

**Scientific Purpose and Human Rights: Evaluating General Comment No. 25 in light of Major Discussions in the Travaux Préparatoires of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights**

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# Nordic Journal of Human Rights

## Scientific Purpose and Human Rights: Evaluating General Comment No. 25 in light of Major Discussions in the Travaux Préparatoires of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights --Manuscript Draft--

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<b>Abstract:</b>	<p>Science and technology play an increasingly dominant role in the contemporary lives of individuals around the world, and the extent to which scientific advancements can both support and frustrate the realisation of human rights is becoming more and more evident. General Comment No. 25 on the Right to Science, which was issued by the Committee on Economic Social and Cultural Rights in April 2020 suggests that science ought to serve human rights and peace as a priority over all other uses. However this suggestion, that science ought to serve a purpose, directly challenges extensive debates that were held around the drafting tables of the 1940s, 1950s and 1960s and the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights were being developed. Proposals to include a scientific purpose in these foundational human rights instruments were rejected multiple times for reasons which remain valid to this day. This article evaluates the proposed scientific purpose in General Comment No. 25 in light of the discussions recorded in the travaux préparatoires to determine the extent to which the new interpretive guidance helps or hinders the future development and realisation of the right to science in contemporary times.</p>

## Scientific Purpose and Human Rights: Evaluating General Comment No. 25 in light of Major Discussions in the *Travaux Préparatoires* of the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights

### 1. Introduction

Science and technology play an increasingly dominant role in contemporary life, and the extent to which scientific developments can both support and frustrate the realisation of human rights is becoming more evident with each passing year.<sup>1</sup> The drafters of the human right to science in Article 27 of the Universal Declaration of Human Rights (UDHR) and Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) debated whether science ought to be given a purpose that would prevent advancements and new discoveries from being used to cause harm. The concerns expressed in those foundational discussions, both for and against the inclusion of a purpose for science in the UDHR and ICESCR, remain as relevant as ever in the present day since binary determinations of scientific benefit and detriment can still be difficult to determine.<sup>2</sup> On 20 April 2020, the Committee on Economic Social and Cultural Rights (CESCR) issued guidance on the interpretation of the right to science in their General Comment on Science and Economic, Social and Cultural Rights<sup>3</sup> (General Comment No. 25), which suggests that “the development of science in the service of peace and human rights should be prioritized by States over other uses.”<sup>4</sup> Yet when the UDHR and ICESCR were being

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<sup>1</sup> For examples of the ‘immense harm that can come from the misuse of science’ see Lea Shaver, ‘The Right to Science: Ensuring that Everyone Benefits from Scientific and technological Progress’ (2015) 4 *European Journal of Human Rights* 411-430, 416.

<sup>2</sup> See discussion in William Schabas, ‘Study of the Right to Enjoy the Benefits of Scientific and Technological Progress and its Applications’, in *Human Rights in Education, Science and Culture: Legal Developments and Challenges* Yvonne Donders and Vladimir Volodin (eds.) (Routledge, 2007), 297-298 regarding the effects of pharmaceutical research and progress in that field. Indeed the UN High Commissioner for Human Rights has observed that in some situations, patents may be used to block research that could lead to scientific progress: Commission on Human Rights (Sub-Commission) The impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights on Human Rights: Report of the High Commissioner (27 June 2001) UN Doc E/CN.4/Sub.2/2001/13, 13 para 40. See also Asbjorn Eide, ‘Cultural Rights as Individual Human Rights’ in *Economic, Social and Cultural Rights*, Asbjorn Eide, Catarina Krause, and Allan Rosas (eds.), 2<sup>nd</sup> Ed. (Martinus Nijhoff, 2001) 289, remarking at 295 that ‘[p]roblems can arise, however, as to what constitutes progress and what does not; in some cases the benefits can be tinged with negative consequences.’

<sup>3</sup> Committee on Economic, Social and Cultural Rights, ‘General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)’, UN Doc. E/C.12/GC/25, 30 April 2020 [hereinafter General Comment No. 25]

<sup>4</sup> *Ibid.* General Comment No. 25, para 6

drafted, states voted strongly *against* proposals that would have required science to serve almost exactly the same ends - peace, democracy and the collective well-being of individuals. Therefore, a re-examination of the *travaux préparatoires* – the drafting history - of the UDHR and ICESCR is necessary, timely and significant in evaluating whether the drafters’ original objections remain valid.

This article advances novel perspectives on the right to science as the scholarship to date has not yet considered the normative content of the right in light of the views of the Committee on Economic, Social and Cultural Rights. In other words, existing scholarship at the time of completing this article advances views that reflect the state of the law prior to the publication of General Comment No. 25 in April 2020. The examination of the right to science in this article focuses on an particular issue in General Comment No. 25 – identifying a purpose that scientific research ought to serve – and it analyses this contemporary understanding of the right in light of the original understanding of the right as communicated by those who drafted the right between the 1940s and the 1960s.

The article will begin by arguing that the *travaux préparatoires* of the UDHR and ICESCR *are* relevant in evaluating the suggested scientific purpose in General Comment No. 25, and that such analysis is justified, timely and significant. A comprehensive account of drafting debates on the purpose of science in a human rights context will then be set out as the views and concerns of states at the time the right to science was being included in the UDHR and ICESCR remain poignant and resonate strongly in light of contemporary developments in and applications of scientific and technological progress. The proposed purpose of science in General Comment No. 25 will then be critically analysed against the views expressed during the drafting debates and in this regard the subjective interpretations of key terms, and the effect of scientific purpose on scientific freedom and intellectual property rights will be evaluated. In conclusion, the article surmises that General Comment No. 25 starts an important contemporary debate on scientific purpose in a human rights context, a debate in which the views of drafters remain as valid today as they did when first expressed in the 1940s, 1950s and 1960s.

## 2. Relevance of Key Drafting Debates to the Purpose of Science in the 21<sup>st</sup> Century

Catalysed by mid-20<sup>th</sup> Century events,<sup>5</sup> states in the late 1940s were keen to develop a common set of values, refracted through the prism of human rights, to prevent similar atrocities from occurring again in the future. Recognising the human right to science in the UDHR and the ICESCR was a notable step forward in this regard.<sup>6</sup> Science was not given a purpose in the UN Secretariat’s initial draft of the

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<sup>5</sup> Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (University of Pennsylvania Press, 1999), 36-91

<sup>6</sup> For further discussion on the drafting history of the right to science, see Tara Smith, ‘Understanding the nature and scope of the right to science through the Travaux Préparatoires of the Universal Declaration of Human

UDHR.<sup>7</sup> However subsequent proposals, notably by the USSR, insisting that science ought to be given a purpose so that advancements could be directed towards positive rather than negative uses were strongly opposed at every juncture, for reasons that will be discussed in detail in the sections below.

While it is difficult to discern from the *travaux préparatoires* of the UDHR and ICESCR the extent to which debates over the purpose of science were drawn out explicitly along cold war lines,<sup>8</sup> it is clear that the final text of the right to science in both instruments was influenced at least as much by political alliances as by the ideological merits of proposed amendments themselves. Exploring the *travaux préparatoires* of the UDHR and ICESCR in light of General Comment No. 25, as this article uniquely does, is as relevant to scholars of human rights history as it is to those engaged in contemporary debates on the nature and development of the right to science. It is argued here that neither the *travaux préparatoires* nor General Comment No. 25 represent the *lex lata* – the law as it exists - on this point, but both may influence the development of customary international law in the future through state reports on the implementation of the ICESCR. In this regard, General Comment No. 25 may have a more dominant effect if the strong and compelling counter-narrative in the *travaux préparatoires* is not given due and equal regard.

The Vienna Convention on the Law of Treaties determines that the drafting history of international legal provisions can be used as a supplementary means of interpretation, either to confirm the ordinary meaning of terms and provisions or to assist in reaching an understanding of a term or provision where the ordinary meaning would lead to an absurd or unreasonable result, or where the meaning is ambiguous or obscure.<sup>9</sup> The *travaux préparatoires* are a common source for supplementary interpretation. For example, the CESCR in General Comment No. 25 refer to the

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Rights and the International Covenant on Economic, Social and Cultural Rights’ (2020) The International Journal of Human Rights, DOI: 10.1080/13642987.2020.1715947

<sup>7</sup> UN Commission on Human Rights ‘Draft Outline of International Bill of Rights’ (4 June 1947) UN Doc E/CN.4/AC.1/3

<sup>8</sup> That the negotiations were influenced by cold war allegiances is an assertion has been made by a number of scholars including Johannes Morsink, *supra* n. 5, 62-63; Maria Green in UN Committee on Economic, Social and Cultural Rights, ‘Drafting History of the Article 15 (1) (c) of the International Covenant on Economic, Social and Cultural Rights’ (9 October 2000) UN Doc E/ C.12/2000/15 and Sebastian Porsdam Mann, Helle Porsdam and Yvonne Donders in ‘“Sleeping Beauty”: The Right to Science as a Global Ethical Discourse’ 42(2) Human Rights Quarterly (2020), 332-356 at 337-338. However, in recent times the role played by smaller states in shaping the contours of the rights contained in the UDHR has been asserted, and this dilutes claims of cold war influence considerably. See Susan Waltz, ‘Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights’ 23(3) Third World Quarterly (2002), 437-448, 444.

<sup>9</sup> United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, Article 32

*travaux* to corroborate their understanding of some elements of the right to science.<sup>10</sup> However General Comments of the CESCR may also be regarded as a supplementary means of interpretation in some respects, particularly where guidance beyond the accepted boundaries of the law are advanced. When two supplementary means of interpretation compete, particularly in the case of the right to science which has received relatively little state<sup>11</sup> or scholarly<sup>12</sup> attention when compared to other rights in the UDHR and ICESCR, then both ought to be considered.

Human rights instruments are of course ‘living instruments’ that ought to be interpreted dynamically and purposively over time. This may suggest that more contemporary supplementary means of interpretation ought to take precedence over historical sources. This article does not purport to use the *travaux préparatoires* or General Comment No. 25 to anchor the right to science to any particular point in time. Rather, by exploring the *travaux préparatoires*, this article advances an evaluation of the suggestion in General Comment No. 25 that science ought to serve certain ends as a priority over others. In so doing it contributes fresh perspectives to scholarly debates on the right to science, particularly where those debates may influence the development of customary international law on the question of scientific purpose over the coming years. Essentially, the drafters of the UDHR and ICESCR rejected the opportunity to explicitly attach a purpose to science, and scholars and international organisations are now proposing that an inference related to scientific purpose ought to be read into the right: it will be for states to decide in the future, through their attitudes and actions, which way the right to science will develop and it is hoped that the evaluation in this article will inform those decisions.

### 3. Drafting Debates on Scientific Purpose in the UDHR and ICESCR

Deciding whether or not to incorporate a provision on the purpose of scientific progress featured heavily in the drafting of the UDHR and it all but dominated the latter-stages of negotiations that led to the inclusion of the right to science in the ICESCR. When drafting the UDHR and ICESCR repeatedly voted against provisions proposed by the USSR which would have established a purpose for science. Examining these drafting debates in detail is now more relevant than ever because the CESCR have advanced a view in General Comment No. 25 that directly challenges the position taken by states at this time. The CESCR assert in General Comment No. 25 that ‘the development of science in the service

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<sup>10</sup> General Comment No. 25, *supra* n. 3, para 10

<sup>11</sup> General Comment No. 25, *supra* n. 3, para 2, where the CESCR confirm that ‘science is one of the areas of the Covenant to which States parties give least attention in their reports and dialogues with the Committee’.

<sup>12</sup> See generally Porsdam Mann, Porsdam and Donders, *supra* n. 8

of peace and human rights should be prioritized by States over other uses<sup>13</sup> and elements of this proposal mirror provisions that were debated by drafters from the late 1940s until the adoption of the ICESCR in 1966.

The views in General Comment No. 25 likely reflect contemporary interpretations of the right to science as they seem to align broadly with the views of the UN Secretary General,<sup>14</sup> the authors of the Venice Statement on the Right to Enjoy the Benefits of Scientific Progress and its Application<sup>15</sup> and academic scholars<sup>16</sup> who have all suggested that science and technology should not be used for the purpose of causing harm. Yet the drafting history of the right, which will be outlined below, shows us that states did not ignore the negative effects that scientific research could have when drafting Article 27 of the UDHR and Article 15 of the ICESCR. Quite the opposite. The absence of an explicit statement on the purpose of science in both instruments was therefore a deliberate choice, not an oversight or gap to be filled. Ultimately drafters chose not to explicitly protect individuals against negative effects or abuses of science (beyond the use of scientific experimentation as a method of torture<sup>17</sup>) as to do so would have, in the view of the majority, resulted in subjective interpretations of obligations, thereby giving states too much power and control over the direction of scientific progress.

An evaluation of whether the concerns of drafters remain valid objections to now attaching a purpose to science, particularly the purpose to serve peace, is therefore certainly timely and relevant. A thorough examination of the rationale and merits of the drafters' decision not to determine or include a purpose for science in the (a) UDHR and (b) ICESCR follows below. Both instruments were negotiated through various committees and structures within the United Nations between the mid-1940s and mid-1960s. The key debates, the committees within which the debates were held, and the points in

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<sup>13</sup> General Comment No. 25, supra n.3, para 6

<sup>14</sup> UN Committee on Economic, Social, and Cultural Rights, 'Guidelines on Treaty-Specific Documents to be Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights: Note by the Secretary-General' (24 March 2009) UN Doc E/C.12/2008/2, 15 para 70(b)

<sup>15</sup> Experts' Meeting on the Right to Enjoy the Benefits of Scientific Progress and its Applications, 'The Right to Enjoy the Benefits of Scientific Progress and its Applications' (UNESCO, 2009) Doc. Code SHS/RSP/HRS-GED/2009/PI/H/1, 13-20

<sup>16</sup> Schabas, supra n. 2, 295. See also the views of Klaus D. Beiter 'Where Have All The Scientific and Academic Freedoms Gone? And What Is 'Adequate for Science'? The Right to Enjoy the Benefits of Scientific Progress and Its Applications' 2019 52(2) Israel Law Review 233-291, 237

<sup>17</sup> See the International Covenant on Civil and Political Rights (1966) 999 UNTS 171. Article 7 states that "no one shall be subjected without his free consent to medical or scientific experimentation." International Covenant on Civil and Political Rights,

time during the drafting of the UDHR and ICESCR that the right to science was negotiated, are discussed below.

a. The Purpose of Science in the Universal Declaration of Human Rights

The purpose of science was not included in the first draft of the right to science as prepared by John Humphrey for the Commission on Human Rights' Drafting session in 1947, even though it appeared in Article XV of the Draft Declaration on the Rights and Duties of Man (which influenced Humphrey to include the right to science in the draft UDHR in the first place).<sup>18</sup> However, the USSR subsequently suggested that such a provision ought to be included in the text of the right to science. During the Commission on Human Rights' third session in 1948 the USSR suggested that 'the task of science was to work for the advancement of peaceful time and to make human life better'<sup>19</sup> and that such sentiments ought to be reflected in the provision on the right to science. To this end, the delegate from the USSR, Mr. Pavlov, proposed an amendment which suggested that 'the advancement of science [...] should serve the interests of the progress of mankind, the cause of peace, and co-operation amongst peoples'.<sup>20</sup> The Commission on Human Rights rejected this initial proposal by 9 votes to 4 with 3 abstentions.<sup>21</sup>

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<sup>18</sup> For an account of the drafting of the right to science and the nature and scope of the right as envisaged by drafters, see Smith, *supra* n. 6. The text of Article XV of the Draft Declaration of the International Rights and Duties of Man, the instrument that influenced the first draft the UDHR prepared by the UN Secretariat (UN Commission on Human Rights 'Draft Outline of International Bill of Rights' (4 June 1947) UN Doc E/CN.4/AC.1/3) reads as follows: "Every person has the right to share in the benefits occurring from the discoveries and inventions of science, under conditions which permit a fair return to the industry and skill of those responsible for the discovery of invention. The state has the duty to encourage the development of the arts and science, but it must see to it that the laws for the protection of 'trademarks, patents and copyrights are not used for the establishment of monopolies which might prevent all persons from sharing in the benefits of science. It is the duty of the state to protect the citizen against the use of scientific discoveries in a manner to create fear and unrest amongst the people." See UN ECOSOC, 'Draft Declaration of the International Rights and Duties of Man' (8 January 1947) UN Doc E/CN.4/2, 9. This document was submitted to the UN General Assembly in 1946 by Chile but prepared by the Inter-American Juridical Committee. UNGA First Committee, 'Letter from the Representative of Chile to the Secretary-General' (6 November 1946) UN Doc A/C.1/38. This text influenced John Humphrey, a former Canadian diplomat and then Director of the UN Secretariat's Division of Human Rights to include the right to science in a draft outline of what would ultimately become the UDHR and which was sent to the Commission on Human Rights for further development.

<sup>19</sup> UN Commission on Human Rights (3<sup>rd</sup> session), 'Summary Record of the Seventieth Meeting', (21 June 1948) UN Doc E/CN.4/SR.70, 4-5

<sup>20</sup> *Ibid*, 6

<sup>21</sup> *Ibid*.



The USSR was not prepared to let the matter disappear after their initial defeat, and the issue of the purpose of science was raised again in discussions during the Third Committee's third session, the stage immediately prior to the adoption of the UDHR by the UN General Assembly.<sup>22</sup> The reason behind the USSR's insistence that the right to science ought to reflect the purpose of science was, according to Mr. Pavlov that '[i]t should not be forgotten that science in the modern world could and often did serve the interests of aggression and [...was used...] for massacring peaceful populations.'<sup>23</sup> Other delegations agreed in part with the USSR, expressing concern over the use of science to further military ends, rather than peaceful ends.<sup>24</sup> The USSR insisted that science should not become 'the handmaiden of militarism.'<sup>25</sup> Proposing another amendment in an attempt to have the purpose of science integrated into the right to science, the USSR once again suffered a defeat.<sup>26</sup>

The United States disagreed strongly with the proposed amendment, arguing that the text was 'a pretext for the enslavement of science'<sup>27</sup> and that in practice, the effect of the amendment may be to place science at the service of politics.<sup>28</sup> This sentiment was echoed by other delegations: the

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<sup>22</sup> The USSR proposed another amendment in UN ECOSOC, 'Report of the Third Session of the Commission on Human Rights' (28 June 1948) UN Doc E/800, 44

<sup>23</sup> UNGA Third Committee (3rd Session) Hundred and Fifty-Second Meeting (22 November 1948) UN Doc A/C.3/SR.152, 636

<sup>24</sup> See the comments of the Ukrainian delegate at 632-633 in *Ibid*; See also comments of the delegate from the Netherlands at 776-777 in UNGA Third Committee (3rd Session) Hundred and Sixty-Sixth Meeting (30 November 1948) UN Doc A/C.3/SR.166; See also the comments of the Polish delegate at 908 in UNGA (3<sup>rd</sup> Session), Hundred and Eighty-Second Plenary Meeting (10 December 1948) UN Doc A/PV.182

<sup>25</sup> UNGA Third Committee (3rd Session) Hundred and Fifty-Second Meeting (22 November 1948) UN Doc A/C.3/SR.152, 636

<sup>26</sup> The text of the USSR's proposal was only slightly different to that which had earlier been defeated. The proposal read as follows: "The development of science must serve the interests of progress and democracy and the cause of international peace and co-operation." UN ECOSOC, 'Report of the Third Session of the Commission on Human Rights' (28 June 1948) UN Doc E/800, 44

<sup>27</sup> UNGA Third Committee (3<sup>rd</sup> Session), Hundred and Fiftieth Meeting (20 November 1948) UN Doc A/C.3/SR.150, 620

<sup>28</sup> *Ibid*.

delegates from Belgium,<sup>29</sup> France,<sup>30</sup> and Chile<sup>31</sup> were reluctant to agree to text which could be used to make science serve political ends, while the delegates from Uruguay<sup>32</sup> and the United Kingdom<sup>33</sup> were hesitant to agree to text in which science could be used to serve an ideology. The Cuban delegate felt that science should remain free from the objectives of states or governments.<sup>34</sup>

Challenging opposition to his proposed amendment, Mr. Pavlov, quite provocatively argued that the USSR's proposal would obviously be unacceptable 'where science was subservient to militarism and where intellectual forces were concentrated on producing a terrible weapon of aggression for the destruction of millions of peaceful human beings'.<sup>35</sup> Mr. Pavlov was referring to the then recent use of nuclear weapons by the United States in Japan. Also, in contemplation of the development of 'a bacteriological weapon which would destroy 180 million human beings at one blow',<sup>36</sup> Mr. Pavlov argued that the 'atmosphere of terror which prevailed throughout the world owing to the application of scientific discoveries for destructive purposes'<sup>37</sup> could be thwarted if science was directed to explicitly 'promote conditions of general peace'.<sup>38</sup>

The USSR requested that the proposal be voted on in three sections based on concerns expressed thus far in an attempt to get some, if not all, of the proposal over the finishing line. But all three aspects of the final proposal were rejected: 'The development of science must serve the interests of progress'

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<sup>29</sup> Ibid, 622

<sup>30</sup> UNGA Third Committee (3<sup>rd</sup> Session), Hundred and Fifty-First Meeting (22 November 1948) UN Doc A/C.3/SR.151, 630

<sup>31</sup> Ibid. 631-632

<sup>32</sup> UNGA Third Committee (3<sup>rd</sup> Session), Hundred and Fiftieth Meeting (20 November 1948) UN Doc A/C.3/SR.150, 621

<sup>33</sup> Ibid, 625

<sup>34</sup> UNGA Third Committee (3<sup>rd</sup> Session), Hundred and Fifty-First Meeting (22 November 1948) UN Doc A/C.3/SR.151, 628

<sup>35</sup> UNGA Third Committee (3<sup>rd</sup> Session), Hundred and Fiftieth Meeting (20 November 1948) UN Doc A/C.3/SR.150, 623

<sup>36</sup> Ibid, 624

<sup>37</sup> Ibid, 623-624

<sup>38</sup> Ibid. 624

was rejected by 24 votes to 11 with 7 abstaining; ‘and the cause of international peace and co-operation’ was rejected by 26 votes to 9 with 7 abstaining; and ‘and democracy’ was rejected by 25 votes to 10 with 7 abstentions.<sup>39</sup> The purpose of science was therefore not included in the final text of the UDHR as adopted by the UN General Assembly on 10<sup>th</sup> December 1948.

Morsink surmises that while many states, including the US and UK, may have surreptitiously opposed the proposed amendment, not on the basis of its merits but on the basis of cold war alliances, some states, such as Belgium and Cuba, did appear to engage with the merits of the proposal and voted against it on the basis of genuine concerns over the ideological and practical consequences of connecting scientific research to a particular purpose.<sup>40</sup> However, this was not the end of the road for proposals regarding the purpose of science, as they were subsequently resurrected during the drafting of the ICESCR.

b. The Purpose of Science in the International Covenant on Economic Social and Cultural Rights

When the drafters of the ICESCR turned their attention to the right to science, the USSR revived its insistence that science should serve a particular purpose to protect individuals against abuses of science. In the discussions that took place in the seventh session of the Commission on Human Rights in 1951, the USSR reasserted their view that ‘[t]here was no greater danger to civilization than the abuse of scientific achievement’.<sup>41</sup> To this end, the USSR proposed an amendment to the text on the right to science which echoed previous proposals that had been rejected during the drafting of the UDHR. The USSR’s proposed amendment reads as follows: ‘[t]he State shall ensure the development of science and education in the interest of progress and democracy, and in those of the maintenance of peace and of co-operation between the nations’.<sup>42</sup> The USSR’s proposal, although ultimately rejected by the Commission on Human Rights at this stage,<sup>43</sup> was not without support – the Ukrainian

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<sup>39</sup> UNGA Third Committee (3rd Session) Hundred and Fifty-Second Meeting (22 November 1948) UN Doc A/C.3/SR.152, 633-634

<sup>40</sup> Morsink, *supra* n. 5, 62-63

<sup>41</sup> In quoting from an article published by a member of the Association of Scientific Workers in the UK in 1950, the delegate from the USSR suggested to the Commission that ‘nothing could be more evil than the abuse of science’, Commission on Human Rights (7<sup>th</sup> session) ‘Summary Record of the Two Hundred and Twenty-Seventh Meeting’ (27 June 1951) UN Doc E/CN.4/SR.227, 13.

<sup>42</sup> UN ECOSOC (13<sup>th</sup> session) ‘Report to the Economic and Social Council on the seventh session of the Commission on Human Rights’ (1951) UN Doc. E/1992, para 47

<sup>43</sup> *Ibid.*

delegate also felt that the final article on the right to science should 'contain a provision ensuring the development of science along peaceful lines'.<sup>44</sup> Mr. Havet, one of the representatives from UNESCO, sympathised with the USSR's position but stated that 'intervention by the State in the cultural and scientific field gave rise to complex problems'.<sup>45</sup> While he did not concur with the USSR's proposal, he did support the position that the resulting instrument should recognise 'principles and aims'<sup>46</sup> in the field of science as a matter of necessity.<sup>47</sup>

During the eighth session of the Commission on Human Rights in 1952, the delegates from Uruguay and Poland agreed with the USSR's resurrected proposal<sup>48</sup>, with the Polish delegate remarking that 'history showed that science could be either a blessing or a curse according to whether or not its aim was to promote human progress, the triumph of democracy and the maintenance of peace.'<sup>49</sup> However these states very much appeared to be in the minority with this point of view. States had already generally agreed to support the need to preserve 'the freedom of scientific research and creation',<sup>50</sup> because 'scientific research by its nature was independent of any external criterion'.<sup>51</sup> Many felt that a provision referring to the purpose of scientific research 'might provide a pretext for State control of scientific research and creative activity',<sup>52</sup> thereby undermining efforts to recognise and safeguard scientific freedom.<sup>53</sup>

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<sup>44</sup> UN Commission on Human Rights, (7<sup>th</sup> Session) 'Summary Record of the Two-Hundred and Twenty-Eighth Meeting' (28 June 1951) UN Doc E/CN.4/SR.228, 9

<sup>45</sup> Ibid, 10

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Commission on Human Rights (8<sup>th</sup> Session) 'Summary Record of the Two Hundred and Ninety-Second Meeting' (27 May 1952) UN Doc E/CN.4/SR.292, 5 & 10; See also UN ECOSOC (14<sup>th</sup> Session) 'Report to the Economic and Social Council on the eighth session of the Commission on Human Rights' (1952) UN Doc E/CN.4/669, para 127.

<sup>49</sup> Commission on Human Rights (8<sup>th</sup> Session) 'Summary Record of the Two Hundred and Ninety-Third Meeting' (27 May 1952) UN Doc E/CN.4/SR.293, 7

<sup>50</sup> UN ECOSOC (14<sup>th</sup> Session) 'Report to the Economic and Social Council on the eighth session of the Commission on Human Rights' (1952) UN Doc E/CN.4/669, para 126

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

The objections to the proposal were varied amongst states. The delegate from the USA, Mrs. Roosevelt, opposed the USSR's proposed amendment because '[u]nder its terms, pure science could be prohibited unless the State thought it conducive to progress'.<sup>54</sup> Further concerns were expressed by other delegations. For example, the Egyptian delegate said that 'science should be free from any mundane considerations, no matter how praiseworthy'<sup>55</sup> and in his view 'scientists should receive no guidance from outside but should obey only their own conscience and the exigencies of their work. The search for truth must remain unshackled'.<sup>56</sup> This was a perspective that the United Kingdom's delegate, Mr. Hoare, agreed with.<sup>57</sup> Mr. Hoare further said that '[i]n his view science, whether pure or applied, existed in and for itself, independent of any use to which it might be put. Science could therefore progress only towards its own ends, irrespective of results, good, bad or indifferent.'<sup>58</sup> The United Kingdom's view was that the ICESCR 'was not designed to limit or prevent certain applications of science'<sup>59</sup> and that determining whether science was being developed for good or ill was a moral, not a legal, problem.<sup>60</sup> The delegate from Australia, Mr. Whitlam, agreed with the objections to the USSR's proposal because the 'reference didn't relate to the application of science, but to science itself.'<sup>61</sup> The Lebanese delegate, Mr. Azkoul, felt that '[t]he adoption of the USSR amendment would enable the State to arbitrarily suppress any scientific activity which was contrary to its peculiar concept

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<sup>54</sup> Commission on Human Rights (8<sup>th</sup> Session) 'Summary Record of the Two Hundred and Ninety-Second Meeting' (27 May 1952) UN Doc E/CN.4/SR.292, 6

<sup>55</sup> Ibid, 8

<sup>56</sup> Ibid, 8

<sup>57</sup> Ibid, 9, stating that '[s]cience in the past had always grown from within; it was and must remain autonomous, and no external criterion, no matter how praiseworthy, should be applied to it or to its development.'

<sup>58</sup> Commission on Human Rights (8<sup>th</sup> Session) 'Summary Record of the Two Hundred and Ninety-Third Meeting' (27 May 1952) UN Doc E/CN.4/SR.293, 8. He also said in the same passage that 'The USSR amendment appeared to mean that the State should make science and culture develop in a given direction in the interests of progress and democracy.'

<sup>59</sup> Ibid, 8-9

<sup>60</sup> Ibid.

<sup>61</sup> Commission on Human Rights (8<sup>th</sup> Session) 'Summary Record of the Two Hundred and Ninety-Second Meeting' (27 May 1952) UN Doc E/CN.4/SR.292, 14

of democracy and peace.<sup>62</sup> Although varied, the views of opposing states were clearly oriented towards preventing undue state interference in scientific research.

The delegate from Yugoslavia, Mr. Jevremovic, attempted to strike a middle ground between the USSR's position and criticisms of the proposal. He said that if the proposal was adopted as it stood, 'states might impose on science the objectives of their day-to-day policies as scientific truths.'<sup>63</sup> Mr. Jevremovic was prepared to agree to a formulation of words conveying the idea that scientific research ought to support peace and democracy without necessarily giving states an opportunity to determine what specifically constituted peaceful or democratic aims.<sup>64</sup> Yugoslavia did not propose alternative wording and no such formula was developed by other states, even those driving the effort to have the purpose of science reflected in the article on the right to science. It was a divisive issue on which no compromise was forthcoming from either the proponents or opponents of the idea. Regardless of the true influence of emerging cold-war alliances on these debates<sup>65</sup> at the very least, as Schabas asserts, its influence was 'hardly conducive to serene discussion.'<sup>66</sup>

During the Third Committee's ninth session in 1954, Mr. Formin, the USSR's then representative, revived the idea behind the proposed amendments that had been rejected thus far. He stated that the impact of the right to science, to him one of the most important provisions that had been included in the draft covenants to date,<sup>67</sup> would be amplified by indicating that science should serve peace, democracy and international cooperation.<sup>68</sup> The Ukrainian<sup>69</sup> and Belorussian delegate<sup>70</sup> agreed with

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<sup>62</sup> Ibid, 11

<sup>63</sup>He continued that 'That was not an abstract hypothesis but a real danger. Science could not remain neutral in contemporary social life; that however did not mean that governments could direct science and determine the objectives science should seek.' Commission on Human Rights (8<sup>th</sup> Session) 'Summary Record of the Two Hundred and Ninety-Third Meeting' (27 May 1952) UN Doc E/CN.4/SR.293, 4

<sup>64</sup> Ibid. 5

<sup>65</sup> For example, in the face of staunch opposition, Poland supported the USSR's proposal. UNGA Third Committee (3<sup>rd</sup> Session), Hundred and Fifty-First Meeting (22 November 1948) UN Doc A/C.3/SR.151, 631

<sup>66</sup> William Schabas, 'Looking Back: How the Founders Considered Science and Progress in their Relation to Human Rights' 2015(4) European Journal of Human Rights 504-518, 516

<sup>67</sup> UNGA Third Committee (9<sup>th</sup> Session) 565<sup>th</sup> Meeting (27 October 1954) UN Doc A/C.3/SR.565, para 20

<sup>68</sup> Ibid, para 32

<sup>69</sup> UNGA Third Committee (9<sup>th</sup> Session) 572<sup>th</sup> Meeting (3 November 1954) UN Doc A/C.3/SR.572, para 16

<sup>70</sup> UNGA Third Committee (9<sup>th</sup> Session) 575<sup>th</sup> Meeting (5 November 1954) UN Doc A/C.3/SR.575, para 10

Mr. Fomin's argument that global experiences of 'rapid scientific and technological'<sup>71</sup> advancements had shown that they had in the past and could in the future be used to 'immeasurably increase the well-being of mankind, or, in the event of abuse, bring destruction and suffering.'<sup>72</sup> These arguments dominated discussions in the closing stages of deliberations during the Third Committee's twelfth session three years later in 1957.<sup>73</sup> At this time, the delegate from Czechoslovakia, Mrs. Leflerova, had been passed the baton by the USSR and she tabled an amendment which very much echoed the USSR's earlier efforts on this front.<sup>74</sup> Mrs. Leflerova, supported by the Ukrainian Soviet Socialist Republic,<sup>75</sup> the Byelorussian Soviet Socialist Republic,<sup>76</sup> and Indonesia,<sup>77</sup> argued that if applied with ill-uses in mind, science could be detrimental to humanity.<sup>78</sup>

There were many reasons for states objecting to Czechoslovakia's final effort to push the proposed amendment over the line. Fears over state control of science were again expressed by a number of delegations, including those from Belgium,<sup>79</sup> Jordan<sup>80</sup> and the United Kingdom.<sup>81</sup> The Greek delegate, Mr. Rossides asked of the aims of science 'who would be the judge. In all likelihood, it would be the State, in which case the amendment would have the effect of restricting individual freedom.'<sup>82</sup> The Greek delegate said that '[i]t was to be feared that any limitation adopted in principle in the interest of peace might finally endanger the rights of the individual, particularly since the State would be sole

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<sup>71</sup> UNGA Third Committee (9<sup>th</sup> Session) 565<sup>th</sup> Meeting (27 October 1954) UN Doc A/C.3/SR.565, para 32

<sup>72</sup> Ibid.

<sup>73</sup> UNGA (12<sup>th</sup> Session), 'Report of the Third Committee' (5 December 1957) UN Doc A/3764, para 77-79

<sup>74</sup> UNGA Third Committee (12<sup>th</sup> Session) 795<sup>th</sup> Meeting (30 October 1957) UN Doc A/C.3/SR.795, para 10

<sup>75</sup> UNGA Third Committee (12<sup>th</sup> Session) 796<sup>th</sup> Meeting (31 October 1957) UN Doc A/C.3/SR.796, para 16

<sup>76</sup> UNGA Third Committee (12<sup>th</sup> Session) 797<sup>th</sup> Meeting (31 October 1957) UN Doc A/C.3/SR.797, para 20

<sup>77</sup> UNGA Third Committee (12<sup>th</sup> Session) 798<sup>th</sup> Meeting (1 November 1957) UN Doc A/C.3/SR.798, para 1-2

<sup>78</sup> UNGA Third Committee (12<sup>th</sup> Session) 795<sup>th</sup> Meeting (30 October 1957) UN Doc A/C.3/SR.795, para 7

<sup>79</sup> UNGA Third Committee (12<sup>th</sup> Session) 798<sup>th</sup> Meeting (1 November 1957) UN Doc A/C.3/SR.798, para 8

<sup>80</sup> Ibid, para 5

<sup>81</sup> UNGA Third Committee (12<sup>th</sup> Session) 795<sup>th</sup> Meeting (30 October 1957) UN Doc A/C.3/SR.795, para 10

<sup>82</sup> Ibid. para 8. See also remarks of the Greek delegate at para 17 in UNGA Third Committee (12<sup>th</sup> Session) 796<sup>th</sup> Meeting (31 October 1957) UN Doc A/C.3/SR.796.

judge in the matter.<sup>83</sup> He continued to argue that '[s]cientific progress could be used for peaceful purposes or for the destruction of mankind. To limit the freedom of the individual in his research or study would not alter that situation.'<sup>84</sup> France and India felt that anything running contrary to a state's perspective on the maintenance of peace could be suppressed through the proposed amendment<sup>85</sup> and that this might lead to chilling censorship of works and ideas<sup>86</sup>, and a whitewashing of historical events.<sup>87</sup> The Mexican delegate, Mr. Gomez Robledo, even felt that the proposed amendment might permit 'undesirable authoritarianism.'<sup>88</sup> Other states feared that the proposed amendment would actually limit the right to science itself. The Chinese delegate, Miss Lin, felt that the Czechoslovakian amendment would be 'out of place in the article'<sup>89</sup> as to restrict the activity of scientists would impede rather than promote progress.<sup>90</sup> The delegate from the Federation of Malaya, Mr. Devasar, felt that any restrictions on the right to science 'might deprive the world of valuable benefits.'<sup>91</sup> The delegate from Pakistan, Mr. Chaudhuri, felt that Czechoslovakia's proposed amendment, though praiseworthy, was too restricted<sup>92</sup> and he instead that the state ought to 'eliminate all obstacles'<sup>93</sup> rather than exert power over the progress which scientific researchers could make. Ultimately, no provision on the purpose of science was included in the final article on the right to science in the ICESCR, Article 15, adopted by the UN General Assembly in 1966.

#### 4. Evaluating General Comment No. 25

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<sup>83</sup> UNGA Third Committee (12<sup>th</sup> Session) 796<sup>th</sup> Meeting (31 October 1957) UN Doc A/C.3/SR.796, para 17

<sup>84</sup> Ibid.

<sup>85</sup> Ibid, para 36

<sup>86</sup> Ibid.

<sup>87</sup> Ibid, para 23

<sup>88</sup> Ibid, para 25

<sup>89</sup> Ibid, para 31

<sup>90</sup> Ibid.

<sup>91</sup> UNGA Third Committee UN Doc A/C.3/SR.797, supra n. 77, para 11

<sup>92</sup> UNGA Third Committee (12<sup>th</sup> Session) 796<sup>th</sup> Meeting (31 October 1957) UN Doc A/C.3/SR.796, para 14

<sup>93</sup> Ibid.



In light of the drafting history, it is clear that there would have been advantages and disadvantages to giving science a purpose - there are merits and demerits on both sides of the debate. Nonetheless, it is noteworthy that the proposals debated and rejected by states during the drafting of both the UDHR and ICESCR bear a striking resemblance to the current assertion by the CESCR in General Comment No. 25 that 'the development of science in the service of peace and human rights should be prioritized by States over other uses'.<sup>94</sup> Are the objections of drafters still relevant or should the suggestion in General Comment No. 25 prevail? The following section compares the *travaux préparatoires* and General Comment No. 25 in three ways: (a) the effect of subjective interpretation of the stated purpose; (b) the effect on intellectual property rights; and (c) the effect on scientific freedom.

a. Subjective Interpretation

While the drafting debates were extremely divisive, in hindsight it is not clear that the views of the USSR were so fundamentally at odds with other delegations: there was clear agreement amongst all states that harmful uses of science were not encouraged or supported.<sup>95</sup> Nonetheless, the fears expressed by the majority of states revolved around the dangers that could arise from the subjective interpretations of peace, democracy, and human well-being being, which could be used by some states to justify what other states might consider to be harmful uses of science.<sup>96</sup> Indeed General Comment No. 25 indicates that states have a wide margin of discretion in selecting the most

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<sup>94</sup> General Comment No. 25, *supra* n. 3, para 6

<sup>95</sup> 'In the opinion of the USSR delegation it was essential for States to take the steps necessary to prohibit scientific activity designed to destroy mankind. Atom-splitting was one of the most important modern discoveries; since then science had progressed in two different directions: use of that discovery for peaceful purposes and use of that discovery for mass destruction of human beings. What was involved was a development of science and not, as some claimed, of applied science outside the field of pure science. The same was true of the discoveries of eminent biologists; the development of science after those discoveries had been, on the one hand, towards the struggle against germ diseases and, on the other, towards perfecting bacterial warfare. Scientific development could therefore represent a threat to mankind and it was for States to obviate that possibility. That was the only purpose of the USSR amendment.' Commission on Human Rights (8<sup>th</sup> Session) 'Summary Record of the Two Hundred and Ninety-Third Meeting' (27 May 1952) UN Doc E/CN.4/SR.293, 6-8. See also the views of Schabas, *supra* n. 66, 516.

<sup>96</sup> Commission on Human Rights (8<sup>th</sup> Session) 'Summary Record of the Two Hundred and Ninety-Third Meeting' (27 May 1952) UN Doc E/CN.4/SR.293. See the comments of the delegate at 8 from the United Kingdom who 'pointed out that any text could be interpreted in different ways, despite its author's intention. The Committee was not discussing the intention of the USSR representative, but the meaning of his text as it appeared to the various delegations.'

appropriate steps for realising the right to science,<sup>97</sup> making the dangers anticipated by drafters in this regard all more relevant. Despite the fact that states took an inconsistent approach to identifying and deleting terms that could fall prey to subjective interpretation,<sup>98</sup> the reality is that they *did* make a decision to exclude the identification of a purpose for science for this reason and that decision calls into question the value and validity of resurrecting a purpose in General Comment No. 25.

That states revisited the question of scientific purpose through the General Assembly in 1975 to adopt the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind [the Declaration] is relevant, as they suggested at that time that science and technology should be ‘used in the interests of strengthening international peace and security’.<sup>99</sup> Though based more broadly in international law, the Declaration would seem to indicate an evolution in understanding which could account for the inclusion in General Comment No. 25 that science should serve peace and human rights over all other uses, despite it being rejected by drafters in the *travaux préparatoires*. Nonetheless, neither the Declaration nor General Comment No. 25 are framed in a way that would defeat the concerns that drafters had in relation to subjective interpretation, particularly with regard to understandings of *peace* and measures necessary for the attainment of peace. Despite the Declaration’s insistence that science and technology should not breach international law, there is still scope in the present day for widely differing views amongst states as to how science and technology can be used to achieve peace within the bounds of international law. The views and concerns of the drafters of the UDHR and ICESCR therefore do remain relevant in the present day. If states do give purchase to the CESCR’s suggestion to interpret science as having a purpose in the context of the ICESCR going forward, then the views of drafters should, at the very least, form part of the CESCR’s interrogation of state reports to monitor the emergence of subjective understandings of peace and the role of science in achieving this end.

#### b. Intellectual Property Rights and Protections

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<sup>97</sup> General Comment No. 25, *supra* n. 3, para 85.

<sup>98</sup> For example regarding the inclusion of the word ‘indispensable’ to describe the level of scientific freedom that ought to be respected by states in Article 15(3) of the ICESCR – the word was retained despite concerns that this would allow states to restrict scientific freedom: a position completed at odds with the one taken in relation to the purpose of science. See UNGA Third Committee (12th Session) 796th Meeting (31 October 1957) UN Doc A/C.3/SR.796, para 29

<sup>99</sup> UNGA, Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, Resolution 3384 (XXX) of 10 November 1975, para 1

If there is a rationale for departing from such strong arguments against attaching a purpose to science - arguments which, in one way or another, could certainly still be made in the present day as discussed above - then perhaps it is that the drivers of scientific research are, on the whole, now very different. Where the drafters of the UDHR and ICESCR were concerned about giving states too much influence in the direction of scientific research, contemporary scientific advancements are frequently a result of private endeavours pursuing profit rather than sovereign power.<sup>100</sup> Had the drafters anticipated the growth of global intellectual property protection in the intervening decades, and the resulting strength of that protection, they may have nuanced the right to science provision and its companion provision on moral and material interests differently.

Given the growth of corporate interests in scientific developments over recent decades, the question of scientific purpose is perhaps more relevant than ever given that, to some, concerns over state control of science may be dwarfed by concerns over private control in the present day.<sup>101</sup> Indeed the question of intellectual property protection and the specific issue of the moral and material interests of the creators of scientific inventions and discoveries was as divisive an issue as the purpose of science during the drafting of the UDHR and the ICESCR. Eide has observed that while the provisions in the UDHR and ICESCR protecting the moral and material interests of scientists have contributed little to the field of intellectual property law, they have potentially significantly undermined individuals' entitlement to enjoy the benefits of scientific progress.<sup>102</sup>

To this end, the suggestion in General Comment No. 25 that science in the service of *human rights* be developed over all other uses may be a progressive proposition that could redress the imbalance between access to scientific progress and intellectual property rights – an issue which the CESCR acknowledge and recognise as a priority issue.<sup>103</sup> Devoid of an explicit purpose such as this, it could be argued that the right to science is failing to achieve what the drafters wanted it to achieve in a human rights context. However, if a nuance is to be drawn between the CESCR's proposal and the amendments debated during the drafting of the UDHR and ICESCR, it is that the purpose in General Comment No. 25 is not absolute – it suggests that science serve peace and human rights as a matter of priority, but not exclusively. Issues of subjective interpretation with regard to the term *peace* aside, requiring science to serve human rights as a priority over all other uses could make a significant

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<sup>100</sup> See Aurora Plomer, *Patents, Human Rights and Access to Science*, (Elgar, 2015), Chapter 1

<sup>101</sup> See the views of Beiter, *supra* n. 16, 262-265

<sup>102</sup> Eide, *supra* n. 2, 297

<sup>103</sup> General Comment No. 25, *supra* n. 3, para 58-62

difference in clarifying the relationship between the right to enjoy the benefits of scientific progress and intellectual property rights by forming the central pillar of future national plans of action.<sup>104</sup>

The protection of the moral and material interests of scientists in the UDHR and ICESCR has been interpreted by the CESCR as referring to individual scientists<sup>105</sup> and their right to work, to adequate remuneration and to an adequate standard of living.<sup>106</sup> Indeed the driving purpose behind proposals to include such protection in the UDHR and ICESCR was, as the main proponent of such provisions - Rene Cassin – summarised:

‘[v]ery many scientists attached great importance to the spiritual side of their work than to the profits that they could gain from it; they only asked that their work should be recognized by future generations. That recognition, which they claimed, should be granted to them, lest injustice should be done in the future.’<sup>107</sup>

Cassin further argued that ‘the world, which had so many reasons for not forgetting the names of those who were bent on destroying it, must also honour the names of those who laboured for the common good.’<sup>108</sup> Giving science a purpose, particularly as nuanced in General Comment No. 25, would therefore not necessarily prejudice the moral and material rights of scientists if the general intention behind the protection, as summed up by Rene Cassin, is accepted. It may, however, interfere with intellectual property rights more widely, particularly those held by corporate bodies or groups of scientists motivated by the desire to profit from discoveries and inventions; if science is to serve *human rights* and *peace* as a priority above all other uses and a right to access such scientific progress defeats competing claims to intellectual property interests and entitlements for these reasons, then

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<sup>104</sup> Ibid. para 87

<sup>105</sup> Committee on Economic, Social and Cultural Rights, General Comment 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), UN Doc. E/C.12/GC/17, 12 January 2006, para 7-8

<sup>106</sup> Ibid, paras 2 & 4

<sup>107</sup> UNGA Third Committee (3<sup>rd</sup> Session), Hundred and Fiftieth Meeting (20 November 1948) UN Doc A/C.3/SR.150, 620. Although the United Kingdom’s delegate noted at 624 that ownership and recognition were two separate issues that should not be dealt with in the same article. In the United Kingdom’s view, the UDHR should only contain values that were universal, and as intellectual property protections differed around the world, they saw no place for the recognition of intellectual property rights in the article containing the right to science.

<sup>108</sup> Ibid. 620

the drivers of scientific advancement may be motivated to pursue science that does not fall within the bounds of this (albeit quite broadly defined) rule. In this respect, attaching a purpose to science, while not quite tantamount to a limitation as envisaged by Article 4 of the ICESCR, may not achieve quite what the CESCR intend it to achieve; it may in fact undermine the drafters' rationale for including a right to science in the UDHR and ICESCR in the first place.

### c. Scientific Freedom

The debates in the *travaux préparatoires* also indicate that some states felt that assigning a purpose to science would limit scientific freedom or the process of scientific discovery. It should be noted that, at the time of drafting, states did debate the inclusion of the word 'indispensable' in relation to scientific freedom in Article 15(3) of the ICESCR as there were concerns that this adjective could be interpreted expansively (meaning that freedom is indispensable for scientific research) or narrowly (meaning that only the freedom that is absolutely and strictly necessary to achieve scientific progress is protected and no more).<sup>109</sup> Assigning a purpose to science, as envisaged by the drafters of the UDHR and ICESCR certainly would have limited whatever degree of freedom Article 15(3) was interpreted as protecting, since the proposed amendments would have required science to serve the ends mentioned, and only those ends. However, General Comment No. 25, with the slightly more nuanced requirement that human rights and peace be prioritised over all other uses, could have less of an impact on scientific freedom as the proposed purpose refers to the uses of science rather than the overall direction that science ought to take, and at that serving human rights and peace is suggested as a priority use of science rather than a finite list.

## 5. Conclusion

As supplementary means of interpretation, both the *travaux préparatoires* and General Comment No. 25 offer competing interpretations of Article 15 of the ICESCR. Relying on the *travaux*, it would seem

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<sup>109</sup> In their twelfth session, the Third Committee discussed whether or not to remove the word 'indispensable' from draft Art. 16(3). The use of the word 'indispensable' was considered to be too restrictive by some. For example, the delegate from the Philippines felt that it 'gave the impression that the State undertook only to respect a strict minimum of freedom necessary for scientific research and creative activity.' Furthermore, as 'it was the State that would determine the degree of freedom considered indispensable', the Philippines delegate felt that retaining the word indispensable might have a 'limiting or nullifying' effect on the scope of the right to science. UNGA Third Committee (12th Session) 796th Meeting (31 October 1957) UN Doc A/C.3/SR.796, para 29

as though science should not serve any particular purpose. Relying on General Comment No. 25, it would seem as though science ought to serve human rights and peace as a priority. The implications of either interpretation are not insignificant, affecting scientific freedom, intellectual property rights beyond those already protected in the UDHR and ICESCR, and global understandings of peace.

The drafting history on the right to science in the UDHR and ICESCR reveals clear differences amongst states regarding the inclusion of a purpose for science in a human rights context. Proposals to suggest that the science ought to serve the ends of peace and democracy, championed by the USSR and Czechoslovakia, were defeated because the majority of states did not want the risk of those ideals being interpreted subjectively, which could have paved the way for science to serve political ends. In light of General Comment No. 25, issued by the CESCR in April 2020, and the suggestion that science ought to serve peace and human rights as a priority, the drafting debates on the purpose of science have been thrown into stark relief. Nonetheless, the objections of drafters in the 1940s, 1950s and 1960s are not specific to that time in history, and they resonate as valid concerns in the present day, where subjective interpretations of *peace*, for example, may result in applications of science and technology that are not universally endorsed.

This article began by arguing that the drafting debates on the right to science, particularly those focusing on the purpose of science, were more relevant now than ever before because the suggestion in General Comment No. 25 that ‘the development of science in the service of peace and human rights should be prioritized by States over other uses’<sup>110</sup> directly challenges the decision taken by drafters of the UDHR and ICESCR to refrain from explicitly assigning a purpose to science in a human rights context. As neither interpretation represents the *lex lata*, both could be considered competing supplementary means of interpreting Article 27 of the UDHR and Article 15 of the ICESCR. Which interpretation prevails will be for states to decide through their future actions.

The analysis in this article subsequently sets out the concerns of drafters in the *travaux* of the UDHR firstly, and then the ICESCR. One of the main contributions of this article to the scholarship on the right to science is comprehensively accounting for the positions of proponents and opponents of a provision on scientific purpose in Art 27 of the UDHR and Art 15 of the ICESCR with a view to highlighting how relevant those concerns are in light of contemporary developments in and applications of science and technology. General Comment No. 25 is then evaluated in light of the discussions around the drafting table on the question of the purpose of science, and that evaluation touches upon three key issues: the subjective interpretation of purposes such as *peace*, the effect of

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<sup>110</sup> General Comment No. 25, supra n. 3, para 6.

assigning a purpose to science on intellectual property rights, and the effect of scientific purpose on scientific freedom.

Ultimately this article concludes that the concerns raised by the drafters of the UDHR and the ICESCR regarding the subjective interpretation of terms such as *peace* remain valid in the context of following the guidance in General Comment No. 25. However, as the suggested purpose for science in General Comment No. 25 is more nuanced than the provisions considered by drafters, it may positively contribute to re-balancing the relationship between the right to science and some intellectual property rights. Nonetheless, it was argued that restricting the entitlements of intellectual property rights holders in relation to the stated purpose of science in General Comment No. 25 may displace efforts, particularly private sector efforts, to pursue inventions and advancements that could achieve these ends. The article concludes by suggesting that the more nuanced purpose in General Comment No. 25 may be more supportive of scientific freedom than the prescriptive proposals considered around the drafting table in the 1940s, 1950s and 1960s.

Power and control over the direction of scientific research will have a greater effect on the full development of the human personality now than perhaps at any other point in human history.<sup>111</sup> Recognising the risks that such power may have in fully realising the right to science and other human rights may provide a rationale for adopting a nuanced and non-prescriptive purpose for science in a human rights context. For that reason, the suggestion that science ought to serve a purpose, as General Comment No. 25 does, starts a very important debate. In that regard, there is much to be learned from the drafting history of Art. 27 of the UDHR and Art 15 of the ICESCR, and the questions and concerns raised during that time ought to stimulate contemporary considerations. The scientific purpose that ultimately evolves will depend on the relationship between states and non-state actors engaged in the pursuit of scientific discovery and advancement, and it will hopefully take shape as states begin to report more comprehensively to the CESCR on their obligations under Article 15 of the ICESCR.

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<sup>111</sup> Morsink, *supra* n. 5, 219