



Advocacy at the UN

By *Connie de la Vega*

For the first time ever, HRA members attended the 46th session of the United Nations Human Rights Council (HRC) virtually. Most of the government delegates and non-governmental organizations' representatives also attended the session virtually. Two students participated in the University of San Francisco's Frank C. Newman International Human Rights Law Clinic during the Spring 2021 semester and represented Human Rights Advocates at the session. For unknown reasons, the written reports the students prepared for the session were not published but are available at the Human Rights Advocates' website www.humanrightsadvocates.org under UN Advocacy. The two students who participated were Byanka Mexia Monson and Linda Ravano. Byanka also worked on the written statement submitted to the Commission on the Status of Women. (Statement by Human Rights Advocates, E/CN.6/2021/NGO/103.)

While we were able to attend the meetings in the main meeting room, the virtual platform was not set up for observing or participating in the resolution drafting

sessions. This made it difficult to have input into that process. Nonetheless, the Frank C. Newman Interns were able to communicate with delegates and make suggestions for the resolutions by email, as well as make oral presentations during the debates at the session. HRA's prior participation and advocacy at the Human Rights Council made it feasible to make those contributions.

Despite the virtual nature of the session, the HRC adopted 30 resolutions and 15 decisions. The latter addressed the outcomes of the Universal Periodic Review. The former included resolutions on topics address by HRA in the past, including: unilateral coercive measures (46/6), the environment (46/7), cultural rights (46/15), right to privacy (46/16 which extended that mandate for 3 years). A new topic was addressed this year involving human rights and the corona virus (46/14). The latter urged a timely and universal access to vaccines, emphasized that States are primarily responsible to adopt and implement responses to Covid-19, reaffirmed that the role of the UN is to coordinate the global response to control and contain the virus, acknowledged the crucial role of the World Health Organization, and urged affordability and transparency in distribution of the vaccine. It agreed to continue the discussion on this matter at the 49th session of the HRC next year. The issues of the effects of foreign debt on human rights (Resolution 46/8, adopted by a vote of 28-14-4) and the right to water as part of the right to food (Resolution 46/19, adopted by consensus) are discussed below.



UN Palais des Nations (Photo: Iury Prado Muci de Lima)

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Foreign Debt: Vulture Funds

By *Byanka Mexia Monson*

I attended the 46th Virtual Session of the Human Rights Council as an intern for Human Rights Advocates. I worked on the topic of foreign debt, specifically, on the effects of foreign debt on the full enjoyment of economic, social and cultural rights. Third-party creditors, more specifically, hedge funds, also referred to as vulture funds, purchase a Member State's debt that is in default, or in risk of default, from the original lender, for pennies on a dollar, turn around and sue the State for more than the face value of the debt, profiting from 300 to 2000 percent.

Under Article 56 of the United Nations Charter, States have a duty to take joint and separate action to create conditions of stability and well-being for the promotion of conditions of economic and social development and, to that end, have a duty to take action against third-party creditors who profit from States' economic distress. Vulture funds practices are of concern for three main reasons: (1) they profit at the expense of the State's economic sustainability, (2) they prevent the State from being able to restructure their debt with other debtors, and (3) debt that may be forgiven, or reduced, essentially ends at the hands of the vulture creditors.

Currently, there is no legal international regulation for these practices. Besides the anti-vulture laws in the UK and Belgium prohibiting the use of their courts for predatory suits, these practices remain unregulated. The only real source of regulation comes from the national courts, specifically, New York courts, known as "creditor-friendly" jurisdictions. This is because most of these hedge funds are based in the United States (US). Under the commercial activity exception in the Foreign Sovereign Immunities Act, US courts have jurisdiction because sovereign debt transactions constitute a commercial activity.

There have been some attempts to pass anti-vulture laws in the US, but they have been unsuccessful. (Stop Very Unscrupulous Loan Transfers from Underprivileged Countries to Rich, Exploitive, Funds Act 2009, H.R. 2932, 111th Cong. § 2 (2009).) One

of the reasons is due to the amount of influence that hedge funds owners have in US politics. Paul Singer, for example, is owner of one of the biggest hedge funds in the world—Elliot Management. He is also one of the Republican Party's top donors, and his stamp of approval is widely sought by conservative politicians.

At the virtual resolution drafting sessions, I proposed that there should be an international framework regulating the secondary market where the debt is being sold and purchased; there should also be a regulatory framework for debt restructuring; there should be limits placed as to the amount of money vulture creditors can recover; and an international tribunal should be the source of authority for these disputes, not local courts who adjudicate with bias in favor of vulture creditors. The resolution mentions the effects of foreign debt and other related international financial obligations and "Urges States, financial institutions and the private sector to take urgent measures to alleviate the debt problem of those developing countries..." (Resolution on the Effects of foreign debt and other related international financial obligations on the full enjoyment of all human rights particularly economic, social and cultural rights, E/HRC/46/RES 8, ¶ 8, adopted by a vote of 28-14-4.)

I learned so much from this experience. For one, there are a lot of factors that need to be considered at every stage of the process, such as political play. State actions cannot be directly condemned without running the risk that the State will do what it can to undermine your proposals. I also learned a lot about my topic. I immersed in my topic so much that I felt like I became a mini expert. Most importantly, I learned that the Human Rights Council is limited as to what it can do to address the problem. It is important to keep that in mind for proposing solutions. Essentially, the Human Rights Council is a platform for bringing to light world problems. The sessions function as a forum to heighten consciousness of the scope of the problem and to develop soft law principles that lays a foundation for the development of customary international law which can also lead to multilateral agreements.

My participation was a wonderful learning experience and am honored to have been part of it.

Transboundary Water Conflict and the Right to Food

By Linda Ravano

In March 2021 I represented Human Rights Advocates at the 46th session of the Human Rights Council. This year, the session took place via video conferencing. My topic focused on transboundary water conflict and the increasing crisis surrounding the scarcity of water, which also has been heavily impacted by global warming. In preparation for the 46th session my research focused on three particular topics that illustrate the different effects that transboundary water conflicts can have among two or more nations. I used the following examples to highlight the issues: Mexico and the United States; Egypt, Sudan and Ethiopia; and China and Laos, Cambodia, Thailand, and Vietnam.

Water scarcity is a growing concern created by global warming. Temperatures continue to rise drying up water sources, and the change in weather patterns has led to less rainfall and severe droughts. This is a significant issue for countries that share water resources. They have already experienced tension over these water sources and global warming has only escalated the issue.

The three examples I focused on represent a unique set of issues surrounding transboundary water. It is crucial that solutions are found to deal with the problems before the water conflicts lead to armed conflict.

The first example is the shared water of the Rio Grande and Colorado River between the United States and Mexico. Based on a 1948 treaty, each year within five year cycles the US is required to give a certain amount of water to Mexico from the Colorado River and Mexico is required to give the United State a certain portion from the Rio Grande.

The United States has been able to meet its water delivery requirements from the Colorado River which is further west, although drought has made this more difficult. More significant issues have occurred with the Rio Grande. If the United States restricts flow from that river, which has increased with dam building, it causes more problems further south when Mexico is required to give water from the Rio Grande to the US. In 2020, at the end of a five-year cycle Mexico did

not have the water it needed due to severe drought. There was a conflict between Mexican farmers and the Mexican National Guard when the government tried to take the water allocated for the United States because the farmers worried there would not be enough water for crops.

The second example is the conflict over the Nile River by Ethiopia, Sudan and Egypt. Ethiopia has built the Grand Ethiopian Renaissance Dam (GERD) on the Blue Nile River. When the Blue and White Nile Rivers meet in Sudan, the flow towards Sudan and Egypt can be decreased. In the summer of 2020 Egypt notified the UN Security Council that if a treaty to address sharing control over the river is not reached, armed conflict is possible. Egypt relies on the Nile for 96% of its total water, and they would like the amount of water to be the same as a treaty signed in the early 20th century.

The third example focused on is the Mekong River which flows from China to Laos, Vietnam, Thailand, and Cambodia. China has many hydroelectric dams. In 2017 when there was a bad drought, the Mekong was completely dry in Cambodia and people there were not able to fish or grow crops. Sixty million people along the Mekong River rely on it for their source of protein from fish and water for agriculture. China has agreed to let the countries know when they are withholding water but in January of 2021 the river dropped one meter in a week downstream and China only belatedly told them it had withheld the water.

Without water there is no food. Solutions need to be found to address these kinds of situations. To accomplish this, I urged the Human Rights Council to create a task force under the Food and Agricultural Organization (FAO) to address these kinds of problems. One way would be to tackle the problem through updated treaties, creating a think tank for all countries. Those nations with good water infrastructure and agricultural irrigation technology such as drip irrigation and water sensor technology can share their knowledge or even physically assist those countries lacking the technology to adopt these methods and reduce water use.

The resolution on the right to food mentions the role of the FAO in supporting the efforts of Member States to promote sustainable and safe food supplies and protection in the preambular paragraph and the

need for access to land and water (¶ 6) and the need to tackle water scarcity (¶ 12) to ensure the right to food. (Right to Food, Resolution E/HRC/RES/46/19, adopted without a vote.)

Overall, it was an enriching and highly educational experience. Attending the HRC virtually with the option to rewatch it, gave me insight into how the UNHRC operates and how NGOs play a vital role in furthering positive change surrounding our topics. Learning how to draft legislation and lobby delegates to get our changes implemented was rewarding. I enjoyed the collaboration with my classmate and am grateful for the guidance of Professor de la Vega.

HRA Annual Meeting

By Kathy Burke

Human Rights Advocates held its 2021 Annual Meeting on April 21, 2021. The meeting was conducted by Zoom, due to the governmental shelter-in-place orders that prohibited group meetings because of the covid-19 pandemic. As has been the practice for many years, the meeting was preceded by the oral reports of the USF law students who attended the Human Rights Council as Frank C. Newman interns (albeit virtually). The new Board of Directors was unanimously elected at the meeting. The Board members from 2020-2021 were all re-elected, as follows: Trevor Yan; Julianne Traylor; Connie de la Vega; Kathy Burke; Anna Manuel, and Bette Gedlu.

Also at the Annual Meeting, Connie de la Vega presented the Treasurer's report, which was approved by the Members. Interested members may request

copies of the Treasurer's report by emailing Connie at delavega@usfca.edu.

The Frank C. Newman student intern reports were thorough and enlightening, as always. The students' written reports are published in this issue of the Newsletter.

Message from the President

By Trevor Yan

Thank you to all of our members who supported our work and participated in our events during this most challenging year. Despite the challenges of operating remotely, HRA has continued to work to advance international human rights – including the students in the Clinic – albeit remotely, at the Human Rights Council. I wish you and your loved ones a safe and enjoyable summer.

HRA NEWSMAKER

We are always happy to receive information about former students of the Clinic in the human rights arena:

Iury Prado Muci de Lima – USF LLM student, Class of 2020, who participated in the Clinic in 2020: Internships with the NGO World Federation of United Nations Associations (WFUNA) working on youth development and peace and security strategies, and at the Office of the United Nations High Commissioner for Human Rights (OHCHR) working on Universal Periodic Review (UPR) issues.

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