

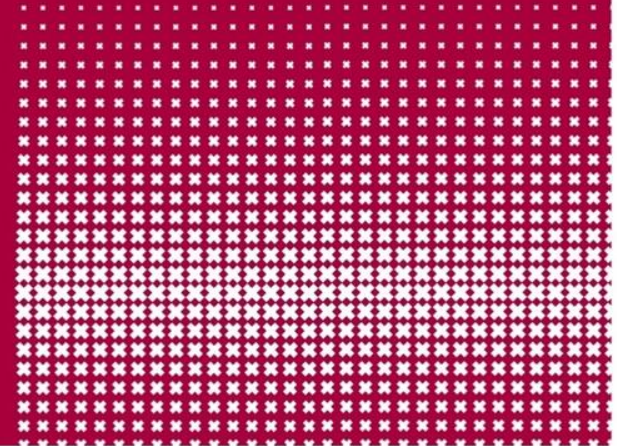


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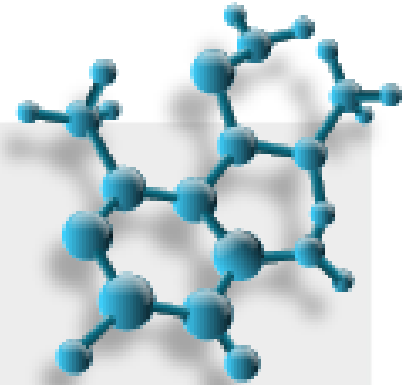
Faculty of Law



# **Balancing Interests: Limiting the Right to Enjoy the Benefits of Scientific Progress**

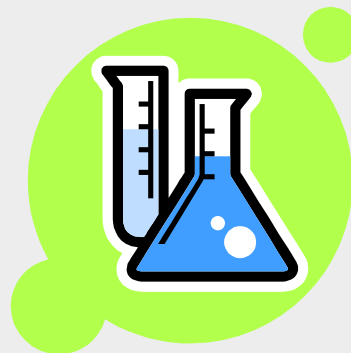
**Prof. Dr. Yvonne Donders**

**Geneva, 30 June 2017**



# The Case of Virus Research

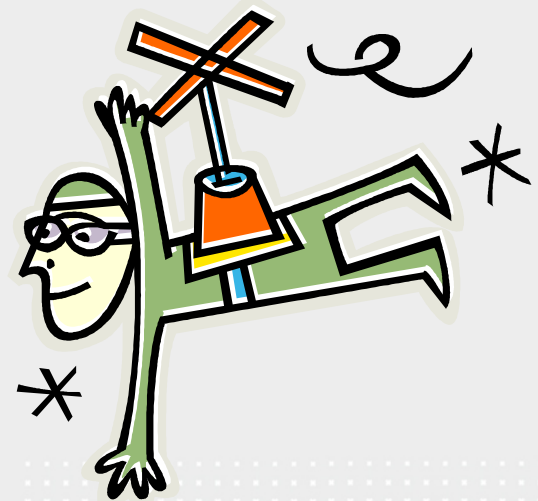
- ⇒ Research on H5N1 virus
- ⇒ Licence in accordance with EU Council regulation – exceptions
- ⇒ Balancing interests: accessibility of research ⇔ effective control over non-proliferation of biological weapons



# Right to Enjoy the Benefits of Scientific Progress and its Applications (REBSP)

- Right to enjoy and have access
- Freedom to conduct, disseminate and protect results
- Protection against harm

↪ ***LIMITATIONS?***



# Legal Framework Limitations

## UDHR article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

# ICESCR - Progressive Realization

## ⇒ Article 2 ICESCR

- ❖ Available resources
- ❖ Progressive realization

## ⇒ General Comment 3

- ⇒ Immediate obligation non-discrimination
- ⇒ Retrogressive measures "...would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."
- ⇒ Core obligations



# Limitations - Article 4 ICESCR

☞ ...the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.



# Limitations - Article 4 ICESCR

- Determined by law
- Not in contradiction with nature: link with core
- Legitimate aim: general welfare in democratic society + national security, public health, rights and freedoms of others
- Necessary: pressing social need + proportionality

# Concluding Remarks



- Rights and responsibilities
- Responsible science – codes of conduct
- Privatisation of science and technology
- Human rights approach: impact assessment, non-discrimination, participation and inclusion, attention for vulnerable and disadvantaged groups