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Is There Such a Thing as a Human Right to Science in International Law?

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Is there a Human Right to Science? The Human Right to Science does in fact exist as a true human right in existing International Law, even if its binding normative content still has to be clarified and better specified. The Human Right to Science is relatively unknown even among Human Rights experts and activists. There does not appear to have been, until very recently,² any organisation specifically devoted to the promotion of this right.³ And it has generally been overlooked by international bodies and also by states. Often states do not satisfyingly report, as is their obligation, on this right before the corresponding United Nations bodies. Nor have these bodies assisted states very much by giving guidelines or recommendations. There have only been a few (but happily increasing in the last few years)⁴ articles and monographs specifically devoted to the Right to Science and there are hardly any judgements based on this right even as a complementary ground.

And yet the Human Right to Science is a right that has been explicitly enshrined in the 1948 Universal Declaration (UD) (art. 27) and in the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR, art. 15). We are not therefore in any way dealing with a new legal right. If the right were better known, promoted and

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² In 2015 experts from scientific and human rights background have created the *International Institute for the Human Right to Science*.

³ I agree with Lea Shaver that “the closest candidate for this title is the AAAS’s Science and Human Rights Program”.

⁴ Recognizing here the extremely important work by Richard Pierre Claude, William Schabas, Audrey R. Chapman, Yvonne Donders, Lea Shaver, Jessica Wyndham for the AAAS and Farida Shaheed as Special Rapporteur for Cultural Rights.

protected, this human right would have an important impact on people's welfare and the enjoyment of other human rights. However, the Right to Science cannot be primarily based on this importance for the enjoyment of other rights, this foundation would be insufficient to explain the true nature of this right.

1. RIGHT TO FULLY PARTICIPATE IN SCIENCE OR RIGHT TO JUST BENEFIT FROM SCIENTIFIC PROGRESS?

The Right to Science was recognised in the 1948 UD as follows:

27.- Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

The first draft of the UD (June, 1947) already included a Right to Science in the same article as culture and arts. During the negotiation process the formulation evolved from the initial "*to share in the benefits of science*" to the wider concept of the right to "*share in scientific advancement*" and finally to a compromise text "*to share in scientific advancement and its benefits.*"

The *travaux préparatoires* show a debate on whether the right is only about enjoying passively its benefits or is also about taking part in the scientific enterprise in a broader sense.⁵ The word *share* in the phrase "the right to share in scientific advancement and its benefits" must be considered to have the same meaning as "participate" indicating an idea of action or agency. Indeed, the French and Spanish versions of the Declaration, which are equally valid, meaningfully opt for the words "*participer*" and "*participar*". The right, as articulated in the UD, advocates a view of "participation" which includes science popularisation, participation in scientific creation and in scientific policy, citizen science, gender equality, the freedoms of those doing science and some other aspects which are in addition to the right to "benefit from scientific applications".

The same applies to the ICESCR. The formulation at the beginning of article 15 ("enjoy the benefits of scientific progress and its applications") must be interpreted together with the wider mandate in the same article "for the conservation, the development and the diffusion of science", to guarantee "respect to the freedom indispensable for scientific research and creative activity" and the "development of international contacts and cooperation in the scientific" field. That language expands the scope of the right in line with what has been said above regarding article 27 of the UD.

The Right to Science is inserted, both in the UD and the ICESCR, in the article dedicated to the cultural rights, alongside the right to "participate in the cultural life" and the right to "enjoy the arts". Nobody claims that participation in cultural life or in arts must be justified as human rights due to their service to other ulterior or higher goals. They are accepted as objectives in themselves. Nobody is asked to explain the use of

⁵ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, Philadelphia, 1999)

poetry, dance, philosophy or music to defend their right to create and enjoy them. The same should happen in the case of science. Its relationship with creativity, enjoyment and human curiosity should suffice in order to justify it standing alone as a human right, because “much more important than the effect of science on our capabilities is its effects on *ourselves*”.⁶

2. WHAT IS IN A NAME?

We may refer to this right in the terms of the UD as the “right to share in scientific advancement and its benefits” or in terms of the ICESCR as the “right to enjoy the benefits of scientific progress and its applications” (REBSP), but these formulae are too long.

I opt for the more flexible and wide-scoping name of *Right to Science*⁷ to refer to an autonomous right within and in close relations to the cultural rights. I believe that this name covers, in a very succinct way, the ambitious goals of this right while respecting the limits of the international instruments mentioned above. I also have some sympathy for the formula *Human Right to Science and Technology*, to stress the increasing importance of technology in our lives, understanding technology as an *application* in conformity with article 27 of the ICESCR.

Lea Shaver has suggested the name *Right to Science and Culture* to include the artistic, cultural and scientific contents. For Shaver, “although ‘science’ and ‘culture’ are invoked separately in the Article 27 text, there is no clear dividing line between these two fields.”⁸ The last report by the Special Rapporteur Farida Shaheed⁹ seems to opt for this formula. The name *Right to Access to Knowledge* has also been suggested, backed by the authority of B. Boutros-Ghali,¹⁰ but I am less inclined to agree given that it only contains some, while of the extraordinary relevance, of the possible contents of the human right we are dealing with.

3. RECENT DEVELOPMENTS: TOWARDS A BETTER ARTICULATED NORMATIVE CONTENT

A joint initiative between UNESCO, the Amsterdam Center for International Law and the Irish Centre for Human Rights has signalled the beginning of the Right to Science’s return to the international arena. These institutions organised three experts’ meeting in Amsterdam (2007), Galway (2008) and Venice (2009) which provided an essential forum for consultation on the subject.

⁶ Steve Weinberg, *Facing Up* (Harvard University Press, 2001).

⁷ Which has been used *inter alia* by the Special Rapporteur of Cultural Rights, *Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, on the right to enjoy the benefits of scientific progress and its applications* (A/HRC/20/26, 2012)

⁸ Lea Shaver, “The Right to Science and Culture”, 2010, *Wisconsin Law Review* n° 1, 121-148

⁹ *Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, on copyright policy and the right to science and culture* (A/HRC/28/57, 2014)

¹⁰ Boutros Boutros-Ghali, *The Right to culture and the Universal Declaration of Human Rights* (Meeting of Experts on Cultural Rights as Human Rights, UNESCO, Paris, 1968)

Farida Shaheed, Independent Expert in the field of cultural rights, presented a thematic report in 2012 on this right. The Rapporteur recommended that “the Committee on ESCR review article 15 of the Covenant in a comprehensive manner, and envisage adopting a new general comment encompassing all rights recognized therein.” November 2013 saw the CESCR approve at its 51st session the start of work aimed at a future General Comment on the REBSP. This General Comment will determine the normative content of this right and lay down guidelines for states on its compliance and to facilitate their information obligations vis-à-vis the Committee.

There have been proposals on the normative content of the Right to Science, to my knowledge, by Richard Pierre Claude (2002),¹¹ William A. Schabas (2007),¹² Audry Chapman (2009),¹³ Yvonne Donders (2009),¹⁴ Lea Shaver (2010),¹⁵ Farida Shaheed (2012),¹⁶ and Margaret W. Vitullo and Jessica Wyndham for the AAAS (2013).¹⁷

In 2002, Richard Pierre Claude set out some of the points that we would later see in other authors’ treatment on the Right to Science. He also gave many important examples and practical cases for each type of obligation or violation and placed article 15.1b) in relation with the rest of the content of article 15. His work is still a rich source of inspiration today.

The principle of non-discrimination included in article 2 of the Covenant has been an important resource for disentangling certain contents of several ESCR and it will do the same for this right. “Non-discrimination is an immediate and cross-cutting obligation in the Covenant” and it generates certain specific obligations and under certain circumstances allows us to identify cases of breach.¹⁸

At the 2009 Experts’ Meeting in Venice, Yvonne Donders proposed four contents for the Right to Science: 1) scientific freedom; 2) the right to be protected from possible harmful effects of science; 3) the access (including participation); and 4) international cooperation. Donders, Chapman, Shaver and the AAAS use, for the interpretation of this right, the criteria already adopted by the CESCR in the general comments relating to other rights: the triple typology of obligations and, with a few qualifications, the criteria of availability, accessibility, acceptability, quality and adaptability.

¹¹ Richard Pierre Claude, “Scientists Rights and the Human Right to the Benefits of Science” in Audrey Chapman and Sagel Russel (eds.), *Core Obligations: Building a Framework for ESCR* (Intersentia, 2002)

¹² William Anthony Schabas, “Study of the REBSP” in Yvonne Donders and Vladimir Volodin (eds.) *Human Rights in Education, Science and Culture* (UNESCO, Ashgate, 2007)

¹³ Audrey R. Chapman, “Towards an Understanding of the REBSP” (2009) *Journal of Human Rights*, 8

¹⁴ *The Right to Enjoy the Benefits of Scientific Progress and its Applications. Report of the Experts’ Meeting, Venice, 16-17 2009*. UNESCO, 2009. p. 9

¹⁵ Lea Shaver, *ibid.*

¹⁶ A/HRC/20/26

¹⁷ AAAS Science, “Defining the REBSP: American Scientists’ Perspectives” (2013)

¹⁸ Committee On Economic, Social and Cultural Rights, *General comment No. 20 Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)* (2009) E/C.12/GC/20

Audrey Chapman and others offered important considerations concerning the right's relationship with the issues of participation, transparency and accountability, as well as important considerations about the international components of the right. Lea Shaver lists the concepts necessary in order to interpret the Right to Science, which include "non-discrimination, progressive realization, minimum core obligations, direct and horizontal application, and the duties to respect, protect and fulfil."

Lea Shaver also makes very original and ambitious contributions in relation to the conflictual relationship between the contents of this right and the international rules on intellectual property. This conflict is one of the principal challenges facing any attempt to establish the normative content of the Right to Science and, as we said, it has very recently been addressed by the Special Rapporteur, as it was previously in the General Comment N° 17 of the ESCRC.

This leads us to some of the most burning issues concerning the relation between science, technology and human rights, those concerning access to knowledge and access to the applications of science when in conflict with property rights. The story of the fight for access to AIDS treatment for poor and more vulnerable populations, particularly in India and Africa, illustrates to what extent the tension between the international IP framework and the human rights perspective affects the life and the dignity of millions of human beings.

The development of the normative content of the Right to Science might help to better understand the required equilibrium, with a view to fostering human dignity, which is foundational in modern international law.

In 2012 Farida Shaheed, after a participative process with numerous states, scholars and scientific and social organisations from around the world, incorporated in her report 24 points focused on the normative content of the right. The report constitutes a basic corpus essential for all future efforts:

"the normative content of the right to benefit from scientific progress and its applications includes (a) access to the benefits of science by everyone, without discrimination; (b) opportunities for all to contribute to the scientific enterprise and freedom indispensable for scientific research; (c) participation of individuals and communities in decision-making; and (d) an enabling environment fostering the conservation, development and diffusion of science and technology."

Another significant contribution from the Shaheed Report is the inclusion of a chapter dedicated to "third-party actors and their obligations," covering the role of the private sector in the development of this right.

To sum up, we can consider the Right to Science to have a wide-ranging and ambitious content, to which the normative content scheme developed for other ESCR is fully applicable. This right will include in addition to the traditional "benefit from scientific

applications” more contents regarding participation in scientific creation and in scientific policy, science education and popularisation, gender equality, rights of those doing science and international cooperation.

The CESCR has begun to develop a General Comment on the REBSP and any intellectual, social and political input towards its success will be most welcome.