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Langlois A. *Negotiating Bioethics: The Governance of UNESCO's Bioethics Programme*. London and New York: Routledge; 2013.

## Chapter 8 Conclusion

Bioethics and genetics stretch beyond national borders in several ways. Multi-centre research projects are increasingly common and require a coordinated system of ethical review. Tissue samples and genetic data frequently traverse national boundaries. Inequalities of health are considered a global injustice. The human genome has been designated the 'heritage of humanity' and so should be of benefit to all. As such issues are inherently global, they cannot be dealt with effectively at national level alone. Hence UNESCO's efforts to provide an international framework for their governance. Pablo Sader, Chair of the government experts charged with finalizing the draft UDBHR, made the following statement at their last meeting in June 2005:

A bioethics-related event makes the international headlines nearly every week. It is a difficult topic. As we have all seen, there have been deep divisions in other meetings on specific bioethics issues. There are points of divergence within individual countries too. For this reason, it is doubly important for us to give a clear signal that we are capable of reaching agreement on important issues. If we do so, the declaration will be proof that multilateralism works, and that will be a boon to our Organization.

(UNESCO 2005m: Annex III, 1)

This chapter assesses whether the UNESCO Bioethics Programme and its three declarations are indeed proof that multilateralism works, in the deliberation and implementation of bioethics.

### Deliberation

The UNESCO Bioethics Programme encompasses several interweaving sets of relationships between different categories of actors: between member states; between state and non-state actors; between international and national bodies; and between diplomats, experts and civil society, at international and national levels. The ways in which these relationships played out in the drafting of the three UNESCO declarations on bioethics and genetics, in terms of the interface between power, interests and knowledge, render the declarations classic exemplars of a formal international regime in several respects, not least the degree to which compromises on their nature and content proved necessary in order to facilitate agreement. This begs the question whether relations between actors can be improved, to foster stronger agreements in the future.

Drawing on the work of Chasek and Rajamani, Held argues that relations between states are often unequal in international regimes, despite formal parity, because developed countries are able to send larger and more expert delegations to meetings than are developing ones (Held 2004b: 95–6). This was indeed the case during the negotiations for the UNESCO declarations. Although procedures were followed scrupulously in terms of giving all countries equal voice and vote, delegates from the global North were both more numerous and more experienced than those from the global South. These trends have continued to a degree. Only 26 of the 36 member states of the IGBC attended its September 2011 meeting (UNESCO 2011k). Among those missing were four of the eight from Group Va (African states): Mauritius, Togo, Côte d'Ivoire and Zambia. Yet of the 23 nonmember states that sent observers, five were from Group Va, four from Group III (Latin American and Caribbean states) and four from Group IV (Asian and Pacific states). Group I (Western Europe and North American states), with five observers, again had the highest proportionate number, being one of the smaller groups (UNESCO 2011j). Nevertheless, that developing countries felt it worthwhile to send delegates to both this IGBC session and the public hearings on human cloning in 2008 perhaps indicates that their interests in bioethics are growing.

Questionnaire respondents in 2012 from sub-Saharan African National Commissions (NCs) and Permanent Delegations (PDs) confirmed that some of the problems affecting meeting attendance are ongoing. In answer to the question 'Do you think that all member states have the opportunity to participate equally in UNESCO meetings on bioethics?', one West African NC wrote, 'Yes, because the invitation is open to all member states to attend either as members or observers.' Several others acknowledged this, but noted that states may not be able to take up this invitation due to limited resources; for example, a Southern African NC reasoned, 'Yes – however, only those that

have the resources attend more often and their voices are heard more than those without the resources.’ An East African PD made a similar observation about the capacity of Paris-based offices:

It highly depends on the availability of staff at the Mission. Very often developing countries do not have a budget for the participation of experts in such technical meetings. Many of the delegations are understaffed and cannot cover all the meetings taking place at UNESCO.

A second Southern African NC pointed out that those states with seats on the IGBC have more opportunities to participate and that these will tend to be those states for which bioethics issues are a priority. A third cited both the lack of resources and the lack of concern with bioethics (which means that low-income countries ‘have little or nothing to contribute in the meetings’), while a West African PD commented on the want of both resources and expertise: ‘No – the main reason, particularly for African Member States, derives from either not having the appropriate experts or lack of funds to sponsor their participation or both.’ A Southern African PD combined all three reasons: ‘In theory yes, in practice no. Impediments to equal participation are cost of attendance at meetings, technical capacity to participate in debates and general interest in or awareness of the subject matter.’

In future endeavours, UNESCO might try to avoid such problems by implementing some pragmatic changes. It could help low income countries meet the travel costs of their delegations, for example, through a participation fund, as suggested by Chasek and Rajamani. Indeed, at its 2009 meeting the IGBC decided to invite the Director-General of UNESCO to look into the possibility of financial provision to enable members from the least developed countries to participate in its meetings (UNESCO 2009f: 5). This move was primarily aimed at very small states, such as Samoa and Kiribati and would be applied on an *ad hoc* basis (interview with K2\_01). It could be a positive step, providing it does not fall prey to some of the problems that the allocation of daily subsistence allowances (DSAs) to delegates can engender. Chasek (2010: 29), in her more recent studies of multilateral environmental agreements (MEAs), has shown that, while DSAs enable developing countries to send representatives to negotiations when they would not otherwise be able to do so, they have generated something of an ‘international MEA meeting “industry”’, which serves to exacerbate some of the problems she and Rajamani had earlier identified and which are seen within the UNESCO Bioethics Programme. Government officials may vie for the opportunity to attend meetings, for example, in order to supplement meagre salaries, with the result that the chosen representative is not always the most appropriate: ‘such would be the case if a foreign affairs official attends a scientific working-group meeting’. Alternatively, a state may opt to ‘share the wealth’ by appointing a different representative to each meeting, with ensuing continuity problems.

Subsidized travel alone would not address the problem of lack of expertise in delegations. Yet here, too, there have been improvements. Where IGBC representatives were, in the past, often from a country’s Permanent Delegation in Paris, some states are now appointing bioethics experts as their IGBC delegate for the duration of their membership of the committee (interview with F2\_03). At the IGBC meeting in September 2011, for example, the majority of states sent at least one specialist alongside a Permanent Delegation member (UNESCO 2011j). This may help to promote a more symbiotic relationship between the IGBC and the IBC. At the joint meeting in October 2010, both chairs were keen to foster better communication and cooperation between the two committees. The following year, Evans, the outgoing IBC Chair, said in his presentation to the IGBC at its September session that the October 2010 meeting had seen a ‘sea change’ in the relationship, citing the IGBC’s input into the vulnerability report as an example (personal observations). What is more, the key difference between the two committees – one is independent, while the other represents member states – can be brought out in a complementary way. A member of the Bioethics Programme (F2\_03) explained that the joint meetings can be a useful way for the IBC and the secretariat to get an indication of what states’ reactions to a possible programme of action are likely to be (and hence its viability), ahead of the General Conference. This was the case with the proposed convention on cloning.

Although the formal procedures of IGOs cannot guarantee equality among states, they do offer some form of protection to the interests of weaker members. As Slaughter (2004: 28) acknowledges, the lack of ‘representation rules, voting rules, and elaborate negotiating procedures’ in less formalized government networks can result in the deliberate exclusion of weak states. Another boon for these states is the advent of group bargaining, offering strength in numbers. The negotiations for the UDBHR (2005) demonstrated how collaborations within and between regions of the global South afforded them a platform from which to demand an article on social responsibility. These collaborations formed around a special issue, as recommended by Chasek and Rajamani, but maintained the power of a broad coalition. The factions that formed during the UN’s cloning debate offer another, less salutary example of group bargaining. In this case the intransigence of both sides meant that the original aim of a binding convention had

to be abandoned, in favour of the weak and ambiguous *Declaration on Human Cloning* of 2005, for which almost half of member states did not vote.

The difference between the resolution of the UN debate and any decisionmaking within the UNESCO Bioethics Programme is that the latter always operates by consensus. This can be both a strength and a weakness. It means that the three bioethics and genetics declarations enjoy the backing of all member states, but this was only possible because decisions on difficult issues such as stem cell research, which came up in the deliberations on the UDBHR (2005), were postponed until a change in the international political climate should render agreement possible. Biller-Andorno (2005: 63), in her *Journal of Medical Ethics* editorial, drew a direct comparison between the two efforts:

If no meaningful universal agreement can be reached on reproductive cloning, at least not at the level of the United Nations, the prospect for reaching a global consensus on other issues in bioethics is rather bleak. It will be interesting to see if UNESCO will have more luck in its development of a declaration on universal norms on bioethics, which is currently in preparation.

Although this statement fails to recognize that it would be through leaving out controversial topics like cloning that UNESCO would be able to achieve consensus on ‘other issues in bioethics’, Biller-Andorno went on to make a pertinent observation about the need for ongoing discourse, which may be of greater longterm benefit. Echoing Slaughter’s call for positive deliberation, she wrote:

But no matter what the outcome is, it certainly makes us aware of the need to foster a genuine, world-wide discourse on bioethical issues (rather than leaving the field to political power games), which may be even more important than reaching immediate substantive conclusions.

(ibid)

Given that UNESCO, like the UN General Assembly, has failed to reach a consensus on cloning, we can ask whether there are limits to the power of deliberation, such that discussion cannot breed consensus where the lines are clearly drawn. An alternative reading would mirror the sentiments of the Swiss IGBC representative who called for a conference on cloning to deepen international dialogue on the issue. Discussions at UNESCO meetings are often rushed. At the May–June 2011 IBC meeting, for example, little more than an hour was spent on cloning at the public sessions, members having been asked to keep their comments brief (personal observation). A more in-depth consideration might allow the debate to move forward. Of course this is speculative, but that is the point: we cannot predict what the outcomes of a free-flowing discussion will be.

Slaughter (2004: 27 and 203–4) advocates discussion and argument, developed in a positive, trust-building manner over time, as a means to achieve ‘reasoned consensus’. These developments are more likely, she says, in networks where membership is based on common professional standards and ethics, or ‘network norms’, than in fora characterized by interest-based bargaining, such as regime negotiations. In this respect, informality may be a strength, as illustrated by the following example. During the intergovernmental meetings of experts charged with finalizing the UDBHR in 2005, Chairman Sader arranged an extramural session, at which he requested that participants refrain from taking positions and instead engage in open discussion. This helped enable consensus, even on the previously fractious topic of social responsibility. Sader also produced a ‘non paper’ on how outstanding issues might be addressed, which he distributed to member states (UNESCO 2005g).

Another way to improve the quality of dialogue is to involve as broad a range of stakeholders as possible. As would be expected in a state-centric regime, it was government representatives who made the final decisions on the UNESCO declarations, but non-state actors played a part in the various drafting stages, through written and verbal consultations. In line with Samhat’s observations about how IGOs have evolved, UNESCO has opened its deliberations to non-state actors to a significant degree, directly and through documentation, most of its meetings being held in public and recorded in the public domain. Yet Williams and Macpherson have criticized the closed nature of the negotiations in prominent ethics journals and significant numbers of bioethics and genetics specialists in Kenya and South Africa were unaware of the declarations when interviewed in 2005–6, not having been asked to feed into their country’s negotiating position. The problem for these states, then, seems to have lain in their incapability (financial or otherwise) to harness expertise, as much as a lack of expertise *per se*. ten Have (2006: 349) acknowledges that UNESCO and its member states could do better in this regard, but also warns that it should not be assumed that ethicists are willing to work with governments and IGOs.

Some of those interviewed were concerned not only that experts in the field had not had input into the draft UNESCO declarations, but also that those who might be affected by their provisions, such as potentially vulnerable research subjects, had not been consulted either. The problem is that UNESCO cannot guarantee how far those at the negotiating table actually represent their constituents. Chasek and Rajamani's suggestions of national policy debates, strategic consultations and greater networking between relevant government ministries would seem relevant here (although the reluctance on the part of Kenyan and South African scientists to get involved in policy-making sounds a note of caution). On the challenge that the interdisciplinarity inherent in bioethics presents for UNESCO's Bioethics Programme, ten Have (2010: 14) writes:

The challenge here is to bring together policy-makers, scientists, health professionals and citizens, so that they engage in dialogue and debate in order to determine what is in the best interest of all. It is only by situating itself in a really global perspective that bioethics can be translated into practical activities that contribute to improving the condition of everyone.

This raises the question of what system of deliberation will best serve UNESCO in bringing together the required mix of people in a way that generates meaningful and fruitful dialogue. Slaughter recommends (2004: 225) that government networks – which the IGBC and the National Commissions arguably are or could be – should engage systematically with their counterparts in the corporate and civil society sectors. Similarly, under Samhat's and Ellis' schemata, regimes would be framed to include all those affected by a specific issue, through the conduit of civil society organizations. These suggestions are very close to the pleas of IBC and IGBC members themselves, who would like to see better communications between the Bioethics Programme secretariat, National Commissions, national bioethics committees and other ethics bodies, to aid broader dissemination of the declarations and their principles.

Held's model goes further, proposing a cosmopolitan democracy through 'an overarching network of democratic public fora', from the local to the global. A diverse range of public spheres would enable informed participation and deliberation, guided by the 'requirements of impartiality'. 'Being impartial here', writes Held (2004b: 109), 'means being open to, reasoning from, and assessing all points of view (especially those of people in urgent need); it does not mean simply following the precepts of self-interest.' In reality, though, impartial and informed participation is difficult to guarantee, particularly among the broader public. This has been the case in Kenya and South Africa, where those who might be significantly affected by decisions in bioethics and genetics (in vulnerable communities, for example) have little knowledge of these subjects. To address this, programmes like South Africa's Public Understanding of Biotechnology aim to inform citizens about biotechnology, so that they can participate in policymaking. The programme tries to be neutral in the information that it gives, but finding the right balance has proved difficult, particularly in terms of assessing how best to offset information given out by interest groups (interviews with SA\_27 and SA\_29). Moreover, its success in generating interest and understanding has been limited.

## Implementation

Each of UNESCO's declarations on genetics and bioethics was adopted by acclamation at its designated General Conference. Yet it does not necessarily follow that all member states immediately rushed to align their national laws, regulations and policies with the provisions of the declarations, particularly as these are non-binding. On this point Lenoir (1998–9: 550–1) writes:

For some, the achievement of consensus on a declaration is a short-lived victory, because declarations are not binding and there is nothing to prevent states from later revoking the commitment they made when the text was adopted. For others, on the contrary, the contrast between treaty law and declaratory law is artificial. In their view, what matters is the formalization of common principles whose moral force arises from their solemn and public acceptance by the community of states.

Do the declarations (and their associated activities) indeed have the moral force to effect significant change in bioethics practice? Victor *et al.* (1998: 18) advocate systems of implementation review (SIRs) as a means to encourage states to honour their non-binding commitments. Precisely because the declarations are nonbinding, however, member states of UNESCO have seen even self-reporting requirements as something of an impertinence. This, like many instances of reluctance on the parts of states to fully uphold their international obligations, pours cold

water on Held's and Archibugi's visions of a world in which coercive power is shared between government and meta-governmental institutions, which would enable UNESCO to enforce its declarations as human rights instruments.

It remains to be seen whether the Bioethics Programme secretariat will (and will have the capacity to) offer member states a 'user-friendly template' for providing feedback on dissemination and implementation of the UDBHR (2005) within their countries, as requested by the IGBC in 2011 (UNESCO 2011c: 2). More successful thus far has been the system of devoting a day of the IBC sessions, when held outside Paris, to presentations on bioethics activities in the host country and region (interview with F2\_03). GEObs is another source of information on implementation. Slaughter (2004: 237) predicts that one of the merits of linking governments in 'virtual space' would be that government officials would know they were under scrutiny. It does not appear that GEOBs is having this effect as yet, but as its usage figures continue to grow it may gain the leverage common to long-standing regimes.

According to Slaughter (2004: 153), treaties and agreements trigger the formation of government networks as an 'inevitable part' of their implementation. In the new world order she envisages, IGOs would play something of a secondary role:

Imagine a global governance system principally composed of horizontal government networks of counterpart national officials, working on their own behalf or to implement formal international obligations. ... Many, if not most, of the international organizations dotting this landscape, regardless of form or title, are in substance largely facilitative 'information agencies'; their job is to collect, distill, and disseminate information needed by network participants and to help the networks coordinate their work.

(ibid: 164–5)

There would appear to be no valid reason why UNESCO should drop its capacity-building activities and become merely a facilitator, but it may be that it could draw on the government network framework to promote stronger implementation of the declarations among member states, if it could encourage the National Commissions to act as such. Rarely are the Bioethics Programme secretariat, National Commissions, relevant ministries in member states (of health or science and technology, for example), NBCs and IBC and IGBC representatives all communicating with each other to coordinate bioethics activities.

The potential for better networking within UNESCO has been recognized by two separate Internal Oversight Office (IOS) evaluations. A 2011 review of the general relationship between UNESCO's Secretariat (that is, the organization's headquarters in Paris) and the National Commissions found that what could be a multilayered 'array of fora' *à la* Held (2004b: 115) is in fact disaggregated in an unhelpful way, mainly due to lack of resources. Calling for improved relations not only within UNESCO but also with other IGOs and non-state actors, it concluded:

While there are many examples of effective cooperation between the Secretariat and National Commissions, the network of National Commission [sic] presents opportunities to function better. Strengthening and retooling of cooperation arrangements between UNESCO's Secretariat and National Commissions are needed. This includes efforts to clarify the roles of each partner and to establish organization-wide working processes, including those related to knowledge management and to cooperation with partners such as civil society, the private sector and other parts of the United Nations system.

(UNESCO 2012h: 2)

More specifically on bioethics, the 2010 evaluation of UNESCO's ethics activities recommended better coordination between the Bioethics Programme secretariat and the regional field offices, to generate 'a more efficient use of resources and an increase in operational synergies' (UNESCO 2010d: 33). The Bioethics Programme does indeed appear to work best where this is happening. In the former Eastern Europe, for example, the Moscow Office (the regional field office) worked to establish NBCs in all its cluster countries by 2007; from 2008, the focus shifted to networking and capacity building among these committees (UNESCO 2011p). At optimum, these different (but related) UNESCO networks might induce greater peer pressure on states to adopt the declarations, while at the same time providing them with a source of mutual support to do so, as Slaughter deems important.

Given the difficulties in enforcing compliance with non-binding norms, the UNESCO Bioethics Programme has chosen to concentrate its resources on a management approach to encouraging implementation of the declarations. The various capacity-building programmes – GEObs, the ABC initiative and the EEP – have been very active since

the adoption of the UDBHR in 2005, especially in developing countries. As indicated by interviewees in 2005–6 and questionnaire respondents in 2012, the most favourable kind of capacity building is that which is planned in response to local needs, as identified by those on the ground. Reinicke (1999–2000: 55–6) notes that global policy networks must be genuinely inclusive at all stages to be successful: ‘the mere façade of inclusiveness may prove their fatal weakness. ... The inclusion of less powerful yet important groups from the developing world is critical not just for designing policies but even more so for implementing them.’

The problems of ensuring equal representation during deliberations notwithstanding, UNESCO appears to be doing reasonably well on this front when it comes to implementation. Requests for assistance come from the countries themselves and programmes are administered through national structures. Furthermore, training sessions on the ABC programme are tailored to the local context, and users of the Core Curriculum (which was written by people from all over the world) are encouraged to adapt the materials in whatever ways they see fit to ensure applicability. This has implications for Slaughter’s model. She places great emphasis on capacity building as a means to improve compliance, but focuses almost entirely on initiatives designed and led by developed countries (Slaughter 2004: 229–30). She does acknowledge that knowledge could flow from South to North, but within an overall framework that hints at condescension: ‘Where possibilities of genuine learning exist, representatives of even the world’s most powerful nations are likely to be surprised by what they do not know or have not thought of ... successful mentoring can often produce students who turn the tables on their teachers’ (ibid: 229–30).

One hindrance to UNESCO’s capacity-building efforts is its reputation in the field of bioethics. Faunce and Nasu (2009: 317) posit that the UDBHR should be seen to have ‘fundamental cosmopolitan normative ground’, concerned as it is with the ‘universal interests of humanity’, while ten Have (2010: 9–10) declares,

This new constellation of fundamental principles is not only the outcome of a process of internationalization of bioethics but it will also be the starting point for a true globalization of bioethics, – a global bioethics that cares about issues and problems in all areas of the world and that responds to the needs and concerns of all human beings on this planet.

The analogies with Held and Archibugi’s visions for cosmopolitan democracy are clear, but does the UNESCO bioethics declaration (and its predecessors) live up to these grand claims? Despite being the first bioethics instruments to be adopted by an intergovernmental body, the declarations are usurped in some countries by longer-standing texts such as the *Declaration of Helsinki* and the CIOMS guidelines. It is thus taking time for the UDBHR (2005), for instance, to become a ‘normative reference’ or a ‘reference text ... for all the stakeholders concerned’, as intended by UNESCO’s IGBC and the April 2005 meeting of government experts respectively (UNESCO 2003i: 8; UNESCO 2005c: 3).

More broadly, the UNESCO Bioethics Programme is still establishing itself as a provider of bioethics capacity building. As ten Have (2010: 14) has acknowledged:

In the past period, emphasis has been on standard setting. The drafting and adoption of Declarations had a high profile. Currently, the focus is on implementation activities; these have a larger span of time and are less visible at a global level.

This is typical of international regimes post-adoption. The 2010 IOS evaluation stated that UNESCO had gained the comparative advantage of ‘being recognized as an honest broker on bioethics issues by a large part of the international community of bioethics experts’ (UNESCO 2010c: 2). But only two of a recent spate of articles on training for RECs mention UNESCO’s efforts (Rwabihama *et al.* 2010: 245; Ijsselmuiden *et al.* 2012: 82). (In line with ten Have’s statement, people have been more inclined to write – often critically – about the negotiation and content of the UDBHR than its implementation.) In 2005–6 many stakeholders in bioethics and genetics in Kenya and South Africa were unaware of the organization’s activities in their field, as well as of the declarations themselves. By 2011–12 a few more were familiar with UNESCO’s programmes, their reactions ranging from censure to ambivalence to strong interest. The most enthusiastic take-up was in Kenya, where the newly constituted National Bioethics Committee became the first to complete the ABC training.

A member of the Bioethics Programme interviewed in 2011 (F2\_03) believed that UNESCO’s reputation as an appropriate forum for bioethics had improved since 2005, when its suitability as a purveyor of bioethics principles had been questioned; where people used to refer to the *Declaration of Helsinki*, the CIOMS guidelines and WHO

documents, they would now also add UNESCO. The difference with UNESCO, they said, is that it is not as narrow as the others, as it is positioned to look at ethical issues beyond research. Nevertheless, the proliferation of ethical guidelines at all levels has proved confusing and counter-productive for some practitioners (although a perceived need to comply with international standards as laid out in the *Declaration of Helsinki* and the CIOMS guidelines provided a catalyst for the strengthening of national systems in Kenya and South Africa in the mid-2000s [and later the UDBHR, in the case of Kenya]). Moreover, having to respond to requests for similar information from several different bodies (for databases of RECs, for example) can be burdensome for stakeholders.

This has implications for both Slaughter's and Held's models. Officials might consider it an inefficient use of their limited time to become involved in more than a few of the 'countless government networks' Slaughter (2004: 15) envisages. Held's 'overarching network of democratic public fora' (2004b: 109) might face similar problems, with the confusion of responsibility Held has identified in the current international system simply being perpetuated. Slaughter (2004: 254) endorses 'an affirmative norm of friction and constructive ambiguity', but the bioethics case demonstrates that friction and ambiguity may be neither affirmative nor constructive. UNESCO has attempted to mitigate the overlap at international level by establishing the UN Inter-Agency Committee on Bioethics. As this committee is open to non-UN bodies, it may be a forum through which UNESCO and other organizations can coordinate their programmes and thus provide mutual reinforcement, in line with Young's positive views on different institutions having similar mandates. But further clarification on how the roles of the WHO and UNESCO should be split is needed, as became clear at the September 2011 IGBC meeting.

The overlap in remits at international level is mirrored at national level. In Kenya and South Africa in 2005–6, for example, there were poor communications within and between different government ministries working in related areas, namely health, education and science and technology. This meant that Kenya's system for the regulation of bioethics was incoherent, while in South Africa the Department of Science and Technology had no opportunity to feed into the negotiations on the content of the UDBHR (2005). The situation had improved by 2011–12, with the advent of the NBC in Kenya and the coalescence under the National Health Act in South Africa. IGBC members have been instrumental in promoting bioethics capacity building in Kenya (as UNESCO would like to see happen in other countries too), yet there is still some confusion over the respective roles of the National Commission and the National Council for Science and Technology.

Cosmopolitan democracy does not presume national governance capacity, but does require it; effective multilayered democratic governance would comprise accountable, responsive and meaningful politics at local to global levels (Archibugi 1998: 209; Held 2004b: 102 and 113). Slaughter, similarly, recognizes that sufficient national level capacity would be crucial to her vision of global governance through a lattice of government networks. Some states might struggle to meet these requirements, because of national level inefficiencies. Slaughter (2004: 5 and 12–13), like some regime theorists, criticizes international relations scholars for seeing states as single units in the international arena and thus ignoring what happens domestically. Under her notion of 'disaggregated sovereignty', government units within states would have discrete mandates to meet international legal obligations. But, for cross-cutting issues like bioethics, which ministry should house what mandate is not always obvious. Thus networking at national level between the disaggregated units would be essential, in order to avoid confusion.

When Slaughter (2004: 232) first outlined her model, she seemed to believe this coordination would be straightforward, commenting only briefly, 'Regulators of all kinds, from health to education to the environment, would conduct their own foreign relations, subject to some kind of domestic interagency process that accepted this phenomenon but nevertheless attempted to aggregate interests.' As the Kenyan and South African cases demonstrate, the existence or efficacy of such a process should not be presumed. Slaughter (2012) has since acknowledged this, stating that, for global governance through government networks to be effective, many governments will need to build 'intra-government networks', to enable far more unitary policy-making.

## Kenya and South Africa

ten Have (2005: 746) writes of the UDBHR, 'The Universal Declaration helps put bioethics on the agenda of States.' This has been the case in Kenya, where a new NBC and attendant systems for the accreditation of RECs have been formed with explicit reference to the UDBHR and UNESCO's Bioethics Programme. It appears to have had little or no impact in South Africa, however, on what is a growing and developing bioethics community. Meagre input into the drafting of the UNESCO declarations by the scientists and ethicists who must apply ethical principles in their everyday work, together with the lack of an in-country champion (a UNESCO chair or IGBC member, for instance), may have hampered take-up. Nevertheless, both countries have seen an increasing emphasis on ethics issues that

UNESCO deems important, such as the need for more ethics training for students, researchers and REC members, tailored to the local cultural context. South Africa, in particular, is making significant progress in this regard, playing a leading role in the development of an Africa-specific ethics textbook.

Above all, there is an acceptance that ethics deserves to be more than simply an afterthought. This was captured by a Kenyan interviewee in 2011 (K2\_17), in the context of the Adili Center and other changes at the Kenya Medical Research Institute:

You know how sometimes things just come together and then you're in the right place at the right time? ... I mean, we had been saying, saying, saying and then suddenly we said the last time and people said, 'Of course you must have your own centre' and 'Of course you must have your own vote' and 'Of course you must charge'. And it's something we've been saying for the last six years. So we now actually are in a position to do things fairly well – fairly correctly – and then we hope that others might look at our model and maybe think that there are some good things about it. ... Because once that one person has done something it's easier for others now to say, 'Oh, okay, this is the way it was done. Why can't we do that too?'

Where challenges remain – protecting vulnerable research participants, developing meaningful ways of sharing benefits, dealing with the complexities of sample shipping, ensuring RECs have the capacity to review and monitor research as demand for their services grows, increasing public understanding and engagement in ethics – the question for the UNESCO Bioethics Programme must be what role it might play in the continuing development of African bioethics.

### The governance of human cloning

When intergovernmental organizations are unable to agree on a piece of binding legislation such as a convention, they often compromise with a less demanding declaration instead. This is what happened at the UN in 2005 when negotiations on a convention on human cloning reached an impasse. UNESCO, in its bioethics standard-setting endeavours, has opted straight for a declaration each time, as these are considered quicker to draft, more flexible and more likely to engender consensus. But this was not a viable option when it came to human cloning, since an international declaration already exists. UNESCO was thus faced with an 'all or nothing' choice – and it chose nothing. There was initially a tension between IBC members, who as independent experts supported a ban on human reproductive cloning and IGBC members, who as representatives of member states were fearful of entangling themselves in a fractious political debate akin to that at the UN a few years before. Eventually, though, both committees seemed to tire of the topic. As consensus on the issue both within and between them has become less rather than more likely, the idea of a convention to ban human reproductive cloning has, effectively, been shelved.

There are ethical and scientific consequences to this decision. Although controversial, human cloning has the potential to contribute to scientific and medical advancement, through the replacement of damaged tissue, for example. The debate over whether therapeutic cloning should be allowed spills over into reproductive cloning and vice versa, with disputes over terminology reflecting deeper concerns with the moral status of the embryo and, more broadly, what it means to be human. As things stand, there is nothing at global level that either definitively bans human reproductive cloning or sanctions therapeutic cloning. This legislative 'black hole' is unhelpful for those states that would draw on international law in formulating their own national regulations or policies. As ten Have (2006: 339) states:

The desire to develop international frameworks therefore often is articulated by the least developed countries that are in need of normative guidance and that want to have the certainty that ethical principles are formulated on a global level so that the same standards are used everywhere.

Compared to other, more immediate concerns in developing countries, particularly in Africa, cloning may seem unimportant. This is often given as a reason for assuming that these countries will be uninterested in such issues, despite science being seen as key to development by NEPAD (the New Partnership for Africa's Development) and the African Union (NEPAD Office of Science and Technology 2006; Juma and Serageldin 2007). Yet the situation leaves African researchers (at least, those quoted in this book) who wish to pursue scientific advancement in a responsible manner frustrated at the lack of guidance and support and worried that they will be left behind by rogue scientists less concerned for the welfare of vulnerable populations, who may be cajoled into undergoing unnecessarily risky



procedures. Thus the continued inability of intergovernmental organizations to find a way to reach an agreement on human cloning acceptable to all parties is deeply problematic.

## Pragmatic suggestions

To change the nature of an organization's governance structures to enable deeper deliberation and multisectoral decision-making is a big ask. But there are smaller adjustments that could be made relatively easily and yet have a significant impact. It is rare, for instance, for a UNESCO bioethics meeting to start on time. This may seem a facile point, but the consequence of the perpetual tardiness is that debates which have already been allocated only a few hours (in which the 36 members of each committee, plus observers, must all try to have their say) are truncated even further, to the detriment of the depth and quality of the discussion. Of course, informal negotiations over coffee may be just as important and valuable as officially timetabled meetings, but ample time for this is already built into the programmes. Redressing this balance does not require a new theory of governance, only a more pragmatic outlook. Given the considerable resources that go into holding these meetings, they should be used to their full potential.

Other seemingly simple improvements might be possible with more funding; covering some of the participation costs for developing countries, for example. But these would be very difficult to instigate in the current climate. In 2011–12 the Director-General of UNESCO, Irina Bokova, instigated a cost-saving drive, after the US withdrew its funding of the organization (which accounted for 22 per cent of the total budget) in the wake of the General Conference's decision to admit Palestine as a member state. She also launched an Emergency Multi-Donor Fund to make up the shortfall. 18 countries, including several from the global South, had pledged contributions as of November 2012 (Algeria, Belize, Cameroon, Chad, Gabon, Iceland, Indonesia, Kazakhstan, Mauritius, Monaco, Namibia, Norway, Qatar, Republic of Congo, Saudi Arabia, Oman, Timor Leste and Turkey). These contributions ranged from USD 20,000 and 50,000 from Mauritius and Namibia respectively, to USD 2 million each from Oman and Gabon, to USD 20 million each from Saudi Arabia, Norway and Qatar (UNESCO 2011n; UNESCO 2011o; UNESCO 2012c; UNESCO 2012f). While some of these amounts are tiny in comparison to a budget deficit for 2012–13 of USD 167 million, they may have symbolic relevance. If the organization can survive the immediate crisis and thus become less dependent on a single state for such a large section of its budget, the balance of power may shift. Significantly, the US remains a member state of UNESCO, but if it is no longer contributing financially, it cannot expect to have the influence it once did. Those countries which have heeded the Director-General's call and stepped into the breach may hope to fill the void.

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