A. The Drafting History of Article 27 of the Universal Declaration of Human Rights and of Article 15 of the International Covenant on Economic, Social and Cultural Rights

Article 27 of the Universal Declaration of Human Rights

The drafting history of the Universal Declaration of Human Rights reveals the difficulties in dealing with cultural rights. UNESCO had proposed the first draft of Article 27. It is indeed impressive that the core debate on whether, apart from individual rights, the Declaration should also recognize group rights and minority rights in particular, took place within the context of article 27 of the Declaration dealing with cultural rights. This discussion was in turn connected with the fierce controversy as to whether the Convention on the Prevention and Punishment of the Crime of Genocide which was being prepared simultaneously to the Universal Declaration, should also address “cultural” genocide besides physical or biological genocide. This parallel and connected history of the two first United Nations human rights instruments is related with extraordinary insight by Johannes Morsink, whose account is the main source for this sub-section.1

Article 27 of the Universal Declaration states:

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

“2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

The very first draft of paragraph 1 of the article is credited to John Humphrey, the first Director of the Human Rights Division of the United Nations Secretariat, and the first draft of paragraph 2 credited to René Cassin, the famous jurist and representative of France at the UN Commission on Human Rights. The word “freely” in paragraph 1 was added by the Peruvian delegation, while it was the Chinese delegation that included the idea of sharing in scientific advancement, which was viewed not as property of the few but as the heritage of mankind.

The second paragraph of Article 27 became the focus of a controversy about international copyright law on which no consensus existed at the time. The controversy was about some states, including the United States, the United Kingdom and India, viewing international copyright as a form of private property protection, and others, including France, Chile and Mexico, seeing in addition an author’s or an artist’s “moral rights” over the use of his or her work, the latter right remaining or lingering even after the legal rights of commercialization have expired. Thus for the first group of states there was no room for intellectual property/copyright as a human right in the Universal Declaration except in the sense of the right to property, while for the second group of states there was. After long debates at the level both of the Commission on Human Rights and of the General Assembly, Article 27 was enriched by paragraph 2.

Yet Article 27 does not present a commitment to the respect of diversity and pluralism, assuming somehow that cultural participation will take place in the “one” culture of the “nation-state”. The question about the inclusion of rights for persons belonging to minorities did arise, as was to be expected in the very First Session of the Commission on Human Rights when it established the Sub-Commission on Prevention of Discrimination and Protection of Minorities. In his report on the issue at the Sub-Commission, Humphrey pointed out that the expression “protection of minorities” would normally “include both protection from discrimination and protection against assimilation”. In his definition of “minorities”, Humphrey referred to “groups within a country that differ from the dominant group in their culture,

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2 The human rights angle of this right has also prevailed in the General Comment of the Committee on Economic, Social and Cultural Rights on article 15, paragraph 1© adopted in 2005 (E/C.12/GC/17 (General Comment), which I discuss in subsequent chapters.