9

Conclusion and Outlook

This book has addressed the question of what constitutes the justiciable normative content of the right to science – particularly its core content – for the subjects and addressees under international human rights law. By focusing on the core content, this book further contributes to the broader discourse in human rights law. Analysing the right to science includes challenging outdated and reductive notions concerning the dichotomy and categorisation of human rights, demonstrating that the discussions around ESC rights and their consequently presumed non-justiciability are overly simplistic and equate to a legal fiction. This effort reinforces the view that ESC rights, including the right to science, are indeed amenable to judicial scrutiny. This perspective not only serves to clarify the substantive legal status of the right to science and the principles of indivisibility, interdependence and interrelatedness of ESC rights specifically and other human rights in general but also underscores advocacy for moving beyond the dichotomy and categorisation within human rights law.

9.1 The Right to Science: A Justiciable Human Right

The underlying rationale of the right to science is the humanisation of science and technology and entails a dual focus: safeguarding the interests of both scientists as well as those of the wider public within a world increasingly influenced by scientific developments.[1] To understand the right to science as a human right, two perspectives are essential. Firstly, science must be viewed through the prism of human rights, thereby placing humans, especially the most disadvantaged and vulnerable of

[1] Claude, *Science in the Service of Human Rights* (2002); 'Scientists' Rights and the Human Right to the Benefits of Science', in A. R. Chapman and S. Russel (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 247, at 250; 'Science', in D. P. Forsythe (ed.), *Encyclopedia of Human Rights* (2009) 412 ff.

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society, at the centre.[2] Secondly, it is crucial to recognise that science operates within a distinct ecosystem – the science ecosystem – which significantly influences the subjects and addressees of the right to science.[3]

The right to science is to be understood as an umbrella term, composed of four substantive human rights guarantees:

- the right of everyone to enjoy the benefits of scientific progress and its applications (Art. 15(1)(b) ICESCR);
- the conservation, development and diffusion science (Art. 15 (2) ICESCR);
- the respect for the freedom indispensable for scientific research (Art. 15 (3) ICESCR); and
- the development of international contacts and cooperation in the scientific field (Art. 15(4) ICESCR).

Each of these guarantees entails distinct sub-rights, with the emphasis placed on the core rights. Peripheral rights – that is, rights deriving from one of the four substantive human rights guarantees but not considered core rights – are not the focus of this book. Attention is directed towards the core content, as this concept represents an underexplored addition to international human rights law and constitutes a justiciable dimension of human rights. Thus, the core content is chosen for its justiciable nature, requiring immediate operationalisation. This analysis unfolds over three parts.

The first part begins with Chapter 1, which outlines the methodological foundations and sources. The chapter meticulously explores the methodology and sources which are foundational to this book, focusing primarily on legal positivism and doctrinal analysis. By delving into treaty interpretation as outlined in the VCLT and the violations approach, the analysis highlights the dynamic nature of interpreting human rights treaties and the evolving understanding of the right to science. Treaty interpretation under the VCLT, with its range of methods, is detailed for those new to international law and for those outside the continental European legal tradition.[4] The chapter also presents the violations approach, reflecting on its evolution and current

[2] See the Introduction. For the definition of the *pro homine* approach, see Chapter 1.1.2.3.
[3] For the definition of the science ecosystem, see Section 7.1.
[4] Section 1.1.1.

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relevance and concluding that it is currently reflected in the core content doctrine by the Committee and the Maastricht Guidelines.[5]

Chapter 2 addresses justiciability and situates the discussion within broader legal debates. It shows that the presumption of ESC rights as non-justiciable is not supported by recent scholarship. Justiciability is 'the quality of a legal rule to be invoked before judicial bodies and adjudicated upon'.[6] The contemporary landscape concerning justiciability demonstrates that justiciability is not per se an impediment to invoking ESC rights.[7] Therefore, this book differentiates between formal and material aspects of justiciability on the international level. Formal justiciability relates to adjudication mechanisms within legal frameworks, such as the OP-ICESCR, enabling the evaluation and enforcement of rights through judicial or quasi-judicial bodies.[8] Material justiciability concerns the suitability of a human right for judicial review, requiring the right to have sufficient precision in its normative content to be clearly understood and applied legally. While formal justiciability has been theoretically established with the OP-ICESCR, material justiciability has posed a challenge for the right to science and ESC rights more broadly in the past. The challenge of material justiciability is accompanied by criticisms of indeterminacy or vagueness concerning ESC rights, which are used as arguments for their non-justiciability. However, the specificity needed for justiciability often evolves through legal interpretation and application, which is also the case for CP rights.[9] Therefore, the perceived vagueness of human rights is not a barrier to their justiciability per se but, rather, a call for more focused examination. Thus, this gap in material justiciability serves as the starting point of this study.[10]

The second part is dedicated to establishing the normative content of the right to science – in particular, its core content – in the service of rendering it justiciable. The normative content is understood here to entail two sides of the same coin. On the one side are elements pertaining to the rights, meaning the scope of protection of the right (i.e., the substantive scope) and the subjects of human rights (i.e., rights holders),

[5] Sections 1.1.3 and 5.2.1.3c.
[6] Bílková, 'Justiciability of Human Rights', in C. Binder et al. (eds.), *Elgar Encyclopedia of Human Rights* (2022) 370, at 370. See Section 2.2.
[7] Sections 2.2 and 2.3.
[8] Section 2.4.1.
[9] Section 2.4.1.
[10] Section 2.5.

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while on the other side are elements pertaining to the obligations concerning the right and the addressees of human rights (i.e., duty bearers).

Chapter 3 explores the history and terminology concerning the right to science. The historical development of the right to science reveals that its aim is to safeguard the interests of both scientists and the wider public, ensuring that everyone can benefit from scientific progress while also being protected from its adverse effects. The terminologies related to the right to science – such as science and the scientific process, the benefits of science and the results of the scientific process – are elaborated by examining these terms through the prism of human rights.

Science and the scientific process, when viewed through the lens of the right to science, are identified as any serious, methodical effort to uncover the truth in both content and form, providing the most reliable statements currently possible on topics recognised by different knowledge systems. The human rights understanding of science is purposefully worded in a broad and inclusive manner. The definition of science within the human rights framework must remain flexible and inclusive, capable of adapting to the continuous advancement and diversification of scientific disciplines and methodologies. This adaptability is crucial, given science's inherent commitment to critical enquiry and its quest for truth, which naturally fosters an environment of constant self-improvement and innovation. However, an important distinction emerges. The evaluation and assessment of scientific methods or processes, which are designed to address particular research questions, depend on the prevailing state of knowledge within each discipline and are beyond legal scrutiny and not justiciable. Therefore, such evaluations and assessments should be delegated to experts in the relevant fields and not to a court of law. However, whether a scientific method or process falls under the scope of protection of the human rights understanding of science is a justiciable question which needs to be assessed by a competent legal authority.[11]

The benefits of science are defined in both a wide and strict sense. In the *lato sensu*, science serves a dual function: It encompasses the scientific process, which is the pursuit of truth, and it plays a crucial role in the advancement of human and societal well-being in the context of human rights.[12] In the *stricto sensu*, the benefits of science refer to the

[11] Section 3.2.2.1.
[12] Section 3.2.2.2a.

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immaterial and material results of science.[13] The immaterial results include knowledge derived from the scientific process, covering a broad spectrum of knowledge systems beyond academic disciplines, such as citizen science, indigenous knowledge and traditional knowledge, emphasising process over discipline. This means that the differentiation is not one of category but, rather, of degree.[14] Material results, meanwhile, refer to applications and technologies designed to meet societal needs through scientific processes. Such results may often be innovative, though innovation is not a prerequisite, as the broad view of science and its practical applications under the right to science include not only cutting-edge innovations but also everyday items such as menstrual products, underlining the importance of science and its applications in improving human welfare.[15] Furthermore, the results of the scientific process are differentiated from their mimics, including non-scientific, unscientific and pseudoscientific knowledge.[16] Lastly, the third distinct result of the scientific process next to the material and immaterial results of science, recognised by the Committee, is the role of science in building critical and responsible citizens for democratic participation. By fostering critical thinking skills, science empowers individuals to navigate effectively in an era of misinformation, disinformation and post-truth politics, to engage in debate and to commit to lifelong learning. This empowerment strengthens democracy by ensuring that people are well equipped to address societal challenges.[17]

Chapter 4 analyses other human rights that stand in close connection with the right to science to better inform the normative content of the right to science. The argument to analyse the interconnectedness of these rights is based on the human rights principles of indivisibility, interdependence and interrelatedness, which have been crystallised in the Vienna Declaration and Programme of Action.[18] This chapter not only analyses interconnected ESC rights but also CP rights, the human right to a healthy environment and the right to development. Additionally, the analysis of the interconnectedness of the right to science with such a broad range of human rights beyond the category of ESC rights

[13] Section 3.2.2.2a.
[14] Sections 3.2.2.3a–c.
[15] Section 3.2.2.3e.
[16] Section 3.2.2.3d.
[17] Section 3.2.2.3f.
[18] UN General Assembly, Vienna Declaration and Programme of Action, A/CONF.157/23, 25 June 1993.

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demonstrates that the right to science includes various interests overlapping with the analysed rights. The chapter highlights the pivotal role of the right to science in the advancement of human rights, ranging from the right to education, which lays the foundation for scientific understanding and enquiry, to the right to a healthy environment, in which scientific innovation is critical for addressing environmental challenges. Moreover, it illustrates how the right to science enriches the normative content of other rights and vice versa, such as the freedom of expression, by facilitating an informed and dynamic public discourse. The exploration, therefore, underscores the indivisible, interdependent and interrelated nature of human rights, thus challenging the traditional dichotomy between ESC rights and CP rights as a legal fiction.

Chapter 5 establishes the substantive scope of the right to science – in other words, the object of the right to science – with a particular focus on the core rights of the right to science. The substantive scope of the right to science is based on the four substantive human rights guarantees (Art. 15(1)(b), (2)–(4) ICESCR), which include various core rights.[19] Attention is directed towards the core content, as this concept represents an underexplored addition to human rights law and constitutes a justiciable dimension of human rights as elaborated by the Committee[20] and reflected in the Maastricht Guidelines[21] and the violations approach.[22] Peripheral rights – that is, rights deriving from one of the four substantive human rights guarantees but not considered core rights – are not the focus of this chapter and book.

What could be observed generally from the language of the treaty and Committee practice is that the focus has been laid primarily on the side of obligations. This is mirrored by the fact that the Committee has elaborated core obligations for the right to science but not core rights. Therefore, this book bases its argument on the fact that rights usually should give rise to obligations, not the reverse. Given that human dignity serves as the foundational element of the core content, the derivation of this core content must originate from human dignity.[23] However, with

[19] Section 5.1.

[20] UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, E/1991/23 (1990), at 24.

[21] International Commission of Jurists (ICommJ), Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 26 January 1997.

[22] Sections 1.1.3 and 5.2.1.3c.

[23] Section 5.2.1.

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the Committee already delineating the core obligations tied to the right to science, there is no need to establish the core content anew. Instead, the Committee's core obligations have facilitated a reverse-engineering process to distil core rights from these obligations. By refocusing the discussion on those who are entitled to these rights, the aim is to deepen the understanding of the right to science from the perspective of those whom it is intended to benefit.[24]

The core rights under Art. 15(1)(b) ICESCR include the right to scientific progress, protection from the adverse effects of science and its mimics, the right to mechanisms for policies and programmes informed by scientific evidence, the right to scientific education, the right to scientific literacy and the right to access scientific applications critical for the enjoyment of ESC rights.[25] The core rights under Art. 15(2) ICESCR are reflected in the core rights to scientific progress and freedom of science.[26] The core rights of freedom of science according to Art. 15(3) ICESCR include the right to intellectual freedom, freedom of scientific opinion and enquiry, freedom of scientific expression and institutional freedom and autonomy.[27] The core rights of Art. 15(4) ICESCR are reflected in the core rights of freedom of science.[28] Finally, the core right to equality and non-discrimination is of a cross-cutting nature and concerns all dimensions of the right to science, particularly non-discriminatory access to scientific progress and its applications as well as participation in science.[29]

Chapter 6 focuses on the personal scope or, in other words, the subjects or rights holders of the right to science. The starting point of the analysis of the personal scope is the term 'everyone' from Art. 15(1) ICESCR.[30] The chapter divides the rights holders into three categories: private persons, legal persons and future generations. Under the right to science, private persons are further divided into two sub-categories: rights holders who enjoy the right to science either individually or in a community. Individuals under the right to science can be professionals, non-professionals and the public.[31] Individual rights holders are also

[24] Section 5.2.3.
[25] Section 5.4.1.
[26] Section 5.4.2.
[27] Section 5.4.3.
[28] Section 5.4.4.
[29] Section 5.4.5.
[30] Section 6.1.
[31] Sections 6.1.1.1–6.1.1.3.

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groups of individuals, such as women, children and persons with disabilities.[32] Groups of individuals are differentiated from communal rights holders such as scientific circles, which also enjoy human rights individually but within a context of a collective entity.[33] Community rights holders such as indigenous peoples have been identified, and they exercise the right to science not individually but in the context of their collective entity.[34] Legal persons – including universities, research institutions and private businesses – are instrumental for the right to science and play a crucial role in protecting and requiring these rights despite not possessing human rights themselves. While legal entities do not have human rights on their own, they can exercise rights on behalf of their members.[35] Lastly, future generations are also presented. Although they are currently not viewed as rights holders under human rights law, they are recognised as beneficiaries of the right to science, as both the benefits and the adverse effects of scientific advancements can have long-lasting implications for them and, thus, should be taken into consideration by the present generation.[36]

The third part of this book is dedicated to the other side of the coin of human rights by focusing on the duty bearers of human rights and their obligations. Chapter 7 presents the addressees of human rights, specifically, the duty bearers under the right to science. To adequately discuss the addressees of human rights in light of the right to science, it is important to understand that science functions in an ecosystem. The science ecosystem is characterised by a complex network of stakeholders, each playing critical roles in sustaining scientific infrastructure, governance and knowledge production and dissemination while navigating institutional autonomy, intellectual property challenges and dynamics of funding.[37] This analysis of the intricate web of stakeholders pertinent to the right to science unveils an equally intricate web of duty bearers. This web extends beyond the conventional framework of state responsibility to encompass a diverse range of duty bearers within the global scientific ecosystem. While the chapter highlights the state's central role in upholding and promoting the right to science,[38] it also discusses the

[32] Section 6.1.1.4.
[33] Section 6.1.1.5.
[34] Section 6.1.2.
[35] Section 6.2.
[36] Section 6.3.
[37] Section 7.1.
[38] Section 7.2.

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nuanced responsibilities of international organisations, their impact on the right to science and the obligation of their member states to ensure compliance with their human rights obligations upon joining an international organisation.[39] The discussion also highlights the significant influence of non-state actors in the science ecosystem – such as business entities, researchers, publishers and private funding agencies – which are not traditionally bound by legal human rights obligations. However, there is a growing recognition of their duties to the community within the human rights framework.[40] Through this examination, the chapter illuminates the multifaceted roles of these actors, spotlighting their significant yet distinct roles for the realisation of the right to science. In doing so, the analysis has effectively challenged the prevailing notion that the 'unbounded' nature of science is inherently incompatible with the 'bounded' nature of duty bearers of human rights law.

Chapter 8 addresses permissible limitations under human rights law. The chapter elucidates that, while limitations are permissible, their imposition must be lawful, consistent with the nature of these rights, aimed at promoting general welfare, and necessary and proportionate.[41] The analysis goes beyond the requirements under the ICESCR and also explores limitations under the ICCPR[42] and those that extend further than legal frameworks, incorporating ethical considerations through the lens of scientific self-regulation in relation to the right to science.[43] In particular, the process of exploring the ethical dimensions of scientific research, particularly through the lens of self-regulation, enriches the discourse by illustrating how the right to science, underpinned by human rights law, provides a fundamental normative framework for regulation in science. This framework is essential to ensure that scientific endeavours are conducted ethically, with conscientious respect for human dignity and human rights. The chapter highlights the complex but indispensable role of limitations in protecting and restricting the right to science as well as the delicate balance that must be maintained between the protection of human rights and the right to benefit from science. It reaffirms the notion that limitations, when used judiciously, serve as both a shield to protect and a sword to restrict, thereby fostering an

[39] Section 7.3.
[40] Section 7.4.
[41] Section 8.3.
[42] Section 8.3.2.
[43] Section 8.3.3.

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environment in which scientific progress can flourish in harmony with the overarching principles of human rights law.

In summary, this book demonstrates that the right to science is indeed a justiciable human right, especially in terms of its core content, and thereby answers the question of what constitutes the justiciable normative content of the right to science for the subjects and addressees according to international human rights law. In doing so, the book meticulously deconstructs outdated dichotomies and categorisations within human rights discourse and argues for a nuanced understanding that ESC rights, including the right to science, are indeed justiciable.

9.2 Operationalising the Right to Science: Five Steps Forward

Realising the right to science as a human right does not necessitate the creation of a new international treaty or the amendment of existing instruments. Instead, what is required is a shift in interpretation, implementation and prioritisation. The findings of this book give rise to five key steps to guide the future development and application of the right to science.

First, the clarified normative content of the right to science establishes it as an appropriate legal foundation for both existing and emerging concepts – ranging from academic freedom to open access. This reinforces the right's continued relevance amid contemporary challenges posed by developments such as artificial intelligence and neurotechnology. While proposals for new legal instruments have been tabled in response to these developments, the right to science already offers a comprehensive normative framework. It accommodates ethical concerns and balances other rights and interests within the broader human rights system. Relying on this right, rather than proliferating new ones, avoids the fragmentation and dilution of human rights law and ensures conceptual continuity. As noted in legal scholarship, 'proliferation of new rights would be much more likely to contribute to a serious devaluation of the human rights currency than to enrich significantly the overall coverage provided by existing rights'.[44]

Second, although the entrenched notion that ESC rights are inherently non-justiciable has long since been refuted, its legacy persists – and full recognition of their justiciability in scholarship and in legal and political

[44] Alston, 'Conjuring Up New Human Rights: A Proposal for Quality Control', 78 *American Journal of International Law* (1984) 607, at 614.

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practice remains overdue. While formal justiciability is theoretically well established – particularly through instruments such as the OP-ICESCR – it remains unevenly recognised in practice. The right to science can only be effectively invoked if procedural barriers are addressed. What is needed first is the access to remedies for ESC rights to exhaust domestic remedies and, second, the ratification of the OP-ICESCR to bring a complaint forward at the international level. Currently, the limited ratification of this protocol underscores a significant barrier to the international pursuit of the right to science. To date, only twenty-six countries have signed the OP-ICESCR, of which only twenty-three have ratified it.[45]

Third, the enhanced normative understanding of the right to science demands a rebalancing of competing interests by subjects and addressees of human rights resulting from the fragmentation of international law. In particular, the divergent rationales of intellectual property and trade law regimes – exemplified by instruments such as TRIPS – frequently clash with the principles underpinning human rights law. IP and trade frameworks often prioritise exclusive protections and have benefitted from sustained institutional and political investment, whereas the right to science remains underdeveloped. States must re-evaluate international commitments that risk undermining their human rights obligations, particularly where such commitments restrict access to the benefits of scientific progress. The right to science can serve as a counterweight to these regimes, ensuring that both public and private interests are balanced more equitably.

Fourth, the existence of the right to science alone cannot prevent its violation. Legal mechanisms, by their nature, are reactive; adjudication typically follows a breach. Therefore, the emphasis must shift towards proactive measures, including implementation, education and institutional design that incorporate a human rights-based approach to science. Such an approach ensures that the right to science is not merely invoked post hoc but is embedded into the policies, governance structures and practices that shape scientific development and its dissemination.[46]

[45] UN Secretary General, *Status of Treaties (OP-ICESCR)*, United Nations Treaty Collection (UNTC).

[46] See, for example, Donders and Tararas, 'Mainstreaming Science and Human Rights in UNESCO', in H. Porsdam and S. Porsdam Mann (eds.), *The Right to Science: Then and Now* (2021), at 126; Kotzmann, *The Human Rights-Based Approach to Higher Education: Why Human Rights Norms Should Guide Higher Education Law and Policy* (2018); O'Flaherty, 'Towards Integration of United Nations Human Rights Treaty Body

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Finally, given the dynamic nature of human rights, this work does not claim to offer the final word on the (justiciable) normative content of the right to science. Human rights treaties are understood as living instruments that must adapt to societal developments and respond to evolving understandings of human dignity in diverse contexts. It is anticipated that the rights encompassed by the right to science will continue to develop through further interpretation, normative elaboration and, ideally, increased adjudication, thereby refining their scope and content. This ongoing evolution creates fertile ground for future research. The parallel between the adaptive character of science and the progressive development of human rights is not merely illustrative but instructive: both rely on critical inquiry, responsiveness to change and normative openness. Drawing this parallel highlights the symbiotic growth of science and human rights, each reliant on their capacity to evolve to address new challenges and advancements.

Recommendations: The Rights-Based Approach Model', in M. A. Baderin and R. McCorquodale (eds.), *Economic, Social, and Cultural Rights in Action* (2007) 18; UN Development Group, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies* (2003); UNICEF and UNESCO (eds.), *A Human Rights-Based Approach to Education for All* (2007); UNSDG Human Rights Working Group, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies* (2003); Uvin, 'From the Right to Development to the Rights-Based Approach: How "Human Rights" Entered Development', 17 *Development in Practice* (2007) 597.

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