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Chapter 3 Global governance

A conceptual framework for analysing bioethics at UNESCO

The field of international relations, in simple terms, explores why, how and to what degree states and other actors engage with each other at international level. International relations theory falls into several schools, realism and liberalism being the two longest standing. The realist paradigm, which purports that nationstates are the key actors in the international arena, was dominant until the end of the Cold War. It is chiefly concerned with the quest for power (Dougherty and Pfaltzgraff 1996: 58). Realists view the international system as one of anarchy, where moral considerations have no place. (A variant on this theme, the concept of an anarchical international society, was introduced by Hedley Bull in 1966: 'Whereas men within each state are subject to a common government, sovereign states in their mutual relations are not. This anarchy it is possible to regard as the central fact of international life and the starting point of theorizing about it' [Bull 2000: 77].) Conflicts between states are seen as inevitable, as each will seek to defend its national interest (defined in terms of 'survival, security, power, and relative capabilities' [Holsti 1995: 37]), primarily through military power (Kegley 1995: 4–5). States must exercise self-sufficiency, as dependence on another actor would leave them open to exploitation. Thus international organizations and international law are thought to be of limited use (ibid; Genest 1994: 71). Neorealism (or structural realism), as championed most famously by Kenneth Waltz, differs from classical realism in that it sees the international system as more than the sum of its parts, its very structure driving states towards certain actions and restricting them from others (Waltz 1995: 74).

The main opposition to realist theory within international relations has come from liberalism. Generally, liberals argue that realists place too much emphasis on conflict and too little on cooperation (Grieco 1995: 151). Security is often defined more broadly than under realism, to include elements such as health and education (Holsti 1995: 43). In a post-Cold War and globalizing world, liberalism has gained ground as an alternative explanation of world affairs, as scholars have paid increasing attention to influences beyond or below the state. Like realism, it has a 'neo-' successor, which synthesizes these two traditionally antithetical approaches (Hasenclever *et al.* 1996: 196). Neoliberal institutionalists assume that selfinterested states are the principal international actors and that power differentials are important. While acknowledging the existence of anarchy, however, they hold that international institutions can 'transcend the basic structural characteristics of the anarchic international system' (Dougherty and Pfaltzgraff 1996: 62).

Constructivism, another school of international relations, has grown greatly in prominence in recent years. Martha Finnemore and Kathryn Sikkink, two of its core proponents, see constructivism as 'a different kind of theory' to realism and liberalism, as it makes no claims about the nature of agents (that is, individuals or institutions) or the content of structures. Rather, as a social theory, it investigates social life and social change. They summarize this approach as follows: 'Constructivists focus on the role of ideas, norms, knowledge, culture, and argument in politics, stressing in particular the role of collectively held or "intersubjective" ideas and understandings on social life' (Finnemore and Sikkink 2001: 391–3). Thus constructivism sees rules and practices as being created and sustained by mutual agreement. State sovereignty, as an institution, provides an example. Reflecting common understandings about the characteristics of states, it allows these actors to recognize one another (Ellis 2002: 273–4).

This chapter explores on three specific approaches to governance within international relations theory: regime theory, government networks and cosmopolitan democracy. Regime theory draws on all three core schools of thought and networked governance and cosmopolitan democracy encompass elements of both neoliberalism and constructivism. Although differing in the significance they attach to concepts of power, sovereignty and the state, each has collaboration and cooperation at an international level as a central theme. Thus they all fall within a concept that has in recent years become central to the study of international relations: global governance.

Global governance

The term 'global governance' derives from the Commission on Global Governance, which met in 1995 to report on the future of the UN (Commission on Global Governance 1995). It refers to governance within and as an output of the international system, aimed at addressing those issues that have the potential to affect everyone, irrespective of national borders. As Robert Goodin (2003: 80) puts it, 'Cross-boundary spillovers – political and moral, as well as economic and environmental – are now absolutely endemic.' Alongside states, transnational actors such as UN

agencies, large corporations and civil society organizations are important actors in how (and how well) these spillovers are managed (Keohane 2003: 130–2; Ruggie 2003: 117). ‘Global governance’ has both descriptive and normative connotations in this regard. Robert Keohane (2003: 132) describes it as rule-making and the exercise of power on a global scale, by entities not necessarily authorized to act by general consensus (with ensuing implications for legitimacy). James Rosenau (1992: 4) used the same premise, but from a different angle: because governance systems lack the traditional legitimacy conferred by democratic election, for example, they can only be effective if the great majority of those they cover agree to them. In this sense, then, governance has an inherent normative purpose; it is derived from shared goals rather than formal authority.

Regime theory

Pierre de Senarclens, a regime scholar, has commented that the notion of governance in international relations theory emerged ‘in the aftermath of the debate about “regimes”’ (de Senarclens 1998: 92). Regime theory (or, more accurately, theories of regimes [Vogler 1995: 25]) has much to offer in terms of describing how international bodies work and how they might do so more effectively. International regimes encompass varying levels of institutional development. They arise from efforts to develop collaborative arrangements, formally or informally, around fairly well-defined issues, such as world trade or environmental concerns (de Senarclens 1993: 456; Dougherty and Pfaltzgraff 1996: 436). Stephen Krasner and colleagues, in the seminal book *International Regimes*, defined them as ‘sets of implicit or explicit principles, norms, rules and decisionmaking procedures around which actors’ expectations converge in a given area of international relations’ (Krasner 1983: 2). Although deemed vague and woolly by critics, this definition remains the most widely used (Strange 1983: 342; Kratochwil 1984: 685; Young 1989: 195; Simmons and Martin 2002: 193).

Traditionally state-centric, regime theory is particularly pertinent to intergovernmental organizations (IGOs) such as UNESCO (Young 1997: 6). States may choose to join such arrangements if they feel a given problem could be addressed more efficiently through an institution. Different theorists put forward power, interests or knowledge as defining variables in regimes, echoing the realist, neoliberal and constructivist schools of thought (Hasenclever *et al.* 1996: 178). Realist regime theory sees regimes as formed around and influenced by the power and interests of a dominant state, or group of states. Since states are seen as being primarily concerned with power plays and the vulnerability that interdependence brings, international cooperation is believed to occur infrequently (Zacher, with Sutton 1996: 2–3). Neoliberal regime theory, the mainstream approach to regimes, does not disregard power differentials, but portrays states as ‘rational egoists’ who pursue absolute rather than relative gains. States will therefore cooperate to realize common interests (ibid: 2; Hasenclever *et al.* 1996: 183–4). Cognitive (or constructivist) regime theory recognizes that cooperation is affected not only by power and interests but also by values, beliefs and knowledge. As regimes are based on shared principles and understandings, they are intersubjective; the issue areas around which they converge are not pre-ordained. Thus cognitive approaches help to explain the evolution and content of regimes (Kratochwil and Ruggie 1986: 764; Haggard and Simmons 1987: 509–10).

The neoliberal and cognitivist approaches do not have to be mutually exclusive. In *After Hegemony*, Keohane (1984: 63) wrote:

But regimes can also affect state interests, for the notion of self-interest is itself elastic and largely subjective. Perceptions of self-interest depend on actors’ expectations of the likely consequences that will follow from particular actions and on their fundamental values. Regimes can certainly affect expectations and may affect values as well.

Similarly, Oran Young (1999: 4) states, ‘it is perfectly possible to adopt the view that actors and institutions are mutually constitutive’. In terms of UNESCO, all three approaches are relevant. We can ask, how much did differences in power between states influence the outcome of negotiations on the declarations and cloning? How did states and other actors go about securing their interests? And how did key principles in bioethics shape the formation of the declarations and vice versa?

Networked governance

Intergovernmental regimes have often been perceived to be slow-moving and ineffective. This has led some international relations theorists to examine alternative deliberative structures to see whether they might be more successful in implementing positive change. Wolfgang Reinicke and colleagues, for example, have analysed what

they call Global Public Policy Networks (GPPNs). Reinicke (1999–2000: 44) charts the emergence of networks such as the Global Environment Facility and the Roll Back Malaria initiative from the 1990s onwards, defining them as ‘loose alliances of government agencies, international organizations, corporations, and elements of civil society such as nongovernmental organizations, professional associations, or religious groups that join together to achieve what none can accomplish on its own’. Those who proposed the Global Genomics Initiative (GGI) (see p. 14) drew on the work of various network theorists. One of their earlier plans was based on Jean-François Rischard’s Global Issues Networks, a highly specified form of GPPN, which Rischard has suggested as a means to address the 20 foremost problems faced by the world within 20 years (Rischard 2002: 66 and 224–5). Under this equitable model the GGI was to comprise representatives from governments, industry, academia, non-governmental organizations (NGOs) and civil society (Acharya *et al.* 2004a: 5). In a later proposal they shifted their focus slightly, citing the influential work of Anne-Marie Slaughter on government networks. The GGI was still to include NGOs, businesses and other sectors, but it would be ‘underpinned by governments’ in order to garner legitimacy and accountability (Dowdeswell *et al.* 2006: 138 and 140).

The importance of the part played by government actors in global networks lies at the heart of Slaughter’s 2004 book, *A New World Order*, in which she analyses how government officials network at a global level, to exchange information and coordinate activities. These government networks are, Slaughter writes, ‘a key feature of world order in the twenty-first century, but they are underappreciated, undersupported, and underused to address the central problems of global governance’ (Slaughter 2004: 1). Slaughter’s premise is that the state, contrary to the model assumed by many international relations theorists and multilateral negotiators alike, is not a unitary actor. Rather, it is disaggregated, primarily along legislative, regulatory and judicial lines; members of distinct domestic government institutions are increasingly involved in activities beyond national borders, interacting with their counterparts in other countries and at supranational level (*ibid.*: 5–6, 12–13 and 31).

Slaughter (2004: 14) defines a government network broadly, as ‘a pattern of regular and purposive relations among like government units working across the borders that divide countries from one another and that demarcate the “domestic” from the “international” sphere’. At present, government networks ‘contribute’ to world order by stimulating policy convergence among states, encouraging adherence to international treaties and promoting international cooperation (*ibid.*: 24). In future, Slaughter suggests, this remit could be expanded. She envisages a form of networked governance that would include non-state actors such as international organizations, corporations and civil society organizations, but with government actors at the core. Slaughter claims that viewing the world as one of disaggregated states enables the imagining of ‘a genuinely new set of possibilities for a future world order’, the ‘building blocks’ of which would not be states but parts of states (*ibid.*: 6). She describes what shape this conceptual framework might take thus:

A disaggregated world order would be a world latticed by countless government networks. These would include horizontal networks and vertical networks; networks for collecting and sharing information of all kinds, for policy coordination, for enforcement cooperation, for technical assistance and training, perhaps ultimately for rule making. They would be bilateral, plurilateral, regional, or global. Taken together, they would provide the skeleton or infrastructure for global governance.

(*ibid.*: 15–16)

Cosmopolitan democracy

More ambitious still is ‘cosmopolitan democracy’, a model for global governance most prominently advocated by political theorists David Held and Daniele Archibugi. Archibugi (2004: 438) pithily captures the purpose of cosmopolitan democracy as follows: ‘to globalize democracy while, at the same time, democratizing globalization’. The aim is to respond to global concerns in an integrated manner. Archibugi detects a strong call for global regulation of issues such as immigration, human rights, the environment, financial flows and development aid, but observes that at present each of these areas is serviced to a greater or lesser extent by its own regime. Cosmopolitan democracy offers a framework to connect what are currently disparate governance efforts (*ibid.*: 451). The idea hinges on the premise that the world is made up of ‘overlapping networks of power’ and ‘overlapping communities of fate’ that do not fit neatly within state boundaries, causing strain in the current global system. The fates of distant communities are interwoven, to the extent that local level economic, social or environmental issues and events can have global ramifications and vice versa (Held 2003: 161–2 and 167). The ensuing risk that national level democracy will be

'hollowed out', as Archibugi (2002: 28) puts it, begs the question why democracy must be contained within domestic borders.

Held (2003: 169) articulates the three fundamental principles of cosmopolitanism as follows: individuals, as opposed to states or other entities, are 'the ultimate units of moral concern'; everyone's equal worth must be acknowledged; and rules and principles must be impartial and thus universally shared. *Cosmopolitan* democracy would particularly address those issues that are difficult to regulate effectively at state level alone. Importantly, a global government *per se* is not envisaged. Rather, democracy would be promoted at several mutually supportive levels – inside nations, among states and transnationally – and involve both state and non-state actors (Archibugi 1998: 209; Archibugi 2002: 28–29 and 34). Held (2004b: 115) outlines the need for a multilayered approach thus:

Today, if people are to be free and equal in the determination of the conditions that shape their lives, there must be an array of fora, from the city to global associations, in which they can hold decision-makers to account. If many contemporary forms of power are to become accountable and if many of the complex issues that affect us all – locally, nationally, regionally and globally – are to be democratically regulated, people will have to have access to, and membership in, diverse political communities.

These different approaches to global governance – regime theory, networked governance and cosmopolitan democracy – have points of convergence and divergence on two key themes that are pertinent to the governance of the UNESCO Bioethics Programme: deliberation and implementation. Taken together, these themes provide a conceptual framework for the analysis of the Programme in later chapters.

The deliberative process: representation, legitimacy and accountability

Whether UNESCO is considered as a legitimate arbiter of bioethics will depend partly on whether stakeholders and experts see it as a representative and accountable body. Allan Buchanan and Keohane (2006: 407) write:

It is important not only that global governance institutions be legitimate, but that they are perceived to be legitimate. The perception of legitimacy matters, because, in a democratic era, multilateral institutions will only thrive if they are viewed as legitimate by democratic publics.

Held (2004b: xiii and 141) describes IGOs (of which UNESCO is one) as facing a 'crisis of legitimacy' on two counts: relations between strong and weak states are unequal and 'chains of delegation' from the international to the national are too long. On the first issue, Held (*ibid*: xiii) states, 'Increasingly, these institutions appear to speak for the powerful, or to be cast aside by these very same forces if they fail to fall into line with their will.'

Drawing on the work of Pamela Chasek and Lavanya Rajamani, Held (2004b: 95–6) points to the power imbalances between states during international negotiations by way of example. These can be both qualitative and quantitative; some countries can afford to make available large delegations of experts to back up their official representative, while others may only be able to send one person, who may not be a specialist in the field. Slaughter (2004: 221) makes a similar observation with regard to less formalized relations between states, highlighting concerns with inequalities in power between rich and poor countries as government officials become increasingly involved in global governance: 'shifting authority to technocrats means privileging the views of those nations that *have* technocrats – inevitably the most developed nations'. She also notes that networks are sometimes criticized on the grounds that their informality can allow more powerful states to dominate, because the constraints found in traditional IGOs are absent (*ibid*: 28–9).

Chasek and Rajamani outline specific difficulties faced by developing countries during international negotiations. Further to the problems concerning the size and expertise of delegations highlighted by Held, they describe how some delegates will arrive at meetings with 'hollow mandates', having not received clear instructions as to what their countries' negotiating positions should be. Moreover, if they attend only later sessions, they will not only have missed out on agenda setting, but will also lack 'institutional memory' and the corresponding leverage to influence proceedings. This can be compounded for those countries without easy access to background documentation through high-speed internet connections (Chasek and Rajamani 2003: 246–9 and 258–9).

The two analysts propose several practical means by which developing countries could be better represented at international meetings and thus have stronger mandates and bargaining positions. Echoing Robert Putnam's notion (1998) that international negotiations are 'two-level games', involving the domestic as well as the international

sphere, they suggest that national policy debates, strategic consultations and greater coordination between relevant ministries would ‘make for more effective delegations’. Second, regional preparatory meetings would aid networking among developing countries. Broad coalitions can be powerful, but given the diversity of national concerns and priorities, Chasek and Rajamani recommend that these should be complemented by smaller groups focusing on special issues. Finally, fast and reliable internet access would help improve both coordination among countries and availability of information. All these measures might be realized through a participation fund (Chasek and Rajamani 2003: 246, 255 and 258–9).

The second crisis of legitimacy that Held identifies, the ‘chains of delegation’, he attributes to weak and obscure mechanisms of accountability, particularly with regard to international negotiations (Held 2004b: 141–2). Raffaele Marchetti (2006: 291) makes a similar observation, describing the system of ‘double representation’ in international organizations, whereby individuals are represented by national parliaments, which in turn elect an international representative, as producing ‘an almost insurmountable barrier to engaging in public international life’. Nayef Samhat and Jaye Ellis argue, separately, for greater public engagement in the international system, to deal with the accountability issue. They propose that regimes (formal and informal) be considered as public spheres, characterized as frameworks within which interests and identities are constituted and actors engage in discussion and deliberation.

Samhat (2005: 180 and 186) believes the ‘democratic potential’ of international regimes is growing as they involve a broadening range of actors, thus forming ‘transboundary political communities’ around specific issues. For Ellis (2002: 274), discourse within regimes enables ‘the articulation of international rules and norms grounded in consensus and therefore enjoying legitimacy’. Both writers see the inclusion of civil society as the key element of regimes as public spheres. Ellis (*ibid*: 288) recommends that negotiations be made more open and thus ‘more permeable to influence from civil society’. This is already happening, according to Samhat. Documentation of international meetings is becoming increasingly public and civil society actors are now participating ‘across the gamut of regime and norm-building processes’, from agenda setting to compliance monitoring. He sees these actors as representative agents and thus the means by which a rudimentary form of global democracy or global citizenship is practised, as a precursor to cosmopolitan democracy (Samhat 2005: 182–3 and 186).

Slaughter, by contrast, while not explicitly taking the line that civil society organizations and businesses are given too much space in international fora relative to states, gives voice to those who do (Slaughter 2004: 9–10, 224–5, 240 and 262). She argues that government networks, as they exist currently, have an advantage over the more equitable global networks advocated by former UN Secretary-General Kofi Annan, Reinicke, Rischard and others, in that, being composed of democratically appointed or elected officials, it is clear who is exercising power on whose behalf. The broader policy networks of Slaughter’s vision of networked governance would thus enjoy legitimacy through having these accountable government networks, responsible for final decisions, at their core. Long chains of delegation would be avoided because those negotiating agreements would also be responsible for their implementation (*ibid*: 28–9, 224, 231 and 263).

Slaughter proposes ‘global deliberative equality’ as the foundational norm of global governance. By this she means that all those individuals and groups affected by common problems should be able to participate in collective deliberation about how to solve them, under a ‘presumption of inclusion’. Participation would be indirect, through government representatives. Slaughter acknowledges that government officials are often seen as unelected technocrats acting on behalf of vested interests, but suggests ways in which such perceptions could be mitigated; namely, government networks could host common websites, engage systematically with counterpart networks of corporations and civil society organizations and promote enhanced accountability at domestic levels (Slaughter 2004: 28–9, 220–1, 235, 245–6 and 266). She envisages a system in which government officials would be explicitly recognized as having both domestic and international duties:

National officials are responsible to national constituencies for their domestic and ... their transgovernmental activities. At the same time ... government networks constitute a global governance system, which must somehow be accountable to the global community as a whole, comprising both states and individuals whose collective interests stem from a common humanity.

(*ibid*: 218)

Held (2004b: 173–4) and Archibugi (1998: 204–5 and 211–12), like Samhat, advocate that individuals should be entitled to take part in policy formation at the global level as fully-fledged cosmopolitan citizens, rather than through

government representatives. Which individuals and groups might come together to hold to account relevant parties over a certain issue would be dictated less by geographical proximity than by whether they fell within, to use one of Held's recurring phrases, 'overlapping communities of fate'. In a similar vein to Slaughter's norm of 'global deliberative equality', Held (2004b: 97) holds that 'those who are significantly affected by a global good or bad should have a say in its provision or regulation'. Likewise, Archibugi (2004: 443–4) argues that 'cross-border issues' should be dealt with under a democratic principle that 'everyone affected is able to take part in the decision-making'. Where this does not happen, there is an accountability gap (Held 2004a: 383; Held 2004b: 99–100).

Under cosmopolitan democracy, new forms of accountability would complement those afforded by democratic elections. A full-blown cosmopolitan polity would involve an 'overarching network of democratic public fora', whereby people would be members of several different communities, according to the issues affecting them and would be able to engage politically in those issues in a variety of ways (Held 2004b: 109). These would include forms of both direct (local) and representative (global) democracy, but also novel democratic arenas such as stakeholder consultations and collective decision-making through impartial deliberative examination of opinion and informed participation (if indeed impartiality of opinion and information can ever be guaranteed) (Held 2003: 175–6). Such fora, construed within or without the UNESCO system, could perhaps help to improve global decision-making on bioethics.

The implementation process: realizing and enforcing norms

UNESCO has a stated purpose to promulgate universal norms on bioethics. How these are implemented and enforced will depend on both their nature and content. In a world of sovereign states, any international system relies ultimately on self-regulation by members, urged on by the perceived threat of reciprocal action and national concerns with status and reputation (Vogler 1995: 41). As Ellis (2002: 292) puts it, 'States are both subjects and instruments of international law, being both the addressees of international norms and the agents responsible for their domestic implementation and enforcement.'

Young (1999: 47 and 103) describes the conception and revision of regimes as 'messy processes'. Norms are often drafted ambiguously rather than to 'coherent institutional designs', representing compromise positions reached through hard bargaining and consensus-based decision-making. Negotiations aimed at binding accords, in particular, sometimes suffer a 'lowest common denominator' effect. Non-binding instruments, which allow for fluctuating levels of compliance and are thus less threatening to reluctant states, may therefore be preferred (Stokke 1997: 50). These generally have the added advantages over binding agreements of being quicker to negotiate, more flexible in application and more open to future adjustments (Victor *et al.* 1998: 8 and 18). The corresponding disadvantages lie in their modest enforcement power, which is seen to render them weaker than binding agreements. This 'conventional wisdom' is challenged by David Victor *et al.* in their study of international environmental regimes, published in 2000. They found that binding instruments that set low standards, even if fully complied with, may have negligible impact on a given problem. By contrast, non-binding agreements enshrining high standards, even if only partly met, may effect significant behavioural change (Raustiala and Victor 1998: 685 and 705; Victor *et al.* 1998: 7).

While regimes usually coalesce around fairly well-defined issues, ambiguity concerning ownership of and responsibility for problems can result in overlapping or contradictory norms, functions and mandates among different international bodies. Lack of coherence can also lead to issues falling between agencies, or uncertainty as to whether action should be taken at global or national levels (Reinicke 1997: 136–7; Hurrell 2002: 143; Held 2004b: 94 and 97). Bioethics provides an example. As the previous chapter illustrated, several international organizations, UN-based and otherwise, have produced guidelines or standards for ethical biomedical research. Sjeff Gevers (2001: 297) is critical of this proliferation:

Before elaborating and publishing their 'own' standards, international organizations should really ask themselves what the 'added value' is of their contribution in terms of further convergence and better protection. A mere proliferation of standards is of no use to anybody, but may only lead to confusion or even "shopping" between different international documents.

From a different perspective, Young notes that, as much as organizations having similar mandates raises the possibility of overlap and congestion, it also enables positive connections and mutual reinforcement (Young 1999: 122). A too strictly delineated remit may also deny linkages with those working on related issues (Haggard and Simmons 1987: 497).

Rischard (2002: 42–4, 157, 170 and 181) deplors what he sees as rigidity in traditional IGOs and concludes that they need to become flatter, leaner and faster. What he does not take into account is that some of the advantages of international cooperation take time to be realized. Regimes confer a degree of stability in international relations by allowing reciprocal expectations and mutual information networks to develop. Liberal regime theorists hold that states will enter into multilateral agreements on the understanding that it will be to their long-term advantage (Smouts 1993: 445 and 447). The longer parties remain in a regime, the more interconnected they become and the harder it is to withdraw. Peer pressure may induce conformity over time. ‘So even though it might formally seem as if treaty regimes have no real power over member states,’ writes Robert Goodin (2003: 82), ‘the informal reality is that they typically provide an awful lot of leverage.’

One way to encourage adoption of regimes at national level may be through systems of implementation review (SIRs). According to Victor *et al.* (1998: 18), SIRs enhance transparency and accountability and lessen the chance of non-binding commitments being ignored. Young (1999: 119) similarly remarks, ‘Well-constructed SIRs are important in almost every case as methods of retaining the attention of policymakers and avoiding the onset of “out of sight, out of mind” syndrome.’ SIRs do have their limitations; Victor *et al.* found poor data reporting to be a chronic problem, in terms of both quantity and quality. More positively, they showed that active and effective implementation review often evolves informally, after an agreement has entered into force. They also observed that states were becoming more open even to external review, in the interests of international cooperation (Raustiala and Victor 1998: 677–8, 680 and 695; Victor *et al.* 1998: 18).

Where norms are not being upheld by member states, IGOs have two approaches to encouraging implementation: enforcement and management. Which is deemed appropriate will depend on whether non-compliance is attributed to self-interested choice or incapacity (Raustiala and Victor 1998: 681). John Vogler (1995: 70) writes, ‘They [governments] may simply lack the technical personnel and data gathering facilities to fulfil their obligations under a regime.’ Young (1999: 81, 95–6 and 100) judges IGOs to be ‘notoriously weak’ in applying enforcement measures such as sanctions and thus considers initiatives like UNESCO’s capacity-building activities, aimed at strengthening those desiring to comply, a better option in many cases. Victor *et al.* found that a combined approach can prove effective; the threatened withdrawal of managerial assistance, for example, might be a powerful enforcement tool. The likely success of either or both methods will depend partly on a system’s capacity to apply them (Raustiala and Victor 1998: 683–4). Young (1999: 119) notes that organizations administering regimes often struggle for sufficient material resources, especially for programmes aimed at developing countries.

Whether a regime is adopted at national level and, if so, how successfully, may be as dependent on internal dynamics and pressures as on IGO enforcement or management mechanisms. Where international arrangements disrupt or are incompatible with local procedures, their efficacy may be impaired (Young 1999: 122–3). This is particularly pertinent to bioethics, given the debate over universal versus pluralist, culturally determined values. Slaughter endorses pluralism, under the constitutional norms of ‘legitimate difference’ and ‘checks and balances’. Legitimate difference would restrain government networks from attempting to cover over differences in fundamental values. Instead, they would draw up compilations of best practices, for regulators to adapt to local circumstances. Similarly, horizontal and vertical checks and balances would enshrine ‘an affirmative norm of friction and constructive ambiguity’ (Slaughter 2004: 31–2, 249–50 and 254–5).

These pluralistic norms would contrast directly with the third principle of cosmopolitanism, which states that rules and principles must be universally and impartially shared; those that cannot be must be rejected. Held (2003: 169–71) gives broad examples of what such rules might comprise, in terms of avoiding harm and meeting urgent needs. He acknowledges that how these should be interpreted could not be specified ‘once and for all’, but would depend on temporally determined cultures and traditions. Samhat (2005: 187–8) takes a balanced approach, seeing regimes as a means to resolve tension between universalism (or ‘solidarism’, as he puts it, defined as consensus on the moral standards states must uphold) and pluralism within the international system, on an issue by issue basis. Progress is generally incremental in this regard, as norms and principles stemming from initially different perspectives are scrutinized and revised. Encapsulated in these different perspectives is a question that UNESCO, with its aim of fostering respect for cultural diversity alongside respect for universal human rights, must answer: how far can universal principles be adapted to suit particular contexts before they lose all potency? At what point, in fact, do they become plural?

Which government agency takes on responsibility for implementing a regime may also be a key factor in the translation of internationally agreed principles to the national context. Slaughter (2004: 247) believes that networks

would work most effectively if they were targeted: 'government networks should be explicitly designed to engage, enmesh, and assist specific government institutions'. What she appears not to recognize is that some issues are cross-cutting. Bioethics, for example, could involve ministries of health, science and technology, industry and education, to name a few. Echoing Slaughter's disaggregated state, Young (1999: 94) observes, 'Regimes ordinarily become the property of specific public agencies within governments rather than of the government as a whole.' Thus it is essential for IGOs to identify and liaise with the most appropriate national bodies (ibid: 48). Samhat and Ellis concur. Although they believe international regimes have the potential to expand democracy beyond the state as global public spheres, they appreciate that strong states are needed to administer whatever rules and norms are agreed upon (Ellis 2002: 280; Samhat 2005: 179–80 and 189). Young (1999: 94–5 and 105) sees unofficial groups as of 'even greater importance' in this regard. Where regimes trigger active communities willing to give time and energy to their fulfilment, they cannot be shunted aside or simply fade from the collective conscience through apathy. It might be expected that involving relevant constituencies in negotiations would harness their subsequent support, but this does not necessarily follow. Victor *et al.* found that including practitioners in decision-making led to better-crafted agreements, but had little impact in terms of encouraging participation in their realization (Raustiala and Victor 1998: 665).

Sceptical of current systems for inducing adherence to international norms and principles, Slaughter and Held suggest alternatives. These range from variations on the enforcement and management approaches to new understandings of sovereignty. Slaughter's plans for augmenting governance through government networks, both horizontal and vertical, would mirror current regime arrangements in that the norms developed would have little potency unless implemented at domestic level. Horizontal networks would employ 'soft power' (Nye 2004: x) on a continuum running from information to socialization to persuasion to discussion and debate, to foster national level adherence (Slaughter 2004: 27, 213 and 263). Vertical networks would see international organizations directly marshalling the legislative, regulatory or judicial power of their domestic counterparts in order to achieve maximum efficacy. 'Absent a world government,' writes Slaughter, 'it is impossible to grant supranational officials genuine coercive power' (ibid: 13–14 and 20).

To promote implementation, costs and prestige would be attached to failing or meeting respectively a network's norms and standards. To this end, Slaughter introduces a new conception of sovereignty: disaggregated sovereignty. At present, she avers, there is a 'conceptual blind spot' in international law and politics, whereby separate government institutions are not formally recognized independently of the unitary state. To address the myopia, Slaughter suggests, these institutions should individually bear the rights and responsibilities of sovereignty. Each would have a discrete mandate to meet international legal obligations (which could lead to duplication and confusion should institutions with overlapping responsibilities separately apply these instruments at national level). Sovereignty would be newly understood in terms of capacity to take part in transgovernmental networks (Slaughter 2004: 25, 33–4 and 266–9). This new notion of sovereignty has not gone uncriticized. Berkowitz (2005: 75) writes, 'One should not underestimate the radicalism of Slaughter's proposal, encapsulated in her casual exercise in redefinition – as if one could disguise the rejection of a fundamental principle by keeping the name while changing the meaning.' Anderson (2005: 1299–1300) likewise comments that Slaughter's argument 'operates by pure definitional fiat', such that she has 'redefined sovereignty to mean engaging in activities characteristic of giving up traditional sovereignty'. He believes she has confused sovereign power with the international benefits it can be used to secure.

Like those of the management school of regime theory, Slaughter sees compliance with international norms as being as much about capacity as willingness. She particularly cites developing countries as lacking this capacity and suggests that government networks could provide technical assistance in helping them to build it (Slaughter 2004: 4, 26 and 261). She also recognizes that network effects take time to develop. She believes discussion and argument are the key to creative, legitimate and high-quality solutions to complex problems and that if the positive nature of conflict could be harnessed in this way the result would be long-term, trusting relationships (ibid: 27 and 214). Again, her ideas have not escaped criticism. Perju (2005: 475 and 480) describes Slaughter's plans for high-quality dialogue as 'romanticized'. In reality, he says, power relations do not get 'filtered out'. He also objects to the dialogue- and discussion-heavy approach on the grounds that it can represent a subtle means for strong states to dominate weak ones, observing, 'the current global conversation is far less global than we should expect it to be'.

Like Slaughter's government networks, cosmopolitan democracy would entail a new understanding of sovereignty. Where traditionally states have been protected from external accountability by the national sovereignty principle, Held (2003: 168) and Archibugi (2004: 452) argue that allowing them to act with impunity simply because they sit within certain borders is incompatible with democracy; states should not be considered 'ontologically privileged' (Held 2004a: 391). The two theorists frame their proposed alternatives differently. Held (2004b: 119 and 131) sees a

'liberal international sovereignty' already emerging in the international arena. Under cosmopolitan democracy, this would entrench powers and constraints, rights and duties that might sometimes conflict with national laws. States would thus forfeit their right to sovereignty if they violated standards of international order, understood in terms of human rights and democracy. Archibugi (2004: 452) endorses a similar ethos, but argues that the canon of sovereignty should be done away with altogether and supplanted by that of 'global constitutionalism', which would see conflict resolved by jurisdictional bodies acting under a constitutional mandate.

Held (2003: 179–80) stresses that cosmopolitan democracy would not necessitate a diminution of state power and capacity *per se*, but it is difficult to envisage how it would be possible to have effective supranational levels of governance without state sovereignty being adversely affected. At present, states can assert that international norms to which they would rather not adhere lack democratic legitimization, a claim that would be invalid under cosmopolitan democracy (*ibid*). In its present form, the UN struggles to persuade states to uphold international law, both in spite and because of their ultimate sovereignty. To convince states to give up this sovereignty would be a task more difficult by an order of magnitude. Like Slaughter's, Held's views on sovereignty have been castigated for being unrealistically benign (Chandler 2003: 339 and 343; Desai 2005: 68–9; Slaughter and Hale 2005: 128; Wolf 2005: 41). Lupel (2005: 122) writes, 'States, as the major actors in the international arena, have a strong interest in maintaining their *de jure* sovereignty; sovereign status remains the foundation of state identity and agency in the international arena. This is never to be given up lightly.'

Held (2004b: 107) and Archibugi (2004: 465–6) recognize that cosmopolitan democracy is not immediately implementable as a *fait accompli*. It would likely be achieved through many 'little steps forward', writes Archibugi, rather than a one-off, momentous shift, with campaigns pursuing limited objectives eventually leading to the desired world order. Whether such little steps can be taken in the area of bioethics and genetics are a prime consideration. The combination of nonbinding agreements and state sovereignty does not augur well for the implementation of the norms and principles of the UNESCO declarations. At issue is whether efficacy can more realistically be achieved by changing the nature of sovereignty or by finding ways to govern in spite of it.

Application to the UNESCO Bioethics Programme

The previous sections have presented a broad theoretical framework for thinking about global governance. In Chapters 4 to 7 the analysis turns to the governance of bioethics and genetics and, more precisely, the actual and potential efficacy of the UNESCO Bioethics Programme, particularly in developing countries. The analysis will be anchored in the questions laid out here, which ask how far the Programme correlates with explanatory approaches to global governance and normative suggestions for its improvement, in terms of deliberation and implementation.

The UNESCO declarations, as a set of principles and norms on bioethics and genetics decided upon according to certain rules and procedures, can be considered an international regime under Krasner's classic definition. Hence we can ask, to what extent do they reflect or shape the powers, interests and values of states and other stakeholders? Like many international agreements, the declarations are housed in an IGO. Held has identified two crises of legitimacy currently faced by these organizations: unequal power between developed and developing countries and long chains of delegation from international to national levels. Chapter 4 will explore whether his assessment can be applied to the UNESCO Bioethics Programme in the context of the bioethics and genetics declarations and the deliberations on human cloning. Did negotiation sessions bear out Chasek and Rajamani's findings about disparities in delegation size, expertise and preparedness? How far were any power differentials mitigated by procedural norms on the right to speak? Has UNESCO fulfilled the democratic potential of IGOs by including civil society actors, as Samhat might expect?

Chapter 5 will examine the content and implementation of the UNESCO declarations. Did their non-binding nature render them relatively quick to negotiate and amenable to future adaptation? Are they characterized by the ambiguity and compromise common to many regimes? Are they weaker than binding instruments, as per conventional regime interpretations, or do they enable states to strive for higher standards, like the environmental agreements Victor *et al.* examined? On the management side, how effective is the Bioethics Programme in encouraging states to adopt and adhere to the declarations? Are its capacity-building activities hampered by constrained finances, in line with Young's observations? With regard to enforcement, how effective are the declarations' reporting mechanisms?

Chapters 6 and 7 turn to the national level. Has the Bioethics Programme been able to engage with the appropriate ministries and departments? Have government-appointed officials adequately represented their constituents at UNESCO meetings, thus garnering the legitimacy Slaughter believes them to carry? Or have geneticists, ethicists and

relevant interest groups in Kenya and South Africa had little opportunity to contribute to the negotiating positions taken by their countries at international level? Have the declarations made an impact on states' laws, regulations or policies, particularly Kenya's and South Africa's? In what ways have their principles been tailored to local contexts and in which areas is implementation lacking? How far does consultation take place between government, experts and the general public on domestic policy on bioethics and genetics?

Where the empirical data highlight that the governance of bioethics and genetics might be improved, the concluding chapter will discuss whether this could be achieved by changing elements of the regime that is the decision-making procedures and declarations of the UNESCO Bioethics Programme. Might measures similar to those recommended by Chasek and Rajamani for increasing the participation of developing countries in international negotiations be applied to UNESCO? Would any of the suggestions for increasing the involvement of experts and civil society put forward by Samhat, Ellis, Slaughter or Held and Archibugi be practicable? Not only an organization's membership but also the nature and number of its rules and procedures will affect the type and content of any norms it elaborates. To mitigate against interest-based bargaining, Held promotes an ethos of impartiality, while Slaughter, Samhat and Ellis emphasize the value of discussion and deliberation. Would such measures lead to improved deliberation and stronger agreements within UNESCO?

The question of how best to secure the implementation of the UNESCO declarations revolves around the issue of state sovereignty. If this is to remain sacrosanct, how might any states that have not yet adopted the declarations be persuaded or encouraged to do so? Could a Slaughter-like network foster interstate peer pressure, the declarations' norms becoming gradually socialized through ongoing discussions among officials? At another level of abstraction, what would happen if states were to relinquish a part or the whole of their sovereignty? This would see UNESCO as the hub of a vertical network in a disaggregated world order, or as an institution empowered to enforce human rights under cosmopolitan democracy. Is either scenario in any way likely, given the powers, interests and values of UNESCO's member states?

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