

Report of the Experts' Meeting on The Right to Enjoy the Benefits of Scientific Progress and its Applications

Amsterdam, 7-8 June 2007

Introduction The Right to Enjoy the Benefits of Scientific Progress and its Applications

*Speakers: Prof. William Schabas and
Ms Maria Virginia Bras Gomes*

Presentation by the speakers

Prof. Schabas started by pointing out that the Right to Enjoy the Benefit of Scientific Progress and its Applications (REBSP) finds itself at the vanishing point of economic, social and cultural rights¹, while at the same time the legal content of the right needs further clarification. The speaker raised the point that an optional protocol instituting an individual complaints' procedure under the International Covenant on Economic, Social and Cultural Rights (ICESCR) may be useful in further developing the REBSP.

Prof. Schabas further maintained that the REBSP brings together many important topical themes, such as globalization and development. Furthermore, the REBSP is of a crosscutting nature, underlying not only many social, economic and cultural rights, but also touching upon civil and political rights, such as the right to information.

According to Prof. Schabas, the REBSP has an unexploited potential in being helpful to progressively achieve other economic, social and cultural rights. He explained this by pointing out that article 15(1) b ICESCR and article 2(1) ICESCR speak respectively of the right to 'scientific progress' and of the obligation of States to 'achieve progressively' the full realization of the rights of the Covenant. Prof. Schabas argued that beyond a resemblance in words, this may be of legal significance as the 'progressive' implementation of the REBSP may be an important factor in the progressive improvement of the availability and quality of food, housing and health. Thus, Prof. Schabas concluded, the REBSP in article 15(1)b ICESCR has a direct effect on the obligation contained in article 2(1).

The speaker also explored to what extent human rights could and should perhaps guide science and scientific research. He advocated the view that the REBSP can provide an indication about what science should and should not

¹ To borrow a concept from Hersch Lauterpacht who stated that "Economic, social and cultural rights lie at the vanishing point of international human rights law". See H. Lauterpacht, 'The Problem of the Revision of the Law of War', (1952) 39 *British Yearbook Int'l L.* 139.

do. For example, scientific research should not serve harmful purposes, such as the development of weapons of mass destruction. Also, the REBSP may provide the legal basis for protecting people against adverse effects resulting from technological development.

Ms Bras-Gomes highlighted several developments and issues related to the work of the UN Committee on Economic, Social and Cultural Rights (CESCR), especially in connection to article 15 ICESCR.

Firstly, she highlighted that articles 13, 14 and 15 of the Covenant are usually addressed at the end of the dialogue with the State presenting its periodic report when there is little time left to discuss them in depth. Furthermore, although there is no formal normative hierarchy, in practice cultural rights sometimes receive less importance in the State reports. To redress this situation, CESCR may need to consider starting the dialogue with a State from the last provisions of the Covenant.

Ms Bras-Gomes then provided a number of examples where the Committee pressed for the implementation of the REBSP or rights related to it. For example, in connection to threats to traditional and indigenous cultures in Finland, in particular of the Sami people, the Committee has called upon Finland to ensure that logging and other economic activities in Sami areas do not interfere with Sami's economic, social and cultural (ESC) rights. Also, it had called upon Mexico to protect the knowledge of its indigenous peoples, for example by registering their authorship of knowledge, and to prevent illegal use of it by third parties. Similarly, it had encouraged Morocco to eliminate language barriers in relation to indigenous communities. In respect to China, the Committee urged the State to remove barriers to access to the Internet especially with regard to academic research. In addition, the Committee asked Chile to guarantee access to generic medicine to its population, and pointed out Denmark's extraterritorial obligations in relation to the impact of TRIPS.

Finally, she pointed out two challenges with regard to the implementation of the REBSP. Firstly, while the Committee considers the subparagraphs of article 15 ICESCR as inseparable, it was not feasible to include them all together in one general comment. Instead it adopted General Comment (GC) No. 17 on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant). The other issue is the inherent tension between the REBSP and Intellectual Property Rights (IPRs). The Committee stressed in its GC No. 17 that article 15(1)c is founded upon different considerations than IPRs. Finally, the speaker stressed the importance of ensuring nondiscriminatory implementation of the REBSP.

Conclusions

Positive experiences

- The CESCR's attempts to promote the implementation of the REBSP in the context of related Covenant rights, such as the right to health.

Obstacles / challenges

- Article 15 ICESCR needs more attention from academics and others to elaborate its normative content.
- There is a need to reconcile the inherent tension in article 15 ICESCR between IPRs and the REBSP.

Recommendation

- An Optional Protocol to the ICESCR establishing an individual complaints' procedure may be useful in further developing the REBSP.