call attention to the plight of migrant workers and to encourage other countries to sign the Migrant Workers Convention. HRA also made contact with a number of Latin American countries, explaining the problems that migrant workers face and asking them to help improve protections for migrants. Additionally, HRA spoke to Central American countries about trying to provide safeguards for

workers in trade agreements to prevent job losses and migration. Although, the end result of the resolution on the Human Rights of Migrant was less than hoped for, Mexico's initial willingness to include HRA's suggestions in the resolution draft may be a sign of better things to come next year.

**HRA** celebrates the U.S. Supreme Court's decision on June 29, 2004, in the case of *Sosa v. Alvarez-Machain*. The Court denied Dr. Alvarez-Machain's right to pursue his claims for the kidnapping he suffered, but rejected the U.S. government's attempt to eliminate the ability of all human rights victims to bring claims in U.S. courts. Adopted in 1789, the Alien Tort Claims Act (ATCA) was one of the first laws of the new American republic. It grants U.S. courts jurisdiction in any dispute in which it is alleged that the "law of nations," is broken, thereby allowing foreign victims of serious human rights abuse abroad to sue the perpetrators in U.S. courts. HRA filed an amicus brief in the case, along with the Center for Constitutional Rights and several other human rights groups. HRA's brief is available here: <http://www.humanrightsadvocates.org/images/hrtors%201.pdf>. Full legal briefs and more information about the case and the ATCA are available at <http://www.nosafehaven.org/>.

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