



# **The Right to Enjoy the Benefits of Scientific and Technological Progress and Its Applications**

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# Normative provisions

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- Art. 27(1), *Universal Declaration of Human Rights* (1948)
- Art. 15(1), *International Covenant on Economic, Social and Cultural Rights* (1957, 1966, 1976)

# ***Art. 27(1), Universal Declaration of Human Rights (1948)***

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- (1) 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.**
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.**

# ***Art. 15(1), International Covenant on Economic, Social and Cultural Rights***

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1. The States Parties to the present Covenant recognize the right of everyone:
  - (a) To take part in cultural life;
  - (b) To enjoy the benefits of scientific progress and its applications;
  - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

# Slight differences in formulation

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*UDHR:*

'Everyone has the right  
... to share in scientific  
advancement and its  
benefits...'

*CESCR:*

'The States Parties to the  
present Covenant  
recognize the right of  
everyone... To enjoy the  
benefits of scientific  
progress and its  
applications...'

# Neglected norm

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**'The human rights community has neglected Article 27 of the UDHR and Article 15 of the Covenant...'**

Audrey R. Chapman, 'Approaching Intellectual Property as a Human Right: Obligations Related to Article 15 (1) (c)', UN Doc. E/C.12/2000/12, para. 25.

# The vanishing point of human rights law

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**if economic, social and cultural rights lie at the vanishing point of international human rights law...**

**then the question of the right to enjoy the benefits of scientific and technological progress and its applications lies at the vanishing point of economic, social and cultural rights.**

H. Lauterpacht, 'The Problem of the Revision of the Law of War', (1952) 39 *British Yearbook Int'l L.* 139.

# Newfound relevance

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- the 'g-word' – *globalisation*
- tension between protection of intellectual property (patented medicines, etc.) and right to benefit from scientific progress
- knowhow of indigenous peoples
- research priorities in medicine, food, water, etc.
- abusive use of science
  - sophisticated weaponry



# Drafting of art. 27 *UDHR*

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- **Humphrey draft: 'Everyone has the right to [freely] participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.'**
- **drawn from Inter-American Juridical Committee draft for American Declaration**
- **no source in national constitutions**



*Eleanor Roosevelt, John Humphrey*

# ***Art. 13(1), American Declaration of the Rights and Duties of Man***

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**'Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries.'**

# Drafting Committee, Commission on Human Rights

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- **Eleanor Roosevelt: 'as regards sharing in the benefits that resulted from scientific discoveries, the idea of the Drafting Committee had been to stress the universality of such sharing'.**
- **Bogomolov: 'this phrase appeared to imply the obligation to reveal the patents of scientific discoveries'**
- **Roosevelt: 'it would be possible to insert a comment to the effect that the Article did not imply the obligation to reveal the secret of scientific discoveries that had been patented'**

# Commission on Human Rights, 3<sup>rd</sup> session (June 1948)

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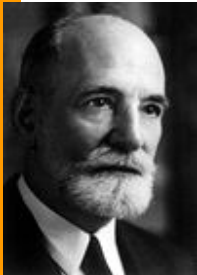


*P.C. Chang, Eleanor Roosevelt*

- Peng Chun Chang; 'share in scientific advancement'
- Pavlov: 'the benefits of science were not the property of a chosen few, but the heritage of mankind. He stressed that the task of science was to work for the advancement of peaceful aims and to make human life better.'
- 'benefits' disappears, for no apparent reason

# Third Committee of UNGA, 1948

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*René Cassin*

- Cisneros: restore the word 'benefits', because 'not everyone was sufficiently gifted to play a part in scientific advancement'
- Cassin: 'even if all persons could not play an equal part in scientific progress, they should indisputably be able to participate in the benefits derived from it'

# Intellectual property provision

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- The other half of article 27
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

# Proclamation of Tehran, 1968

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**'While recent scientific discoveries and technological advances have opened vast prospects for economic, social and cultural progress, such developments may nevertheless endanger the rights and freedoms of individuals and will require continuing attention.'**

**- para. 18.**

# Vienna Declaration and Programme of Action, 1993

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**Everyone has the right to enjoy the benefits of scientific progress and its applications. The World Conference on Human Rights notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual, and calls for international cooperation to ensure that human rights and dignity are fully respected in this area of universal concern.**



# Art. 15(1), *International Covenant on Economic, Social and Cultural Rights*

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1. The States Parties to the present Covenant recognize the right of everyone:
  - (a) To take part in cultural life;
  - (b) To enjoy the benefits of scientific progress and its applications;
  - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

# Proposed text comes from UNESCO in 1951

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- '[t]he right of everyone to enjoy his share of the benefits of science was to a great extent the determining factor for the exercise by mankind as a whole of many other rights'.
- '[e]njoyment of the benefits of scientific progress implied the dissemination of basic scientific knowledge, especially knowledge best calculated to enlighten men's minds and combat prejudices, coordinated efforts on the part of States, in conjunction with the competent specialized agencies, to raise standards of living, and a wider dissemination of culture through the processes and apparatus created by science'.

# Commission on Human Rights report to UNGA, 1954

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**'Members generally favoured the inclusion of a provision preserving the freedom of scientific research and creation. Some members deemed it essential to complete the article by adding a provision to the effect that States undertook to ensure the development of science and culture in the interests of progress and democracy and in the interests of ensuring peace and co-operation among nations. Most members, however, were opposed to including a statement of the ends which scientific research should serve...'**

# Interpretation of art. 15(1)

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- promise of a General Comment from the CESCR
- perfunctory remarks in the State party reports, Concluding observations

# Relationship between 15(1) and 2(1)

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- **'... to achieving progressively the full realisation of the rights recognized in the present Covenant ...'**

# Does 15(1) only protect 'authors' and not 'inventors' ?

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1. The States Parties to the present Covenant recognize the right of everyone ...
  - (c) To benefit from the protection of the moral and material interests resulting from any *scientific, literary or artistic production of which he is the author.*
  - does it only protect individuals as owners of intellectual property?

# Statement by Committee (2000)

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'The Committee therefore encourages the development of intellectual property systems and the use of intellectual property rights in a balanced manner that meets the objective of providing protection for the moral and material interests of authors, and at the same time promotes the enjoyment of these and other human rights.'

# UNESCO Declaration on Science and the Use of Scientific Knowledge, 1999

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‘Measures should be taken to enhance those relationships between the protection of intellectual property rights and the dissemination of scientific knowledge that are mutually supportive. There is a need to consider the scope, extent and application of intellectual property rights in relation to the equitable production, distribution and use of knowledge. There is also a need to further develop appropriate national legal frameworks to accommodate the specific requirements of developing countries and traditional knowledge and its sources and products, to ensure their recognition and adequate protection on the basis of the informed consent of the customary or traditional owners of this knowledge.’



# Regional norms

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- **American Declaration on the Rights and Duties of Man**
- **Council of Europe Convention on Human Rights and Biomedicine**
- **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**
  - 'take all appropriate measures to ... promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control...'

# TRIPS and the benefits of scientific progress

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- **Trade-Related Aspects of Intellectual Property Rights (TRIPS)**
- **Resolutions in the Sub-Commission**
  - some members (*e.g.*, A. Eide) warn that trade-related issues of intellectual property threaten realisation of economic and social rights
- **controversy in the Commission on Human Rights**
  - US delegate: questioning 'the validity of internationally agreed protections of intellectual property rights' was 'bad public health policy'

# Intellectual property of indigenous peoples

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- *Draft Declaration on the Rights of Indigenous Peoples*
  - right to 'the full ownership, control and protection of their cultural and intellectual property'

# Scientific progress and other economic and social rights

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- research priorities for medicine
  - Viagra<sup>®</sup>, hypertension, obesity, but no cure for malaria, TB
- Research priorities for food
  - GM foods, patented seeds, integration with pesticides and fertilizer production

# Scientific progress and civil and political rights

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**Special Rapporteur on freedom of opinion and expression:**

**'the new technologies and, in particular, the Internet are inherently democratic, provide the public and individuals with access to information sources and enable all to participate actively in the communication process'**

# Protection from abuse of scientific progress

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- patent regimes may block scientific progress
- research priorities follow profit, not human need
- some scientific research inherently harmful
  - ongoing development by P5 and others of weapons of mass destruction
  - ‘humane weaponry’ and IHL
  - *Quid*: does the right to enjoy the benefits of scientific progress include the right to be attacked by ‘smart bombs’?

# Science and production of weapons of mass destruction

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- is some scientific research inherently harmful?
  - ongoing development by P5 and others of weapons of mass destruction
  - 'humane weaponry' and IHL
  - *Quid*: does the right to enjoy the benefits of scientific progress include the right to be attacked by 'smart bombs'?



Hiroshima, after the atomic bomb

**‘Progress, man’s distinctive mark alone,  
Not God’s, and not the beasts...’**

- Robert Browning, ‘A Death in the Desert’, (1864).



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