



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

Amsterdam, 7-8 June 2007

## List of Acronyms

CESCR	Committee on Economic, Social and Cultural Rights
ESC Rights	Economic, Social and Cultural Rights
GC	General Comment
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communication Technology
IPRs	Intellectual Property Rights
MDGs	Millennium Development Goals
REBSP	Right to Benefit from Scientific Progress and its Applications
RtAF	Right to Adequate Food
RtD	Right to Development
RtE	Right to Education
RtH	Right to Health
RtI	Right to Information
TRIPS	Trade Regulations on Intellectual Property Systems
UNESCO	United Nations Educational, Scientific and Cultural Organization
WG	Working Group
WHO	World Health Organization

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**Opening**  
**Experts' meeting on the Right to Enjoy the**  
**Benefits of Scientific Progress and its**  
**Applications**

The experts' meeting on the right to enjoy the benefits of scientific progress and its applications (REBSP) was organized by UNESCO jointly with the Amsterdam Center for International Law and to the Irish Centre for Human Rights. The co-organizers received also the support of the Netherlands National Commission for UNESCO, the Royal Netherlands Academy of Arts and Sciences and the Municipality of Amsterdam.

The purpose of the meeting was to elucidate the content of a right, which despite its significance on all spheres of human life and its early normative entrenchment has received over the years very little attention. The right to share in scientific advancement and its benefits was enshrined in article 27 of the Universal Declaration of Human Rights. It was included in the International Covenant on Economic, Social and Cultural Rights (article 15 para. 1b). Nevertheless, it is generally agreed that the REBSP is an 'underdeveloped' human right. No comprehensive study and analysis have been conducted while little reference has been made to it in State reports to the Committee on Economic, Social and Cultural Rights.

UNESCO actively supported the inclusion of this right in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. In recent years, the Organization is paying an increasing attention to the right to enjoy the benefits of scientific progress. This right was reaffirmed in all three declarations elaborated in the area of bioethics and ethics of science and technology, the latest being the Universal Declaration on Bioethics and Human Rights (article 15). It closely relates to the programme entitled *Information and Communication Technologies for Development*, the activities for poverty eradication, as well as to many other projects of the Organization in the field of education and natural sciences.

The equal and universal enjoyment of the right to benefit from scientific progress becomes even more crucial in view of the inherent link between the sharing of the benefits of scientific progress and the realization of

many other human rights. The right to development, the right to an adequate standard of living, the right to health, the right to education, the right to information and the right to food are some of the rights directly affected. The tension with intellectual property rights, the harmful effects of scientific and technological advancements on human beings and the interrelation of ethics with the exercise of this right are also central issues of discussion.

These questions were raised at the opening statement made on behalf of UNESCO by Mr Vladimir Volodin, Chief of Human Rights and Gender Equality Section. He expressed the wish that this meeting will create a momentum for the continuation of the normative clarification of the REBSP. Professor André Nollkaemper, Director of the Amsterdam Center, conveyed his greetings to the participants and expressed the interest of his institution to be associated to the process of 'unpacking' the content of the REBSP.

**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 rights<sup>1</sup>, 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).

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<sup>1</sup> 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.

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 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 non-discriminatory 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.

**Session 1**  
**The REBSP and The Right  
to Development**

**Speaker:** *H.E. Ambassador Prof. Ibrahim Salama*

**Moderator:** *Prof. André Nollkaemper*

**Presentation by the speaker**

Prof. Salama pointed out the interdependence and the interrelationship of the REBSP and the right to development (RtD). Based on a comparative analysis of the challenges to the implementation of both rights, he made recommendations with regard to the normative content of the REBSP. Prof. Salama noted that both rights are at the vanishing point of human rights, meaning they have received little to no attention by human rights bodies and academics. He further added that both rights are subject to progressive realization, which means that (according to article 2 ICESCR and article 10 of the Declaration on the Right to Development) their implementation may be subject to the availability of resources and requires international cooperation.

Prof. Salama pointed out that there are essentially three factors that in general play a role in the normative development of a human right, and which were decisive in particular for the right to development. Firstly, a social demand is needed, which is a mobilizing factor for change and should lead to a standard-setting process whereby social input is important. Ideally, a coalition of stakeholders should be built taking into account this social input and transform the right into an operational provision that can be monitored.

Secondly, a clarification of the right needs to take place. Prof. Salama gave several examples of how such clarification was achieved in the context of the RtD. The Commission on Human Rights created a Working Group (WG) on the Right to Development in 2004, including a task force consisting of representatives of trade, finance and development institutions and independent experts. They developed standards, indicators and implementation options for the RtD. The Working Group addressed the

numerous dimensions of the right to development and conceptualized the human rights component of development. One of such dimensions the WG has explored was trade and how trade impacted on development. States were asked by the WG to address how trade agreements impacted on the RtD. Similarly, the REBSP should be 'unpacked' and clarified. Prof. Salama proposed as one of the issues to be reviewed within such a process the social impact of TRIPS on the REBSP.

Thirdly, a right needs monitoring mechanisms. Prof. Salama supported the adoption of an Optional Protocol to the ICESCR providing for an individual complaints' procedure. He also proposed that the CESCR could emphasize national action to implement the REBSP, inviting States to adopt national science policies.

Prof. Salama further raised the idea that the UN Millennium Declaration and the Millennium Development Goals (MDGs), as an inter-state agreement that sets priorities for international efforts with regard to development, may be useful entry points for the REBSP. Goal 8 of the MDGs is to develop partnerships for development and includes a reference to partnerships on technology transfer. This has been taken up by the Task Force on the RtD and may similarly provide a methodology for the REBSP.

To develop the normative content of the REBSP, Prof. Salama proposed the following process. The first step could be a 'nursery' phase. A coalition, composed of representatives of the CESCR, scientists and academics from different disciplines and other stakeholders with the support of intergovernmental organizations, in particular UNESCO, should operate as a 'think-tank' exploring the normative content of the REBSP. The CESCR could, drawing upon the findings of this coalition, issue a General Comment. Prof. Salama, however, warned that the elaboration of a GC should not be rushed, because that may lead to States opposing to the ideas expressed therein. The same applies to the implementation of the REBSP through the adoption of an Optional Protocol to the ICESCR. Until the normative content of the REBSP is further clarified, a complaints' procedure may not yield tangible results.

Prof. Salama also pointed out that at present several initiatives are being undertaken indicating the emergence of a common responsibility approach

as to sharing the benefits of scientific progress. For example, there is the UNITAID initiative whereby a number of countries have put taxes on flights to raise money for a fund that supports developing countries in the response to HIV and AIDS, malaria and tuberculosis. Similarly, a REBSP global fund could be created to support scientific research contributing to the enjoyment of human rights all over the world. The speaker stressed however that as opposed to the charity approach of the UNITAID, a human rights-based approach should be followed for the REBSP fund.

## **Debate**

Agreement was expressed as to the need at the international level to explore inter-linkages between the REBSP and other human rights, as well as to the need to use soft-law mechanisms to promote the REBSP. A proposal to establish guidelines as to the implementation of the REBSP was also favorably received.

Questions on the collective dimension of the REBSP were raised. One participant suggested that the purpose of the REBSP has a collective character, whereas issues related to non-discrimination and access to the REBSP are of a more individual nature. Although no agreement was reached on the exact nature of this collective dimension, there was consensus as to the importance of the REBSP for indigenous communities particularly in relation to the fight against poverty, exclusion and linguistic barriers.

Discussion took place on the legal nature of the REBSP, focusing on who the duty-bearers of this right are, and how their duties should be implemented. Some suggested States as the only duty-bearers having obligations both at the national and international levels. At the national level, a State should support the development of local and locally appropriate technology and balance trade-related and human rights obligations. At the international level, States should cooperate towards the achievement of the REBSP.

Some participants suggested that, in light of globalization, growing privatization and the weakening of the State, there may also be a duty for non-State actors, such as companies or NGOs or even individuals as to the REBSP. Imposing duties on companies was deemed problematic by

several, as it would mean transforming such actors into subjects of international law. It was suggested as an alternative to oblige States to regulate such companies. States often have a stake in companies and as a consequence tend to be favorable to corporate interests, even when they are detrimental to human rights.

Other issues that were raised were: the question what other actors besides the scientific community should be involved in attempts to clarify the normative content of the REBSP; the further elucidation of the term 'science' and the term 'scientific progress'; the elaboration of the core content of the REBSP; the operationalization of the REBSP; the justiciability of article 15 ICESCR, as its paragraph (1)c seems to limit the application of paragraph (1)b; and the gender perspective with respect to the REBSP.

Concerning the idea of a REBSP fund, although participants concurred that it is a good idea, they disagreed on the financing of the fund and the form of involvement of international financial institutions, such as the World Bank or the International Monetary Fund.

## **Conclusions**

### **Positive experiences/good practices**

- The Working Group on the Right to Development and its Task Force has been a very effective platform in the elaboration of the right to development. This practice could be used for further elucidation of the REBSP.

### **Obstacles / challenges**

- The further clarification of the normative content of the REBSP is a prerequisite for the promotion and enforcement of this right.
- Advocacy for the REBSP is missing at present: few structures, networks, or advocacy groups focus on this issue.
- Existing monitoring mechanisms have not been promoting effectively the realization of the REBSP.

### **Points of agreement or disagreement**

- There was agreement on the need to explore the interlinkages between the REBSP and other human rights.
- There was agreement on the need to use soft-law mechanisms to promote the REBSP, for example the elaboration of relevant guidelines.
- A REBSP fund may be useful, although no agreement was reached on the sources of financing.
- There was no agreement on whether besides States also non-State actors were to be considered duty-bearers of the REBSP.

### **Recommendations**

- A CESCR General Comment clarifying the REBSP would be most welcome.
- An individual complaints' mechanism under the ICESCR may help to develop the normative content of the REBSP.
- The development of the REBSP could start with a 'nursery' phase, involving the exploration of its normative content through a coalition or a 'think-tank', composed of representatives of the CESCR, scientists and academics, and other stakeholders, with the support of intergovernmental organizations.
- The UN Millennium Declaration and the MDGs may be a useful entry point for the REBSP. Especially Goal 8 of the MDGs is relevant for the REBSP.
- A REBSP Task Force could be created, modeled on the existing task force on the RtD to further explore and clarify the content of the REBSP.

## Session 2

# The REBSP and the Right to Adequate Food

**Speaker:** *Dr. Flavio Valente*  
**Moderator:** *Prof. Erika de Wet*

### Presentation by the speaker

Dr. Flavio Valente pointed out the impact that the promotion of the REBSP could have on the realization of the Right to Adequate Food (RtAF). Relevant areas of investigation in this regard are: access to productive resources (land, seeds, genetic resources, water, etc.); quality public services (water sanitation, health care, nutrition education, etc.) and food quality (diversity, safety and access to information).

He highlighted that the research agenda in relation to food issues is increasingly funded and directed by the private sector both at the international and the national level. He also mentioned that, within the public sector, little regulation exists on the type of research that should be conducted in terms of its social benefits. The speaker expressed the view that scientific research in relation to access to food is seldom conducted with a social benefit perspective. Instead it is mostly market-oriented, mainly resulting in corporations reinforcing their capacity to control or monopolize food production.

The speaker mentioned that States face different regulatory frameworks that deal with food-related issues from seeds production to food production, with different and unbalanced enforcement capacity, which might hinder the implementation of the right to food. Examples are the UNEP Convention on Biological Diversity, the FAO International Treaty on Plant Genetic Resources for Food and Agriculture, the International Convention for the Protection of the New Varieties of Plants, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the ILO Revised Convention (No. 169) concerning Indigenous and Tribal People in Independent Countries.

Dr. Valente explained that the RtAF has received increasing attention by the international community since the 1996 World Food Summit, with the

elaboration of the CESCR General Comment No. 12 on this issue in 1999 and, more recently, with the adoption by the FAO Member States of the Voluntary Guidelines on the Progressive Realization of the Right to Food in 2004. These Guidelines are the first intergovernmental document dealing with the operationalization of an economic, social and cultural right.

Dr. Valente referred to the strengths and weaknesses of the CESCR General Comment No. 17 on authors' rights. In his view, a broader interpretation of article 15 of the ICESCR is needed in order to guarantee that: 1) more coherence is achieved among existing frameworks; 2) public interest is placed above private and specifically corporate interests; 3) traditional knowledge is recognized and protected; 4) access to existing scientific benefits is promoted universally and without discrimination; and 5) participatory regulations are put in place.

The speaker acknowledged the fact that it is difficult to causally link intellectual property regimes with violations of the REBSP and the RtAF. However, he pointed out that the way international intellectual property rights are being implemented violates human rights principles, such as transparency, participation, and enforcement capability, and destabilizes economic and political power relations.

Some cases were mentioned to illustrate the links between the REBSP and the RtAF, and how the non-realization of the REBSP hinders the realization of the RtAF. The speaker analyzed, among others, the Beri Beri deaths that took place in Brazil in 2006; the scientific reports showing that breastfeeding highly reduces infant malnutrition and mortality; the smuggling of genetically modified soy seeds into Brazil and its implications for public policies and small farmers, as well as the risk of contamination of seeds' banks by GMO in Mexico and elsewhere.

Dr. Valente concluded his presentation by insisting that the intricate relationship between the REBSP and the Right to Adequate Food could strongly benefit from a clarification of State obligations under article 15(1)b ICESCR.

The importance of advancing towards a case-to-case approach to the REBSP was strongly emphasized, not only when dealing with its relation with the RtAF, but also with other rights.

The limitations and shortcomings of General Comment No. 17 in relation to article 15 were discussed. By dealing only with 15(1)c, it was noted that, important issues in relation to the RtAF were left aside, such as scientific developments in the area of agriculture and the collective traditional knowledge of traditional farmers, peasants and indigenous peoples in this regard.

Skepticism was expressed about a possible Farmers' Convention proposed by the UN Special Rapporteur on the Right to Adequate Food and endorsed by Mr. Valente in his presentation. It was argued that very often new conventions and monitoring mechanisms, created to solve the problems and shortcomings of existing instruments, have not significantly changed the situation. It was also warned that, rather than focusing on specific groups of people, mainstreaming human rights for all should be the main objective of human rights development.

In response to that it was argued by Mr. Valente that the proliferation of human rights conventions, even if very specific, can counterweigh the existing hegemony of trade-related instruments (i.e. intellectual property rights). It was pointed out that new conventions can lead to mobilizing a social demand towards a right. It was stressed that a Farmers' Convention is necessary because the rural sector represents 80% of the undernourished people in the world and State obligations in relation to the rural workers' and the rural sector are not always clear.

Other participants suggested that, instead of a new convention, these issues could be addressed in possible guidelines on the REBSP. These could be used as a comprehensible operational instrument for development practitioners. Inspiration could be drawn from the Voluntary Guidelines on the Right to Adequate Food, and other governmental instruments, such as the British manual on the Right to Health, and academic documents, such as the Limburg Principles on the Implementation of the ICESCR and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

In order to be meaningful, it was underlined that the eventual REBSP guidelines should be concrete, specific and results-oriented, proposing indicators and benchmarks, rather than abstract notions. Precision, operationability and feasibility should be their main features.

## Key figures

- There are more than 850<sup>2</sup> million undernourished people in the world and 80% of them live in rural areas, where, paradoxically, the food is produced.
- Close to 66% of deaths below the age of 5 are related to malnutrition, which means that 8 million deaths per year are preventable<sup>3 4</sup>.
- Preventable micronutrients' deficiencies cause at least 2 million deaths a year.<sup>5</sup>

## Conclusions

### Positive experiences/good practices

- The Voluntary Guidelines on the Promotion of the Progressive Realization of the Right to Adequate Food are a positive experience that should be reflected upon in relation to the further elucidation of the REBSP.

### Obstacles / challenges

- The State obligations concerning the REBSP in relation to the RtAF need to be further explored.

### Points of agreement or disagreement

- There was agreement on the fact that there is a strong link between the REBSP and the RtAF.

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<sup>2</sup> FAO. The State of Food Insecurity in the World - SOFI 2006. Roma, FAO, 2007. full text available in: <http://www.fao.org/docrep/009/a0750e/a0750e00.htm> (consulted in June 2007)

<sup>3</sup> SCN, Ending malnutrition by 2020 – an agenda for change in the Millenium. Report to the SCN of the Commission on the Nutrition Challenges of the 21st Century. Geneva: SCN, 2000. Available at: [http://www.unsystem.org/SCN/Publications/UN\\_Report.PDF](http://www.unsystem.org/SCN/Publications/UN_Report.PDF)

<sup>4</sup> UN SCN Participants' statement, SCN 33rd. Annual session , Geneva, Switzerland, March 2006.

<sup>5</sup> UN SCN The critical role of nutrition for reaching the Millennium Development Goals and success of the Millennium Development project. SCN meeting in ECOSOC. 7th June 2005. in: <http://www.unsystem.org/SCN/Publications/ecosoc/RS6%20SCNECOSOC.doc>

- There was no agreement about the implications of article 15 to the RtAF and to what extent General Comment 17 incorporates all of them.
- There was no agreement on the desirability to establish a Farmers' Convention. Most participants suggested focusing on the development of a soft-law instrument on the REBSP.

## **Recommendations**

- It was suggested to clarify the links between the REBSP and the RtAF by looking at concrete cases.
- Voluntary guidelines on the implementation of the REBSP should be discussed and developed.
- A strong social movement involving scientists, NGOs and international institutions is needed in order to establish a social demand for the implementation of the REBSP in relation to the RtAF.
- Collective efforts should be undertaken in order to promote a comprehensive interpretation of article 15 as a whole, with special attention to 15(1)b.
- Clarify national and extraterritorial State obligations in relation to the promotion and regulation of scientific research and its applications from a human rights perspective.
- Strengthen recognition and protection of the right of indigenous groups to maintain their traditional knowledge and historical practices.

### Session 3

## The REBSP and the Right to Health

**Speaker:** Prof. Audrey Chapman  
**Moderator:** Prof. Janusz Symonides

### Presentation by the speaker

Prof. Audrey Chapman presented the factors that affect the realization of the REBSP and the Right to Health (RtH) by looking at the strong interdependence and inter-relatedness between these rights. She argued that a human rights-based approach to the implementation of those rights requires that governments evaluate the implications of the development process in areas of science and technology on human dignity.

Two recent international human rights instruments reflect this requirement: the UNESCO Universal Declaration on the Human Genome and Human Rights and the Council of Europe Convention on Human Rights and Biomedicine.

The speaker explained that human dignity remains a vague concept. Policy documents and legal instruments rarely provide a definition of this concept, nor do they assess the impact of a given technology or scientific activity on human dignity. Prof. Chapman contended that it is important to develop a commonly accepted understanding of human dignity, in the context of the REBSP.

The speaker talked about the right to self-determination and the principle of participation which entail that all members of society take part in a meaningful way in the decision-making process on issues relating to the implementation of their rights or on issues that they themselves consider important. When dealing with the REBSP, this requires that, at least, major decisions about policy priorities in the area of science be made in consultation with the people and not only by experts or civil servants.

The speaker also mentioned that research conducted in advanced countries is often tested in poor countries because of its low costs, the fewer or less strict regulations, and the fact that research subjects, the persons undergoing the treatment, have been exposed to fewer other

drugs. Not many developing countries, however, have the regulatory capacity to prevent abuses when people are used as research subjects, nor to provide the necessary means for an informed consent.

Prof. Chapman maintained that, in most cases, countries with a stronger capacity for scientific and medical research do not cooperate closely with the developing world. In many situations, the creation and diffusion of new products and innovations do not respond to the needs of the poorest countries. Scientific needs of those countries are often neglected. In this context, the speaker underlined how important it is that every country develops a local scientific and technological capacity in order to set and address their own priorities.

The speaker stressed how economic globalization and the rise of powerful transnational corporations have weakened the State institutions, particularly in smaller and less developed countries, making the implementation of their human rights obligations more difficult. It was pointed out that, for example, major transnational pharmaceutical corporations have more resources than the governments in most developing countries.

It was also mentioned that the majority of funds in the area of medicine are currently coming from the private sector. As a consequence, the research agenda is mainly profit-driven, rather than needs-based. This not only increases the costs of prescription drugs substantively, it also reduces incentives for innovation and it can undermine the process of making science more responsive to people's needs.

Prof. Chapman further spoke about the implications of intellectual property provisions. She mentioned that, although the Doha Declaration and the TRIPS Agreement allow for a certain degree of flexibility – for instance, that in public health emergencies countries may be exempted from some patents provisions – it takes a very complicated and political procedure to use them.

Finally, the speaker raised the issue of the capacity of countries to progressively achieve the realization of the REBSP. She argued that very few countries have the means and the expertise to conduct basic scientific research in the field of medicine and, at the same time, to regulate and

share its benefits. Although the REBSP is an international human right it is necessary to determine how it will be possible to monitor and compensate for capacities that national many governments do not really have in a globalized world.

## **Debate**

The importance of a case-by-case or sectoral approach was once more emphasized by the participants as a means to clarify the concrete implications of the REBSP. Specifically with regard to the RtH, it was argued, the interrelatedness and interdependence of the two rights are very clear.

The participants noted the lack of regulatory frameworks to control pharmaceutical companies and the protection that the latter enjoy from the governments of developed countries.

The subjectivity of the concept of human dignity generated various comments. It was argued that it is a concept that raises questions in relation to many areas of science. Human dignity could be defined as a limited concept, only related to individual autonomy, or as a broad concept related to human enhancement.

The lack of interest and innovation within pharmaceutical companies in relation to the needs of people in developing countries (and sometimes even the needs of the developed ones) was an issue of general concern. One of the problems in the developing world is that corporations are not willing to make large investments in research unless they have exclusive licensing rights. It was suggested that there might be a need to make major changes in the way scientific practices are conducted, including the environment in which scientists operate. It was noted that scientists rarely regard their own work in terms of social responsibility. The reason for this is partly that the criteria of scientific innovation, established by the scientific institutions, are usually based on a purely academic perspective.

Several participants argued that the REBSP should not be seen as a counterbalance to intellectual property rights, but as a complement thereto. It was argued that the intellectual property regime should not be seen merely as an adversary. On the contrary, it would be a challenge to

try to merge the REBSP and the intellectual property rights regime by means of international cooperation based on article 2 ICESCR.

It was also observed that mental health issues have been generally neglected in the discussion on the right to health.

## Key figures

- Some 1.7 billion people have inadequate or no access to life-saving medicines, 80% of whom live in developing countries<sup>6</sup>.
- 25 to 50% of medicines consumed in developing countries are likely to be counterfeit and seriously harmful. In Africa, the use of counterfeit vaccines resulted in 2,500 deaths in 1995<sup>7</sup>.
- Despite increasing levels of investment in pharmaceutical research and development during the past 30 years, only 1% of new compounds marketed have been for developing world diseases<sup>8</sup>.
- 93% of the global burden of premature mortality is attributable to disease problems in developing countries. However, about 95% of the global expenditure on health is directed at the disease problems of developed countries<sup>9</sup>.
- From the total world expenditure on health research by the public and private sectors, only 10% is devoted to the health problems of 90% of the world's population<sup>10</sup>.
- At the global level there is an overall shortage of four million health professionals<sup>11</sup>.
- The Americas, including Canada and the US, although only having 10% of the global burden of diseases, have 37% of the global health work force while sub-Saharan Africa, with 24% of the global burden, has only 3% of the health professionals<sup>12</sup>.

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<sup>6</sup> Josh Ruxin et. al., "Emerging consensus in HIV/AIDS, malaria, tuberculosis, and access to essential medicines," *The Lancet*, 365 (February 2005): 619.

<sup>7</sup> United Nations Information Service, International Narcotics Control Board Annual Report, Press Release No. 2, 1 March 2007.

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<sup>9</sup> Nuffield Council on Bioethics, *The ethics of research related to healthcare in developing countries*, p. 22.

<sup>10</sup> World Health Organization, *Investing in Health Research and Development: Report of the Ad Hoc Committee on Health Research Relating to Future Intervention Options*, WHO: Geneva, 1996.

<sup>11</sup> *The World Health Report 2006: Working Together for Health*, Geneva: World Health Organization, 2006, p. 12.

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## Conclusions

### Obstacles / challenges

- Human dignity is still a vague concept. When dealing with the REBSP and its inter-relatedness with the RtH, the need to define it more clearly appears as a necessity.
- It is necessary to determine how to monitor capacities that are in fact limited within certain governments in relation to the realization of the REBSP. In that context, the term 'progressive realization' should be more clearly defined.
- Providing adequate participatory mechanisms and strengthening accountability are main challenges in relation to the development of science and the sharing of its benefits.
- The lack of regulatory frameworks to control pharmaceutical companies and the weak position of certain States in relation to them was pointed out as one of the main issues in the developing world.

### Points of agreement or disagreement

- There was agreement among the participants that the interrelation and interdependence between the RtH and the REBSP is even more evident than the case of other human rights.

## Session 4

# The REBSP and the Role of Ethics

**Speaker:** Prof. Sheila McLean  
**Moderator:** Prof. Hans van Delden

### Presentation by the speaker

Prof. McLean stressed the importance of ethical issues for the realization of the REBSP. She started by mentioning the conceptual distinction between morality and ethics. The former was defined as the intuitions that one has and that could be based on religious, cultural or familiar values. The latter could be seen as a discipline that provides the intellectual framework to analyze concrete issues, some of which could be moral.

The speaker encouraged that any decision in relation to scientific progress be informed by ethics and ethical principles. Such decisions are not always easy, because of the lack of agreement on ethical values and standards and, moreover, because ethics as a discipline has not solved all its own problematic questions.

Prof. McLean argued that the human rights language is strongly based on ethical values, like human dignity, respect for persons, autonomy or self-determination, which are included in the Universal Declaration of Human Rights. In the aftermath of the Second World War, those principles did not require much explanation because they meant almost the same thing for everybody. However, they are no longer self-evident today. In the speakers' view, they need further exploration.

In relation to the concept of 'respect for persons', Prof. McLean gave the example of the Council of Europe Convention on Bioethics and Human Rights which the United Kingdom (UK) refuses to ratify, because the treaty incorporates prohibitions on embryo experimentation allowed in the UK. This shows clearly how the concept 'respect for persons' is not always understood in the same way.

The speaker pointed out that certain conventions speak about 'advancement' of science and others refer to 'progress'. In her view, ethics could help to clarify those two concepts. Advancement, according to Prof. McLean, means linear movement forward, while progress also incorporates the idea of benefits (qualitative concept).

In relation to the REBSP, she argued, ethics can help us to determine which kind of science we aspire for and what benefits we want to obtain. Based on ethics, it was suggested, we should also consider whether to expand the notion of science from 'hard sciences', such as physical and clinical health sciences, to other sciences that are important for human well-being, such as mental health sciences.

As regards the realization of the REBSP, the speaker pleaded for an ethical approach that would avoid both cultural relativism and cultural imperialism. Even if there is not always consensus, ethics can provide an adequate foundation for demands concerning accountability, responsibility and transparency of scientific work.

Finally, the speaker expressed her agreement that the REBSP should be treated as an integral part of all the rights of the ICESCR, rather than an isolated right. When considering the REBSP, she recalled the right not to be harmed by scientific advancement and progress, for instance in relation to organ transplantation, which is particularly problematic in countries lacking the necessary regulations to prevent and punish unethical conduct.

## **Debate**

The participants agreed with the speaker on the complexity of ethical issues. It was again pointed out how, for instance, the concept of human dignity can be used as a constraint to human development or as a trump card for human enhancement. There was conceptual disagreement among the participants on the dissimilarities between the ethical and the human rights concepts. Some participants argued that the former are more susceptible to change, whereas the latter represent developments of a *long durée*.

Controversial issues were raised, such as euthanasia, abortion and capital punishment. It was discussed whether it is ethical to use science for those

purposes. One of the participants asked whether, for example, those who have been convicted to death penalty should also have the right to benefit from scientific progress in order to have their suffering reduced during execution. The speaker argued that, in relation to death penalty, it is hardly possible to conceptualize anything in terms of human rights. She further stated that when dealing with for example euthanasia, the main issue is, in her view, the right to autonomy and self-determination and not the REBSP.

The question was raised to what extent ethical concepts are present in the human rights debate. It was maintained that human rights cannot be but an ethical issue because they are based on assumptions about what is good. It was said, however, that whereas human rights are engaged in day-to-day politics, ethics can distance themselves from that and remain more critical. It was also argued that the added value of ethics, when discussing human rights issues, is that it provides some tools to develop human rights law. It allows to constantly re-evaluate the human rights standard-setting process.

The participants stressed the need to better define within the ICESCR the concepts of science, progress and its benefits. This should help to determine the normative content of the REBSP. The importance of looking at regional cultural specificities was also mentioned, in order to identify areas of convergence between different cultures and religions in attempting to delineate a universally acknowledged ethical framework and decide what should and what should not be included therein.

## **Conclusions**

### **Points of agreement or disagreement**

- There was certain conceptual disagreement among the participants on the differences between ethics and human rights concepts.
- There was also certain disagreement among the participants about the extent to which law can exclusively define what scientific progress is. Some participants argued that such a task could only be done by the scientific community.

## Session 5 The REBSP and the Right to Education

**Speaker:** *Dr. Rodolfo Meoño*  
**Moderator:** *Dr. Fons Coomans*

### Presentation by the speaker

Dr. Meoño presented the inter-relatedness and interdependence between the REBSP and the Right to Education (RtE). The speaker addressed the need to question existing notions of 'progress' that imply a linear and mechanistic vision of history, as well as a gradual sequence in social change. According to this conception development is the result of an evolution that follows an economically determined order, whose phases gradually transform societies that have fallen behind the industrialized world.

The speaker argued that this conception of progress presupposes a single way to development, resulting in a Eurocentric vision that privileges the economic growth pattern. Dr. Meoño suggested that, when dealing with the REBSP and the RtE, State policies should overcome those patterns and also include the knowledge of indigenous peoples.

Dr. Meoño pointed out that a reductionist understanding of science, mainly focusing on its logical-instrumental rationality, should be avoided. Space should be left for all human dimensions, including ethical approaches to life. The speaker also argued in favor of incorporating social participation in the policy-making processes concerning scientific research.

The speaker further highlighted the growing concentration of scientific patents in the hands of transnational corporations. This has turned them into actors who decide (using criteria of profit) upon the terms of access to the benefits of scientific progress. From this point of view, economic actors have become new political actors, leaving States with less power regarding the demands to share the benefits of scientific progress.

The importance of ICTs in the learning process was also stressed. Dr. Meoño argued that the TRIPS Agreement has generated a paradox among developing countries in which those that are in a better position as regards

the digital gap and the level of education (e.g. in Latin America: Argentina, Uruguay, Chile and Costa Rica) also appear in the 'black lists' of corporations due to their lack of State controls on information technology and electronic piracy. If truly implemented, the speaker warned, the TRIPS would cause an educational catastrophe, for example, in Latin America.

Finally, the necessity was highlighted to establish a preferential treatment to developing countries in relation to intellectual property rights, in order to fulfill the right to education. He argued that a growing universalization of the benefits of scientific progress is needed, in particular in relation to information and communication technologies, by means of reducing their market costs. For this, a decrease of the margin for the recuperation of investment is needed, as well as an increase of the intervals for technological substitution.

## **Debate**

The remark made by the speaker in relation to the catastrophe that intellectual property rights would cause in the educational systems of Latin America raised doubts and questions among the audience. In answer to that, the speaker observed that the problem is not limited to the countries of that region, although the situation is particularly serious there.

He mentioned, for instance, that 80% of the people who have personal computers at home in Latin American countries do not pay license fees for the software they use. Something similar occurs in public institutions, including universities where students who cannot buy their books simply clone them.

Dr. Meoño spoke about the difficulties faced by Latin American universities to develop their own scientific and technological capacities and to link the existing ones with the productive system, dominated by international corporations. Latin American countries, although sometimes spend large sums on science and technology, have not been able to develop their own capacities in these fields.

The speaker was asked to further elaborate on the links between the REBSP and the quality of education. He responded that science and technology are needed to fulfill the RtE whereas, at the same time,

education is required to satisfy the needs of the professionals specialized in these areas. Criteria to assess the quality of education need to be based on the concepts of availability, accessibility, acceptability and adaptability. Furthermore, it is necessary to look at the real capacity of educational systems to create equal opportunities while acting as instruments for social mobility.

The speaker stressed the importance of incorporating the perspective of indigenous populations into the REBSP and the RtE was stressed, because those populations face difficulties both in relation to their collective rights (in terms of traditional knowledge) and in access to education. It was also highlighted that there is currently a growth of indigenous movements claiming the protection of their cultures. Within this context, education is seen as a tool to defend their sovereignty and the ways they see the world.

## **Key figures**

- 80% of the people who have personal computers at home in Latin America do not pay licenses for their software and something similar occurs in public institutions.
- In the past, Costa Rican public universities issued 90% of the university degrees. Nowadays, private universities issue 60% of them.

## **Conclusions**

### **Obstacles / challenges**

- The tendency towards increasing the enforcement of intellectual property rights might cause serious problems within the educational institutions in the developing countries which currently depend on scientific and technological advancements developed and owned by transnational corporations.

## Recommendations

- Scientific and technological personnel in developing countries should be better educated to enable them to take part in scientific progress.
- A differential treatment in the field of international trade is needed which could bridge the digital gap between the developing countries and the post-industrialized countries and to avoid that educational institutions have to keep recurring to 'piracy' to obtain information technology when trying to maintain their quality standards.
- International institutions should lobby within transnational corporations in favor of greater flexibility regarding the enforcement of intellectual property rights in developing countries.

**Session 6**  
**The REBSP and the Right to Seek,  
Receive and Impart information**

**Speaker:** *Dr. Miguel A. Ramiro Avilés*

**Moderator:** *Prof. Fouzia Rhissassi*

**Presentation by the speaker**

Dr. Avilés pointed out three issues presented by the REBSP: first, the need to elucidate its normative nature and content; second, the necessity to discuss its interdependence and interrelation with other human rights, and in the case of this session, the Right to Seek, Receive and Impart Information and last, the need to ensure a non-discriminatory implementation of the REBSP.

Concerning the normative nature of the REBSP, the speaker indicated that he held it to be a diffuse right, also commonly known as a fourth generation right. Fourth generation rights spring from demands of technological development, are based on solidarity between Northern and Southern countries and aim to protect collective interests. The REBSP corresponds in this regard to the nature of the Right to Information (RtI), which is also a fourth generation right.

In the context of the interdependence of the REBSP and the RtI, he remarked that the RtI underlies social dialogue, democracy and political participation, as it enables the public, for instance through the internet, to access information and ensures pluralism of ideas and information. A number of examples of the impact of the Internet were presented in this context.

Firstly, the Internet has increased the number of rights-holders in the world. The Internet has caused a change in the determination of who receives and who imparts information. While this role was traditionally held by the media, nowadays every human being has a potential capacity to impart and receive information through the Internet. Consequently, every individual can potentially exercise the Right to Seek, Receive and Impart Information. This increases the importance of the State's duty to

respect and promote the right to receive any information without public or private interference.

In addition, the Internet is an example of the gap between those that can and those that cannot enjoy the REBSP, as not all humans are living in such conditions that they can equally enjoy access to the Internet. This was further explained by noting that infrastructure requirements for Internet call for resources that some States do not have. The speaker further observed that this also affected the sorts of information that can be found on the Internet, as underdeveloped countries are underrepresented in the electronic space. He therefore pleaded for equal participation in, access to and use of information and communication technologies, including the Internet, and stated that international cooperation aimed at the development of media and information and communication facilities in all countries was desirable with a view to ensuring the REBSP.

Dr Avilés highlighted that the problem of access to the Internet is even more pressing for women, as high rates of illiteracy, due to unequal access to education for girls and women, implies that often they do not fully enjoy their RtI. Thus, he proposed that the aim should be to facilitate equal participation in, access to and use of information and communications technology.

More specifically, concerning the importance of information for scientific progress, the speaker proposed a threefold obligation for States in relation to the right to information. Firstly, States are obliged to respect the freedom of individuals to seek, receive and impart information about scientific progress, which includes not only natural and biological sciences, but also progress in the social sciences and the humanities. Secondly, States should respect applications of new scientific insights following from the right to enjoy the benefit of such progress. Thirdly, States should actively promote the interplay of ideas and information among scientific researchers throughout the world.

## **Debate**

It was agreed that the Internet generally improves cooperation in doing science, for instance in terms of facilitating access to books or articles as well as contacts and interaction among scientists.

The extent to which the State should regulate the Internet as a 'public' space was discussed. Although no agreement was reached on this issue, the participants shared the view that regulation in the interest of the public was most desirable. One participant proposed to tackle the issue of ownership and IPRs in the context of the development of the REBSP, as the Internet is of such vital importance to the implementation of the REBSP.

The interrelatedness of the Rtl with other human rights was further explored. It was maintained that the REBSP has many positive implications for other human rights, such as education and the right to take part in cultural life. Some speakers pointed out that deprivation of information negatively impacts those rights. One speaker suggested that the REBSP should be used as a means to ensure the spread of ICTs and combat exclusion resulting from non-access to the Internet. Another speaker argued that human rights bodies should monitor the duties of States to protect and fulfill the right to education and to take part in cultural life and push for measures to combat exclusion in education and cultural life in particular of vulnerable groups.

The proposed classification of the REBSP as a fourth generation right was debated, with some participants contesting the usefulness of the distinction between the different generations of rights. The REBSP in fact represents a right that is clearly related to other human rights. Others argued that such a distinction might impede the implementation of the REBSP by States, which could use this argument so as not to fulfill their duties under this right as they may consider it less important. The speaker argued that the distinction is important, in the sense that it has consequences for the duty-bearer, as fourth generation rights aspire to collective benefits and may impose duties on both State and non-State actors.

Other issues raised were the potential negative impact of the media, including the Internet, on people, especially children. For example, terrorism, violence propagation, propaganda for harmful food, or the control by groups with certain economic interests, may negatively impact access and plurality of information. Furthermore, the potential negative

impact of the Internet on language variety was raised, in light of the predominance of English.

## **Conclusions**

### **Obstacles / challenges**

- There is a need to develop the normative content of the REBSP and its interdependence with other human rights.
- There is a need to reach a non-discriminatory implementation of the right to information.

### **Points of agreement or disagreement**

- There was no agreement on the usefulness of the 'fourth generation right' concept.
- There was no agreement on the desirability of State regulation of the Internet.
- There was agreement that the REBSP has many positive implications for other human rights, such as education and the right to take part in cultural life, which should be further explored.

## **Recommendations**

- Attempts should be made to formulate the normative content of the REBSP.
- Equal participation in, access to and use of, information and communication technologies, such as the Internet should be ensured under the REBSP.
- International cooperation aimed at the development of media and information and communication facilities in all countries should be ensured in the context of the REBSP.

## **Session 7**

# **The REBSP and Intellectual Property**

**Speaker:** *Mr. Sisule F. Musungu*  
**Moderator:** *Prof. Rumen Valchev*

### **Presentation by the speaker**

Mr Musungu started off by indicating that his presentation assumed neither a positive nor negative relationship between the REBSP and intellectual property rights, and that it would depart from the idea that States should attempt to reconcile trade rules with human rights. He argued that it is perceivable that the two legal systems are reconciled, as both set limitations to what States can and cannot do. In other words, human rights obligations set conditions to trade liberalization and trade rules may condition how human rights obligations are fulfilled.

The speaker pointed out that an analysis of the main principles of the REBSP and intellectual property rights reveals the following links: Firstly, article 2(1) ICESCR obligates States Parties to undertake steps, especially economic and technical, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights in the Covenant. It was argued that in discussing the REBSP it may be useful to consider what is meant by taking economic and technical steps. The speaker stressed that the CESCR by way of its GC No. 3 meant economic measures in the broad sense, and did not preclude the use of a certain economic system for the achievement of the rights in the Covenant. It was subsequently argued that IPRs can be considered such economic framework. In this sense, IPRs and human rights can be deemed reconcilable. Although this is most likely to be so in theory, since in practice they tend to be in conflict. The speaker further explored the complex relationship by noting that in fact, in the drafting process, IPRs notions influenced the wording of article 15(1) b and c ICESCR. This was deemed important as it indicates that the intention of the drafters was that IPRs should, through the rewarding of authors, advance science.

Furthermore, Mr Musungu maintained that conceptually and practically there are entry points to reconcile State obligations under TRIPS and the

REBSP. Firstly, the 'progressive realization using appropriate means' concept can be found both in article 2 ICESCR and in TRIPS article 1. The former offers room for technological means to realize human rights and the latter provides States with the freedom to choose how to implement TRIPS. In other words, the freedom to implement TRIPS while taking into account human rights considerations. An example on the possibility of States to include human rights considerations in the context of patents on pharmaceuticals was given. The speaker pointed out that under TRIPS, States can eliminate compulsory licenses in an effort to provide more affordable drugs, thereby guaranteeing its or other populations the right the health.

Secondly, the objectives of article 7 TRIPS are mirrored in article 15(1)b and c. Article 7 speaks, firstly, of promotion of innovation and technological development, which alludes to scientific progress as stipulated in article 15. It also includes the objective of transfer and dissemination of knowledge, which resembles article 15. In addition, TRIPS provides that innovation, technical development, transfer and dissemination should be done to the mutual advantage of producers and users, which resembles article 15's concern with scientific progress benefiting people.

The last entry point discussed was that TRIPS and the ICESCR both provide for special and differential treatment in relation to developing countries. TRIPS allows for more time to implement the Agreement, and the Covenant speaks of the possibility of non-fulfillment of rights, apart from the core content, in case of lack of economic means. The former can be seen as recognition of the possibility under IPRs rules to impose a lighter burden on developing countries and the possibility to shape IPR rules in such a way as to ensure equal access to scientific benefits of poor and vulnerable groups, the majority of whom reside in developing countries.

Mr. Musungu further discussed which obligations could be imposed on State under the REBSP and how IPRs could impact a State's ability to fulfill such obligations. He proposed the following obligations: a) States should, in the context of the development of science, develop science in education, provide financial and technical investment in science, support research and

funding incentives to public and private institutions that conduct beneficial science and make efforts to establish priority-setting mechanisms that ensure research that is beneficial; b) in the area of diffusion of science, States should support needs-focused research, ensure non-discriminatory access to products and services, including financial support for vulnerable groups so they can have access to scientific benefits; c) lastly, States should provide protection against potential harmful effects of scientific or technological advances. Other State obligations as to scientific research and activity are: ensuring academic freedom to conduct science and ensuring a context beneficial to the conduct of science, for example protection of scientific gatherings and supporting freedom of thought.

The speaker also highlighted what he thought were the most important *international* obligations of States: the obligation to support, financially or otherwise, science, to engage in collaboration projects that yield benefits to human beings, to promote scientific publications that people can benefit from and to support and encourage data sharing between countries.

Mr Musungu then set out how IPRs could affect the carrying out of these obligations. In order to assess this effect, three categories of IPRs should be distinguished as they impact differently on the obligations listed. He named: patents, copyright and related rights, in particular data protection and plant variety protection. He noted that patents affect all the above-mentioned elements of doing science: development, diffusion, cooperation and scientific activity. The negative effects of patents on the REBSP could include copyrights adversely affecting education, data protection blocking science and thus the right to enjoy its benefits and plant variety protection stifling agriculture development.

Mr. Musungu indicated that further research is needed to assess how these categories of IPRs exactly impact the REBSP. In this regard, he mentioned that some discussion is going on within the WHO as to the negative effects of IPRs on the right to health.

### **Debate**

Repeated concern was voiced over the negative effect of TRIPS on human rights, in relation to which the examples of overpricing of medicines, limits on plant variety and food resources, affecting even the right to life, and the misuse by companies and States of the patent system were mentioned.

One participant proposed to use the REBSP to impose on States the obligation to mitigate the negative effect of IPRs, and to compel States to provide funds for the conduct of beneficial science, as well as to cooperate internationally in this respect. Agreement was reached on a rights-based approach (and corresponding State obligations) to the implementation of the REBSP.

One participant noted that the effects of IPRs on conducting science are minimal, as IPRs rules are often not implemented in this area. For this participant, the efforts to document the impact of IPRs on scientific research had indicated that the majority of scientists involved in basic research were ignoring (i.e. violating) intellectual property restrictions. The participant pointed out that the real effect of patents is felt in the course of developing products, and consequently in the cost and availability of those products. Some proposals in this regard were: a broad research exemption for scientists that conduct research for beneficial purposes; to keep some scientific research in the public domain, because privatization may cause problems; and the need to return research tools to the public domain. It was also held that the TRIPS Agreement provides for possible restrictions, and there should be attempts by States to make use of them.

The point was also raised that the way the IPRs system is implemented has a huge effect on whether and how science provides benefits. Also, in the absence of the possibility to directly regulate private companies, States should attempt to make public organizations that hold patents accountable to public interest. It was further indicated that the IPRs system is important to the REBSP in that it provides a framework to protect sensitive technological data and technology and trade secrets.

Another issue that was raised was that in a world with 60 failing States, State obligations may not solve all problems or the abuse of IPRs and that therefore the setting up of standards addressing companies directly may have to be considered in the context of the REBSP. Agreement was reached that companies are major players in the area of IPRs, both in lobbying for and in using them. It was agreed that the use of the 4A scheme (Availability, Accessibility, Adaptability, Acceptability) could be

helpful to understand human rights notions in IPRs systems. Agreement was also reached that a sectoral impact approach to TRIPS and human rights is needed.

## **Conclusions**

### **Positive experiences**

- The discussion in the WHO context was cited as an important attempt to assess the negative impact of IPRs on the right to health and search for possible solutions.

### **Obstacles / challenges**

- The core content of the REBSP needs clarification.

### **Points of agreement or disagreement**

- Agreement was reached that TRIPS can and does in some cases have a negative effect on human rights.
- Agreement was reached on the need to regulate companies, as major players in the area of IPRs, both in lobbying for and in using them.
- Agreement was also reached on the desirability of a sectorial impact research with regard to TRIPS and human rights.

## **Recommendations**

- Conduct further research to assess how TRIPS may affect human rights in general, and the REBSP in particular.
- Urge States to develop national science policies aimed at the development, diffusion, and non-discriminatory access to science that is beneficial, as well as aimed at protecting people from possible harmful effects of scientific or technological developments.
- Urge States to cooperate internationally to support, financially or otherwise, science that is beneficial to the public.

## Conclusions and proposed follow-up action <sup>13</sup>

### Conclusions

1. Discussions on the place, role, scope, content and future of the right to enjoy the benefits of scientific progress and its applications (REBSP), despite their exploratory nature, proved to be promising as to the possibilities of elucidating its potential normative content.
2. Papers presented during the meeting constitute the most recent research on issues linked to the REBSP as it stands today. These papers demonstrate the wide range of issues and connected rights related to the REBSP.
3. This interdisciplinary nature of the REBSP and its numerous links and tensions with other rights and standards demonstrate the importance of adopting the appropriate methodology towards its analysis and promotion in a progressive, collaborative and collegial manner.
4. Gender issues relating to the REBSP were discussed as an important and key component of the further exploration and development of the content of this right.
5. Despite the lack of precision as to the normative content of the REBSP, this human right acquires additional importance with globalization and with the ongoing process of reinforcing the justiciability of economic, social and cultural rights.
6. The REBSP is of a cross-cutting nature and has direct links with many human rights, as well as with the fight against poverty and discrimination, which should facilitate a sectorial approach to its analysis along the lines of the programme of this meeting.

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<sup>13</sup> NB: The conclusions and proposed follow-up action were adopted by the participants in the closing session.

7. The main rights relating to the REBSP explored during the meeting are: the right to health, the right to food, the right to development, the right to education, the right to seek, receive and impart information.
8. The potential contributions and dimensions of ethical analysis for the REBSP were discussed. Further study and elaboration of the ethical dimension, and of the definition of ethics and morality are needed.
9. The tension between the intellectual property rights and the REBSP was discussed and it was agreed that it could potentially be addressed using a complementary approach.

### **Proposed follow-up action**

1. UNESCO, the Amsterdam Center for International Law (ACIL) and the Irish Centre for Human Rights are invited to establish in close cooperation with other partners a coalition for the promotion of the REBSP.
2. The main objective of this coalition, composed of interested NGOs, scientific community representatives and independent experts, will be to launch a process of scientific research and dialogue on the normative content of the REBSP in an interdisciplinary manner involving all relevant stakeholders.
3. Once this preliminary phase of reflection and elucidation of the normative content of the REBSP in all its relevant aspects is concluded, it is hoped that relevant UN bodies and agencies, in particular the Committee on Economic, Social and Cultural Rights (CESCR), would continue this process in order to benefit from its expected results.
4. In a future implementation phase of the REBSP, the main possible entry points for potential action of bodies and agencies of the UN system dealing with human rights could be the following:
  - a) CESCR, to further elaborate the normative content of Article 15 (1) b;
  - b) Working Group on the Right to Development, within its current mandate on MDG 8 concerning the transfer of technology;

- c) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (when finalized);
  - d) A new independent expert on the REBSP to be appointed by the Human Rights Council (HRC);
  - e) Mainstream the REBSP into the mandate of existing independent experts;
  - f) Insertion of the REBSP on the agenda of the Human Rights Council Advisory Committee (successor to the Sub-Commission), when established;
  - g) Increased synergies among the International Bioethics Committee, the World Commission on the Ethics of Scientific Knowledge and Technology (UNESCO) and UN human rights bodies and mechanisms;
  - h) Possible resolution of the HRC addressing the need to promote and progressively develop the REBSP within and in addition to existing human rights mandates and working groups.
5. Participants in this meeting, as well as other interested actors, are invited to reflect on the issues that still need to be addressed or require further elaboration through collaborative research and reflection and submit their input to UNESCO, the ACIL and the Irish Centre for Human Rights.
6. The conclusions and recommendations of this meeting will be distributed to relevant actors and stakeholders who did not participate in the meeting, with a view to seeking their support and input.

The Right to Enjoy the Benefits of Scientific  
Progress and its Applications  
*Experts' meeting*  
(Amsterdam, 7-8 June 2007)

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***"The right to share in scientific advancement and its benefits was enshrined in Article 27 of the Universal Declaration of Human Rights. It was included in the International Covenant on Economic, Social and Cultural Rights (Article 15 § 1 b). Nevertheless, it is generally agreed that the REBSP is an "underdeveloped" human right. No comprehensive study and analysis have been conducted while little reference has been made to it in State reports to the Committee on Economic, Social and Cultural Rights."***

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

**Amsterdam, 7-8 June 2007**

The experts' meeting on the right to enjoy the benefits of scientific progress and its applications (REBSP) was organized by UNESCO jointly with the Amsterdam Center for International Law and the Irish Centre for Human Rights. The co-organizers received also the support of the Netherlands National Commission for UNESCO, the Royal Netherlands Academy of Arts and Sciences and the Municipality of Amsterdam.