

## **Brave New World at the General Assembly: The United Nations Declaration on Human Cloning**

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### **INTRODUCTION**

In the first year of the new millennium, a little-reported controversy began to unfold at the United Nations General Assembly (UNGA). The resulting debate spanned four sessions of the UNGA and roiled capitals around the globe. It seriously divided the United States and the United Kingdom, at a time when these two States were the closest of allies on issues of global terror and the invasion of Iraq. It united a remarkable coalition of dozens of developing world States with the conservative administration of President George W. Bush, who went in person to the podium of the Assembly to argue his case and theirs. It revealed profound divisions among Islamic States, despite but also because of, the flawed efforts of the Organisation [sic] of the Islamic Conference (OIC) to present a united front. The proposal that sparked the debate caused such upheaval in the capital of one of its two primary sponsors that domestic

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pressure forced that sponsor into a series of humiliating policy shifts, culminating in outspoken opposition to the very approach the delegation had originally promoted. Such controversies are expected to become more frequent as a result of the increasing global and disruptive effects of emerging technologies. As humanity confronts the twenty-first century and its attendant scientific developments, the United Nations debate on human cloning offers a case study in the difficulties of formulating global policies to meet the challenges of a “brave new world.”<sup>1</sup>

In a letter dated August 7, 2001, representatives of France and Germany brought before the UNGA what they considered a straightforward proposal,<sup>2</sup> built on their existing collaboration on issues of biopolicy,<sup>3</sup> and expected to be met with enthusiasm by other United Nations Member States.<sup>4</sup> They proposed a Convention to prohibit human “reproductive cloning,” and asked that the Assembly’s legal committee, the Sixth Committee, draft its text. This seemingly modest proposal, which would prohibit a

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1. See ALDOUS HUXLEY, *BRAVE NEW WORLD* (1932) (providing a dystopian vision of a society comprised of human beings who had been genetically engineered during their embryonic stage, which foreshadowed many of the concerns expressed over human cloning).

2. Jacques Villemain, Address to the Ad Hoc Comm. on Int’l Convention for the Prohibition of Human Reprod. Cloning (Sept. 23, 2002) (on behalf of the French and German U.N. delegations) (calling their proposal to ban “reproductive” cloning “a simple, practical and urgent objective.”), cited in Rosario M. Isasi & George J. Annas, *Arbitrage, Bioethics, and Cloning: The ABCs of Gestating a United Nations Cloning Convention*, 35 CASE W. RES. J. INT’L L. 397, 406 (2003).

3. See Joachim Schemel, Taskforce on Env’tl. and Biopolitical Issues, German Fed. Foreign Office, presentation at the 6th World Congress of Bioethics (Nov. 1, 2002), cited in Isasi & Annas, *supra* note 2, at 405.

4. As one commentator noted:

Because of the narrow focus of the proposal, the cloning of babies, and its consistency with the general approach within the European Union and a declaration adopted by UNESCO, it was assumed that negotiations would proceed smoothly. Indeed, it was expected that the initiative might even proceed enthusiastically, for it allowed the General Assembly to enter a new area of lawmaking.

Mahnoush H. Arsanjani, *Negotiating the UN Declaration on Human Cloning*, 100 AM. J. INT’L L. 164, 166 (2006) (authored by Deputy Director, Codification Division, Office of Legal Affairs, United Nations) (citations omitted); see M. Asif Ismail, *Dim Chance for Global Cloning Ban*, CENTER FOR PUB. INTEGRITY, June 2, 2004, available at <http://www.publicintegrity.org/genetics/report.aspx?aid=276> (noting that this was the first time that the U.N. had become involved in an issue of bioethics).

practice that had drawn almost universal condemnation, led to years of global debate that touched on everything from the place of ethics in science to religion, issues of women's health, the status of the human embryo, and of course the role of international organizations in setting standards for global biopolity. Despite expectations to the contrary,<sup>5</sup> at no point was the debate reduced to the abortion politics that have often complicated efforts to address health-related issues in the multilateral organizations.

The key point of contention soon emerged: whether the proposed Convention should focus on merely "reproductive cloning" (the "focused" approach<sup>6</sup>—a prohibition on the use of cloning to produce born children), or address human cloning as such; that is, to include "research cloning" (the "comprehensive" approach<sup>7</sup>—a prohibition on any use in humans of the cloning technique). This difference of approach was finally resolved after four years of debate, by which time the proposed Convention had been transformed into a Declaration on Human Cloning. The process involved unprecedented non-governmental organization (NGO) lobbying of delegations in New York; stormy debate in the *Bundestag* that led Germany first to withdraw sponsorship of its own resolution and ultimately to speak strongly in favor of the opposing view; a prominent role for the fifty-seven-member OIC which sought to stymie resolution of the process by urging first a delay and then abstention; and growing engagement on the part of developing nations concerned about issues of women's health in light of developments in the life sciences.

This article explores the process that led to the Declaration and reflects on its significance.<sup>8</sup> Part I surveys the background

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5. E.g., Irwin Arieff, *UN Vote a Veto on Cloning*, DAILY TELEGRAPH (Sydney), Mar. 10, 2005, at 29 ("[A]nti-abortion groups [lobbied] to obtain a call for a blanket ban on all cloning.").

6. This term was first introduced in the Ad Hoc Committee meeting in 2002. See Press Release, Gen. Assembly, In Opening Debate on Human Cloning Ban, Some Speakers Urge Outright Prohibition, Others Favour Partial Ban to Allow for Medical Advances, U.N. Doc. L/2995 (Feb. 26, 2002) [hereinafter General Assembly Press Release, Feb. 26, 2002], available at <http://www.un.org/News/Press/docs/2002/l2995.doc.htm>.

7. This term was also first introduced in the Ad Hoc Committee meeting in 2002. See *id.*

8. Despite the contention it produced, as well as the surprising result, very little has been written about the Declaration on Human Cloning. As of July 2007, few legal notes and articles discuss the Declaration in any detail. One article, authored by Rosario Isasi and George Annas, provides a comprehensive

that suddenly led cloning to become a major issue of global concern and also reviews existing relevant international instruments. Part II explores the process of the passage of the Declaration, focusing in particular on the interplay between key Member States as well as the progression of the language of successive texts. Part III examines disagreements and misconceptions over the Declaration's interpretation and significance. Finally, the conclusion looks to the impact of the Declaration.

## I. BACKGROUND

### A. CONTEXT: THE CLONING OF DOLLY THE SHEEP

The Franco-German proposal came in the wake of the 1996 birth in Scotland of Dolly the sheep, an event that paralleled the splitting of the atom in achieving an instant grip on the global imagination. Dolly, the only success out of 277 attempts, marked the first birth of a cloned mammal.<sup>9</sup> The process of cloning, known as somatic cell nuclear transfer (SCNT), entails extracting the nucleus from an egg and replacing it with the genetic material of the animal or human to be cloned.<sup>10</sup> The resulting entity is then stimulated to begin dividing, and forms

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assessment of the debate process, but only up to the point of the United Nations General Assembly (UNGA) one-year deferral at the end of 2003. Isasi & Annas, *supra* note 2, at 403. Isasi and Annas argue that the push for a comprehensive ban is “a missed opportunity for the United States to show international moral leadership and help lead an international dialog on universal values in bioethics and human rights.” *Id.* at 414. Another article, written by the Deputy Director in the Codification Division of the Office of Legal Affairs in the United Nations and providing an insider’s insights into the debate, questions whether the final Declaration prohibits either research or reproductive cloning. Arsanjani, *supra* note 4, at 164–65. A law student note similarly asserts that the Declaration has no effect, given the ambiguity of the language. Channah Jarrell, Note, *No Worldwide Consensus: The United Nations Declaration on Human Cloning*, 35 GA. J. INT’L & COMP. L. 205 (2006). Another law student analyzes the Declaration through a comparison of the United Kingdom and Germany, arguing that a ban on “reproductive” cloning is the optimal solution. Elizabeth M. Luk, Note, *The United Kingdom and Germany: Differing Views on Therapeutic Cloning and How the Belgian Resolution Brings Them Together*, 10 MICH. ST. U. J. MED. & L. 523 (2006).

9. Gina Kolata, *Scientist Reports First Cloning Ever of Adult Mammal*, N.Y. TIMES, Feb. 23, 1997, at 11.

10. Human Genome Project Information, Cloning Fact Sheet, [http://www.ornl.gov/sci/techresources/Human\\_Genome/elsi/cloning.shtml](http://www.ornl.gov/sci/techresources/Human_Genome/elsi/cloning.shtml) (last visited July 23, 2007).

an embryo.<sup>11</sup> This embryo, indistinguishable as an organism from an embryo sexually conceived, is genetically virtually identical to the creature whose genetic material was used to create it.<sup>12</sup> As is the case with a human embryo resulting from *in vitro* fertilization, two options then present: to use it for purposes of research (so-called “therapeutic” or “research cloning”), or to implant it in a uterus with the goal of bringing the fetus to term (so-called “reproductive cloning”).<sup>13</sup> In the case of research use, the goal may be to isolate stem cells, use the embryo as a disease model, or some other purpose.<sup>14</sup>

Many researchers claim that cloning could be used to generate embryonic stem cells for regenerative therapies that

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11. *Id.*

12. The cloned being is not completely identical because the egg itself contains mitochondria which contribute to some of the clone’s genetic makeup. *Id.*

13. Differentiating these two processes into “reproductive cloning” and “therapeutic cloning” is somewhat of a misnomer, in that the actual process of cloning is identical in both. National Human Genome Research Institute, National Institutes of Health, Cloning/Embryonic Stem Cells, <http://www.genome.gov/10004765> (last visited July 27, 2007). The ultimate use of the embryo once the cloning process is complete, not the means of obtaining the embryo in the first place, is what differs. *See id.* It has also been accepted by proponents of research cloning that the term “therapeutic cloning” is misleading for another reason, in that there are no present “therapeutic” applications of such research, even if—as with much research—therapy is a goal.

The act of cloning embryos may be undertaken with healing motives. But it is not *itself* an act of healing or therapy. The beneficiaries of any such acts of cloning are, at the moment, hypothetical and in the future. And if medical treatments do eventually result, the embryonic clone from which the treatment was derived will not itself be the beneficiary of any therapy. On the contrary, this sort of cloning actually takes apart (or destroys) the embryonic being that results from the act of cloning.

PRESIDENT’S COUNCIL ON BIOETHICS, HUMAN CLONING AND HUMAN DIGNITY: AN ETHICAL INQUIRY 44 (2002), *cited in* Bonnie Steinbock, *Reproductive Cloning: Another Look*, 2006 U. CHI. LEGAL F. 87, 89–90 (2006). As was argued by some delegations in the Sixth Committee, all cloning (as all use of *in vitro* fertilization) is inherently “reproductive,” since this is the nature of mammalian reproduction. PRESIDENT’S COUNCIL ON BIOETHICS, *supra* at 44. For these reasons, while various terms were used in the course of the UNGA debate, in this article we generally use the terms “research cloning” and “reproductive cloning.” Where we use “reproductive cloning” and occasionally “therapeutic cloning,” we keep them in quotation marks to indicate that they are contested while avoiding the unwieldy if perfectly descriptive terms agreed by the President’s Council on Bioethics, “cloning-for-biomedical-research” and “cloning-to-produce-children.” *Id.* at xxiv.

14. Nuala Moran, *Bill Limiting Hybrid Embryo Research Riles UK Scientists*, BIOWORLD INT’L, June 20, 2007, at 3.

would overcome the body's rejection of foreign cells.<sup>15</sup> A patient's own genetic material would be inserted into an enucleated egg to create a cloned embryo.<sup>16</sup> That embryo could then be used as a source of embryonic stem cells for the patient.<sup>17</sup> However, embryonic stem cell research itself is not dependent upon cloning, which is simply a method of obtaining embryos with a particular genetic make-up as the source of stem cells.<sup>18</sup>

To date, no one has successfully cloned a born human being (and there has been very limited success in efforts to clone human embryos<sup>19</sup>). Compounding the ethical implications are

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15. See, e.g., International Society for Stem Cell Research, Frequently Asked Questions, What is the Difference Between Therapeutic Cloning and Reproductive Cloning?, <http://www.isscr.org/science/faq.htm#13a> (last visited July 27, 2007).

16. *Id.*

17. *Id.*

18. Despite this distinction, parties on both sides of the UNGA debate, as well as scholars writing about the debate, discussed both research cloning and embryonic stem cell research. For example, the representative of Costa Rica stated that research cloning was unnecessary because “[a]dult stem cells could cure the same diseases as embryonic ones.” See Press Release, Gen. Assembly, Legal Committee Discusses Differing Texts on Issue of Human Cloning: Some Delegates Favour Convention Imposing Total Ban; Others Support Exception for Therapeutic and Scientific Research, U.N. Doc. GA/L/3257 (Oct. 21, 2004) [hereinafter General Assembly Press Release, Oct. 21, 2004], available at <http://www.un.org/News/Press/docs/2004/gal3257.doc.htm>. Similarly, opponents of the comprehensive approach argued that research cloning should not be banned because “it was unclear whether adult stem cell research yielded the same benefits for medical science as embryonic cells.” See Press Release, Gen. Assembly, Legal Committee is Told of Efforts to Reach Consensus in Formulating Convention against Human Cloning, U.N. Doc. GA/L/3216 (Oct. 17, 2002) [hereinafter General Assembly Press Release, Oct. 17, 2002], available at <http://www.un.org/News/Press/docs/2002/gal3216.doc.htm>. One scholarly review of the UNGA debate, penned by a senior official of the United Nations, summarized it bizarrely as a “debate on *stem cell research* in the General Assembly . . . .” Arsanjani, *supra* note 4, at 179 (emphasis added). Unfortunately, the tendency to couch the debate in terms of stem cell research both disregarded practical justifications for regulating research cloning and marginalized nonsectarian bases for the comprehensive approach (such as concerns about potential exploitation of women for eggs). As a result, these issues were largely neglected during the course of the debate.

19. After the now-infamous Hwang Woo Suk's claims of being the first to produce embryonic stem cell lines were exposed and the man discredited, the only team to have successfully cloned a human embryo is that of Alison Murdoch, professor of reproductive medicine at Newcastle University. Nuala Moran, *UK Feeling Pressure After Fake Stem Cell Work in South Korea*, BIOWORLD INT'L, Jan. 18, 2006. To date, no one has successfully cloned a human embryo to the stage where stem cells can be extracted, but as of 2006, both Harvard University and the University of California at San Francisco had

health considerations, for animal clones that survive the cloning process and reach the newborn stage have often, like Dolly, developed serious health problems.<sup>20</sup> Nevertheless, in the summer of 2001, Italian professor Severino Antinori and United States researcher Panos Zavos announced plans to begin efforts to clone a human baby that fall.<sup>21</sup> It was as a response to moves toward cloning a born human being that were “already happening,” therefore, that France and Germany came before UNGA. Their proposal sought to ban human “reproductive cloning” and was “aimed at the protection of the inherent dignity of the human individual by avoiding his instrumentalisation.”<sup>22</sup>

## B. EXISTING INTERNATIONAL INSTRUMENTS

In 1997 in Oviedo, Spain, the Council of Europe opened for signature the Convention on Human Rights and Biomedicine, whose primary purpose was to “protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine.”<sup>23</sup> Of the forty-seven Member States, thirty-four have signed the Convention to date, with twenty-one ratifying.<sup>24</sup> States continue to sign and ratify it, most recently Norway in October, 2006, and Bosnia and Herzegovina in May, 2007.<sup>25</sup> Turkey, which went on to oppose the comprehensive approach in the U.N. debate, ratified the Convention in November, 2004.<sup>26</sup>

initiated programs to do so. *A Start on Research Cloning*, N.Y. TIMES, June 9, 2006, at A26.

20. Pallab Ghosh, *Researchers Give Clone Health Warning*, BBC NEWS, Aug. 7, 2003, <http://news.bbc.co.uk/2/hi/science/nature/3131255.stm>.

21. Graham Jones, *First Human Clone Bid Planned*, CNN.COM, Aug. 7, 2001, <http://archives.cnn.com/2001/WORLD/europe/08/06/clone.doctor/>.

22. Villemain, *supra* note 2.

23. Council of Europe, Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Apr. 4, 1997, ETS No. 164, ch. 1, art. 1 [hereinafter Convention], available at <http://conventions.coe.int/treaty/en/treaties/html/164.htm>.

24. Council of Europe, Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Chart of Signatures and Ratifications [hereinafter Convention Chart], available at <http://www.coe.int> (go to A-Z Index; then select "C"; then select "Conventions"; then select number 164; then select "Chart of signatures and ratifications").

25. *Id.*

26. As evidence of the confused nature of these issues, nine of the States that have ratified the Convention opposed the comprehensive approach in the

The Convention explicitly prohibits, under Article 18, the creation of human embryos for purposes of research.<sup>27</sup>

In early 1998, the Council added the Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings, which proscribes the creation of “a human being genetically identical to another human being, whether living or dead.”<sup>28</sup> Of the Members that had signed the Convention, all but three signed the Protocol, with sixteen subsequently ratifying it.<sup>29</sup> Ratification places a formal obligation upon the State concerned to bring domestic law into harmony with the international instrument.<sup>30</sup>

Also in 1997, the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the Declaration on the Human Genome and Human Rights.<sup>31</sup> The Declaration

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U.N. debate: Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Iceland, Lithuania, Norway and Spain. While Canada and other States that have criminalized all cloning also opposed the comprehensive approach for varied reasons (generally, a desire for consensus), this rationale does not readily apply to States that are already party to a convention—and one that did not attract consensus support. Convention Chart, *supra* note 24.

27. Convention, *supra* note 23, at ch. 5, art. 18 (“The creation of human embryos for research purposes is prohibited.”).

28. See Council of Europe, Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings, Jan. 1, 1998, ETS No. 168, art. 1, available at <http://conventions.coe.int/treaty/en/treaties/html/168.htm>. In the Explanatory Report of the Additional Protocol, the Council states that although the Convention prohibits the creation of embryos for research purposes and “reproductive cloning,” it takes no position on cloning for research purposes. See Council of Europe, Additional Protocol to the Convention on Human Rights and Biomedicine on the Prohibition of Cloning Human Beings, Explanatory Report, Jan. 12, 1998, ETS No. 168, para. 4, available at <http://conventions.coe.int/Treaty/EN/Reports/Html/> 168.htm. This further illustrates a level of confusion in policy circles.

29. See Convention Chart, *supra* note 24; Council of Europe, Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings, Chart of Signatures and Ratifications, available at <http://www.coe.int> (go to A-Z Index; then select “C”; then select “Conventions”; then select number 168; then select “Chart of signatures and ratifications”).

30. Convention, *supra* note 23.

31. Universal Declaration on the Human Genome and Human Rights, UNESCO Gen. Conf., 29th Sess. (Nov. 11, 1997), available at <http://unesdoc>.

prohibits “practices which are contrary to human dignity,” and gives “reproductive cloning of human beings” as an example of such a practice.<sup>32</sup> In 2005, UNESCO adopted the Declaration on Bioethics and Human Rights. Interestingly, this document makes no specific reference to the U.N. Declaration on Human Cloning, or to cloning in general.<sup>33</sup>

France and Germany had several specific reasons for introducing the proposed ban to the General Assembly as opposed to UNESCO. First, the United States had withdrawn from UNESCO membership in 1984.<sup>34</sup> Although the United States rejoined under the Bush administration, it did not do so until September, 2002—after the UNGA debate on human cloning had already begun.<sup>35</sup> Additionally, France and Germany considered that the process would move more quickly in the UNGA than in other organizations of the U.N. system.<sup>36</sup> Finally, they considered that the expertise of the U.N.’s legal committee would prove particularly valuable when drafting a convention having the complexity anticipated in the cloning ban.<sup>37</sup>

### C. NATIONAL LEGISLATION ON HUMAN CLONING

Well before Dolly the sheep made cloning a major question of public concern, Germany had taken the lead in prohibiting

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[unesco.org/images/0010/001096/109687eb.pdf](http://unesco.org/images/0010/001096/109687eb.pdf).

32. See *id.*; The Declaration on Human Cloning makes reference to the UNESCO Declaration. United Nations Declaration on Human Cloning, G.A. Res. 59/280, U.N. Doc. A/RES/59/280 (Mar. 23, 2005), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/493/06/PDF/N0449306.pdf?OpenElement>. UNESCO may be considered a more likely forum for an instrument on cloning than the UNGA. UNESCO’s focus incorporates issues of ethics, science and technology through its Division of the Ethics of Science and Technology. The Division includes two expert committees, the World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) and the International Bioethics Committee (IBC).

33. Universal Declaration on Bioethics and Human Rights, UNESCO Gen. Conf., 33d Sess. (Oct. 19, 2005), available at [http://portal.unesco.org/en/ev.php?URL\\_ID=31058&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php?URL_ID=31058&URL_DO=DO_TOPIC&URL_SECTION=201.html).

34. The United States’ withdrawal was followed by the United Kingdom’s in 1985, which rejoined in 1997, and Singapore’s in 1986, which rejoined in 2007. UNESCO Member States, <http://erc.unesco.org/portal/UNESCOMemberStates.asp?language=en> (last visited Nov. 14, 2007). In 1984, the Reagan administration cited mismanagement and opposite values as reasons for withdrawal. Isasi & Annas, *supra* note 2, at 405 n.28.

35. See Isasi & Annas, *supra* note 2, at 405 n.28.

36. *Id.*

37. *Id.*

cloning in domestic law.<sup>38</sup> Germany's statute prohibits not only "reproductive" and research cloning, but also the creation of hybrids or chimeras, the creation of human embryos for research, and experimentation on the human germline.<sup>39</sup> The contrast between this domestic position and Germany's role as co-sponsor of the focused approach led to speculation that the UNGA proposal represented an attempt on the part of Chancellor Schroeder to liberalize domestic policy.<sup>40</sup>

France, Germany's co-sponsor for the proposed Convention, acted to prohibit cloning in domestic law in July, 2004.<sup>41</sup> The law bans both "reproductive" and research cloning, but distinguishes them: "reproductive cloning" merits a sentence of up to thirty years imprisonment, plus a fine; in contrast, cloning for research merits a mere seven-year sentence, plus a fine.<sup>42</sup> Although its domestic policy reflects the comprehensive approach, during the UNGA debate France consistently maintained its support for a focused approach.<sup>43</sup> Like Germany, however, it eventually withdrew from its role as co-sponsor.<sup>44</sup>

Among other States engaged in the process, the United States and the United Kingdom played key roles—the United States as advocate for the comprehensive approach and the United Kingdom for the focused. The United Kingdom, while specifically prohibiting "reproductive cloning,"<sup>45</sup> is one of the few States with legislation that expressly allows the creation of human embryos for research purposes.<sup>46</sup> As the State where

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38. See Luk, *supra* note 8, at 541.

39. *Gesetz zum Schutz von Embryonen* [Embryo Protection Law], Dec. 13, 1990, BGBI. I at 2736, cited in Luk, *supra* note 8, at 541 n.146.

40. In addition, Chancellor Schroeder created the *Ethikrat*, the German equivalent of the President's Council for Bioethics. It was considered to be significantly out of step with the bipartisan biopolity consensus. Robert Koenig & Gretchen Vogel, *German Leaders Spar Over Bioethics*, SCIENCE, June 8, 2001, at 1811. If Schroeder's intent was to shape domestic policy, it backfired.

41. Brad Spurgeon, *France Bans Reproductive and Therapeutic Cloning*, BMJ, July 17, 2004, <http://www.bmjjournals.org/cgi/content/full/329/7458/130-d>.

42. *Id.*; see also General Assembly Press Release, Oct. 21, 2004, *supra* note 18.

43. See General Assembly Press Release, Oct. 21, 2004, *supra* note 18.

44. *Id.*

45. See Human Reproductive Cloning Act, 2001, c. 23 (Eng.); Luk, *supra* note 8, at 53.

46. See The Human Fertilisation and Embryology (Research Purposes) Regulations 2001, available at <http://www.opsi.gov.uk/si/si2001/20010188.htm>; Human Fertilisation and Embryology Act, 1990, c. 37 (Eng.), available at

both *in vitro* fertilization and mammalian cloning originated,<sup>47</sup> it has taken an approach to biopolitics that is both permissive yet highly regulated.<sup>48</sup> In the 2001–02 session of Parliament, a Select Committee on Stem Cell Research submitted a report in which it declared that the ethical arguments against destruction of the embryo were not sufficiently persuasive to preclude embryonic stem cell research.<sup>49</sup> The United States, on the other hand, although advocating the comprehensive approach in the UNGA debate, has yet to pass any federal legislation regulating either research or “reproductive” cloning. In both the 107th and the 108th sessions of Congress, the House of Representatives passed bipartisan bills prohibiting cloning under the comprehensive approach, though the bills subsequently failed to pass in the Senate.<sup>50</sup> The argument within Congress mirrors the division in UNGA as to whether a focused or comprehensive approach should be adopted.<sup>51</sup>

France and Germany are not alone in prohibiting both research and “reproductive” cloning in domestic law. In 2004, Canada also enacted a comprehensive cloning ban as part of its Assisted Human Reproduction Act, which makes it illegal to “create a human clone by using any technique, or transplant a human clone into a human being or into any non-human life form or artificial device.”<sup>52</sup> A person convicted of doing so faces a fine of up to \$500,000 or imprisonment for up to ten years.<sup>53</sup> Australia enacted a similar prohibition, though Parliament recently modified it to permit “therapeutic cloning.”<sup>54</sup> Most of

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www.opsi.gov.uk/acts/acts1990/Ukpga\_19900037\_en\_1.htm; Luk, *supra* note 8, at 536.

47. See Stephen S. Hall, *U.S. Panel About to Weigh In on Rules for Assisted Fertility*, N.Y. TIMES, Mar. 30, 2004, at F1 (stating that the first successful birth from *in vitro* fertilization (1978), as well as the first successful mammalian clone (1996), occurred in the United Kingdom); Gina Kolata, *Scientist Reports First Cloning Ever of Adult Mammal*, N.Y. TIMES, Feb. 23, 1997, at 11.

48. See, e.g., Human Fertilisation and Embryology Act, 1990, c. 37 (Eng.).

49. SELECT COMMITTEE ON STEM CELL RESEARCH, REPORT, 2001–02, H.L. 83-I, c. 4.21, available at <http://www.publications.parliament.uk/pa/l200102/lselect/lstem/83/8305.htm>.

50. Human Cloning Prohibition Act of 2001, H.R. 2505, 107th Cong. (2001); Human Cloning Prohibition Act of 2003, H.R. 534, 108th Cong. (2003).

51. Sheryl Gay Stolberg, *House Votes to Ban All Human Cloning*, N.Y. TIMES, Feb. 28, 2003, at A22.

52. Assisted Human Reproduction Act, 2004 S.C., ch. 2, cl. 5(1)(a) (Can.), available at <http://laws.justice.gc.ca/en>ShowFullDoc/cs/A-13.4//en>.

53. *Id.* at cl. 60.

54. Raymond Bonner, *World Briefing Australia: Parliament Lifts Ban on Human Cloning*, N.Y. TIMES, Dec. 7, 2006, at A10.

these States permit embryonic stem cell research using supernumerary *in vitro* embryos, though Germany, like the United States bases its supply on a cut-off date.<sup>55</sup> Other jurisdictions that have prohibited research cloning<sup>56</sup> include Hong Kong,<sup>57</sup> India,<sup>58</sup> Brazil,<sup>59</sup> Argentina,<sup>60</sup> Chile,<sup>61</sup> Peru,<sup>62</sup>

55. However, in Germany—unlike the United States—practicing embryonic stem cell research using stem cell lines derived after Jan. 1, 2002, is a criminal offense. There is pressure to change the present situation from the German Research Foundation (*Deutsche Forschungsgemeinschaft*). Cormac Sheridan, *German Foundation Wants Easing of Stem Cell Rules*, BIOWORLD INT'L, Nov. 22, 2006. Furthermore, in mid-July, the German National Ethics Council (*Ethikrat*), a government advisory group, voted fourteen to ten in favor of lifting this cut-off date. MacKenna Roberts, *German Bioethicists Support Relaxation of Stem Cell Laws*, BIONEWS, July 22, 2007. The policy group instead recommended that an authority be created which could approve research on new stem cell lines on a case-by-case basis. *Id.* Politicians intend to raise the issue in Parliament this fall. *Id.*

56. For a more complete discussion of global policy and cultural perspectives, see CROSS-CULTURAL ISSUES IN BIOETHICS (Heiner Roetz ed., 2006) and Nigel M. de S. Cameron, *Cloning: US and Global Perspectives*, 99 S. MED. J. 1429 (2006).

57. Human Reproductive Technology Ordinance (2000), Cap. 561, § 15. (H.K.), available at <http://www.hklii.org.hk/hk/legis/ord/561/>; Nigel M. de S. Cameron, *Cloning and Stem-Cell Research Policy: The Global View* (forthcoming) (on file with author).

58. See INDIAN COUNCIL OF MED. RESEARCH, ETHICAL GUIDELINES FOR BIOMEDICAL RESEARCH ON HUMAN PARTICIPANTS 92–94 (2006), [http://icmr.nic.in/ethical\\_guidelines.pdf](http://icmr.nic.in/ethical_guidelines.pdf), cited in Cameron, *supra* note 57.

59. Article 8 of Law 8.974 of 1995 on the Uses of Genetic Engineering Techniques and Release of Genetically Modified Organisms into the Environment expressly prohibits the genetic manipulation of human germinal cells and intervention in *in vitro* human genetic material. Exemptions may apply to therapeutic purposes and the treatment of genetic diseases . . . . After a thorough analysis of the law, the Brazilian Biosafety Technical Commission of the Ministry for Science and Technology issued two normative instructions in 1997 . . . specifically stating that genetic manipulation of human germinal cells includes the nuclear transference technique.

UNESCO, Div. of the Ethics of Sci. and Tech., *National Legislation Concerning Human Reproductive and Therapeutic Cloning*, Apr. 2004, at 5 [hereinafter *National Legislation*], available at <http://unesdoc.unesco.org/images/0013/001342/134277e.pdf>; see also Law on Biosafety P.L. 2401-C/03, 2005 (Brazil), cited in Cameron, *supra* note 57.

60. *National Legislation*, *supra* note 59 (“Two provinces prohibit human cloning: law No. 6581 of 1998 in Mendoza province and . . . law No. 9072 of 2003 in Cordoba, province.”).

61. *Id.* at 5–6 (“Bill No. 1993-11 concerning scientific research on human beings, the human genome and banning human cloning has been introduced. It prohibits the cloning of human beings as well as any intervention which results

South Africa,<sup>63</sup> Tunisia,<sup>64</sup> Iceland,<sup>65</sup> and Uruguay.<sup>66</sup>

## II. THE MAKING OF THE CLONING DECLARATION

In this climate, the German and French foreign ministers first met on June 21, 2001, to lay the groundwork for the proposal to prohibit “reproductive cloning.”<sup>67</sup> Germany and France considered that they were introducing an initiative that would bolster international relations and strengthen collaborative relationships, not only with one another, but also with the United States.<sup>68</sup> At the outset, the proposal appeared to be a welcome addition to the U.N. agenda. Not only did a consensus appear likely,<sup>69</sup> it also afforded UNGA the

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in the creation of a human being genetically identical to another, dead or alive.”).

62. *Id.* at 12 (referencing Law No. 26842, General Health Law, 1997 (Peru)).

63. National Health Act 61 of 2003 s. 57 (S. Afr.), available at <http://www.info.gov.za/gazette/acts/2003/a61-03.pdf>, cited in Cameron, *supra* note 57.

64. At the request of the Minister of Health, the National Medical Ethics Committee examined the issue of cloning in 1997. Following initial discussions, the Technical Section of the Committee concluded that any technology of human cloning should be banned. It deemed the practice as undermining the field of human reproduction and the dignity of the human species, and an open door to all forms of abuse.

*National Legislation*, *supra* note 59, at 15; see also Law on Biosafety P.L. 2401-C/03, 2005 (Brazil), cited in Cameron, *supra* note 57.

65. The Icelandic government passed legislation prohibiting “all research experiments and operations on embryos.” Article Fertilisation Act, Reg. No. 5/1996, art. 11 (Ice.), available at <http://eng.heilbrigdisraduneyti.is/laws-and-regulations/nr/685>, cited in Cameron, *supra* note 57. However, the Act provides exceptions permitting embryo research: (1) where the research is part of an *in vitro* fertilization treatment; (2) where the research is intended to diagnose hereditary diseases in the embryos themselves; (3) where the purpose of the research is to advance the treatment of infertility; or (4) where the purpose of the research is to improve the understanding of the causes of congenital diseases and miscarriages. *Id.* The Act prohibits cultivating, producing, and cloning embryos, as well as transplanting embryos into animals, and it bans cloning and the cultivation of embryos for more than fourteen days outside a woman’s body. *Id.*

66. *National Legislation*, *supra* note 59, at 16.

67. See Steven Erlanger, *France and Germany Jointly Seek a Ban on Cloning Humans*, N.Y. TIMES, Aug. 22, 2001, at A4.

68. *Id.*

69. Brian Endless, American Model United Nations International, Some Differences Between the United Nations and Model UN Conferences, pt. 7, <http://www.amun.org/index.php?page=UNandMUN-diffs#part7> (stating that more than 70% of all U.N. resolutions now pass by consensus, on average

opportunity to enter into a new area, which some saw as a welcome prospect.<sup>70</sup>

On August 7, 2001,<sup>71</sup> France and Germany requested the U.N. Secretary-General to create a working group to draft a convention that would ban “reproductive cloning,” in the interests of “human dignity and identity.”<sup>72</sup> They requested the Sixth Committee, the legal committee, as the appropriate forum for the debate, given the complexity of the issue.<sup>73</sup> On September 19, the General Assembly therefore placed on its agenda an international convention against the “reproductive cloning” of human beings<sup>74</sup> and duly referred the matter to its Sixth Committee.<sup>75</sup>

#### A. SPRING 2002: THE AD HOC COMMITTEE OF THE SIXTH COMMITTEE

In order to address the issue fully, the Sixth Committee formed an Ad Hoc Committee, open to all Member States, UNESCO, and the World Health Organization (WHO).<sup>76</sup> The Ad

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(although that number varies by body)) (last visited March 6, 2008).

70. Press Release, Gen. Assembly, At First-Ever Meeting, Committee on Convention to Ban Human Cloning Hears Expert Views on Science, Ethics Involved, U.N. Doc. L/2994 (Feb. 25, 2002) [hereinafter General Assembly Press Release, Feb. 25, 2002], *available at* <http://www.un.org/News/Press/docs/2002/L2994.doc.htm> (including statement of Committee Chairman Peter Tomka that the Committee was “embarking on a totally new challenge for the United Nations”); see Arsanjani, *supra* note 4, at 166.

71. See Annex 1 at p. 205 for a timeline cataloging pertinent events from the submission of the letter by France and Germany to the final vote.

72. Letter from the *Chargés d'affaires a.i.* of the Permanent Missions of France and Germany to the United Nations (Aug. 7, 2001), *available at* <http://www.un.org/documents/ga/docs/56/a56192.pdf>.

73. U.N. Rules, R. 98, *available at* <http://daccessdds.un.org/doc/UNDOC/GEN/NS0/005/44/IMG/NS000544.pdf?OpenElement>. The U.N. General Assembly has six main committees: the Disarmament and International Security Committee (First Committee); the Economic and Financial Committee (Second Committee); the Social, Humanitarian and Cultural Committee (Third Committee); the Special Political and Decolonization Committee (Fourth Committee); the Administrative and Budgetary Committee (Fifth Committee); and the Legal Committee (Sixth Committee). *Id.* When an item is raised in the General Assembly, it is referred to the committee (or committees) that deal(s) with that particular subject. *Id.* at R. 97.

74. U.N. Gen. Assembly, Sixth Comm., *International Convention Against the Reproductive Cloning of Human Beings*, ¶ I.1, U.N. Doc. A/56/599 (Nov. 26, 2001), *available at* <http://www.un.org/documents/ga/docs/56/a56599.pdf>.

75. *Id.* ¶ I.2.

76. *Id.* at III.1–2.

Hoc Committee's first meeting ran from February 25 to March 1, 2002.<sup>77</sup> On the opening day, the committee heard expert testimony in order to familiarize the Members with the ethics and practice of human cloning.<sup>78</sup>

The first among the experts to speak was Professor Cesar Nombela, head of a research group studying molecular microbiology and biotechnology and founder of the Centre for DNA Sequencing of Complutense University of Madrid in Spain.<sup>79</sup> Professor Nombela provided a basic description of the science of cloning, including twinning, embryo cloning, and adult nuclear transfer and put those processes into the context of other advances in the field of biotechnology.<sup>80</sup> The next speaker was Dr. Fernando Zegers-Hochschild, co-founder and member of the board of directors of the Chilean Institute of Reproductive Medicine and founder and of the Latin American Registry of Assisted Reproduction.<sup>81</sup> Dr. Zegers-Hochschild informed the Committee on reproductive technology and its potential uses as a treatment for infertility.<sup>82</sup> Third to speak was Professor Arthur Caplan, director of the Center for Bioethics at the University of Pennsylvania and an expert in "genetics, cloning and genetic testing, transplant, artificial organs and genetically engineered foods and medicines."<sup>83</sup> Dr. Caplan spoke on the "interface between the science of cloning" and the ethical and social implications involved.<sup>84</sup> Following him was Professor Leonardo De Castro, a member of UNESCO's International Bioethics Committee, President of the Philippine Health Social Science Association, Vice-Chairman of the Western Pacific Forum for Research Ethics Committees, and Member of the National Ethics Committee.<sup>85</sup> Dr. De Castro addressed varying perspectives

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77. General Assembly Press Release, Oct. 17, 2002, *supra* note 18.

78. General Assembly Press Release, Feb. 25, 2002, *supra* note 70.

79. U.N. Ad Hoc Comm. on an Int'l Convention Against the Reprod. Cloning of Human Beings, *Biographies of Experts Selected to Participate in the Expert-Level Segment* (Feb. 14, 2002) [hereinafter *Biographies*], available at [http://www.un.org/law/cloning/documents/1st\\_session/english/Bio.final.pdf](http://www.un.org/law/cloning/documents/1st_session/english/Bio.final.pdf).

80. U.N. Ad Hoc Comm. on an Int'l Convention Against the Reprod. Cloning of Human Beings, *Exchange of Information and Technical Assessments Provided by Experts on Genetics and Bioethics* (Feb. 25, 2002) [hereinafter *Exchange of Information*], available at [http://www.un.org/law/cloning/documents/1st\\_session/english/Presentation%20schedule.pdf](http://www.un.org/law/cloning/documents/1st_session/english/Presentation%20schedule.pdf).

81. *Biographies*, *supra* note 79.

82. *Exchange of Information*, *supra* note 80.

83. *Biographies*, *supra* note 79.

84. *Exchange of Information*, *supra* note 80.

85. *Biographies*, *supra* note 79.

from law, philosophy, and theology around the world that informed the thinking about the right to create human beings or human embryos through cloning, emphasizing issues of safety, morality, and regulations already in effect.<sup>86</sup> Last to speak was Dr. Carmel Shalev, director of the Unit of Health Rights and Ethics at the Gertner Institute for Epidemiology and Health Policy Research; Tel Hashomer, a professor of health and human rights at the faculties of law of Tel Aviv University and Hebrew University in Jerusalem; and a member of the Scientific and Ethical Review Group of the WHO Special Programme of Research, Development and Research Training in Human Reproduction.<sup>87</sup> Dr. Shalev took a step back to examine the broader social and ethical significance of cloning from a human rights perspective.<sup>88</sup> The focus of the expert panel was almost exclusively on “reproductive cloning,” on which it was not clear that there was unanimity on the panel.<sup>89</sup> Only one expert addressed the question of research cloning.<sup>90</sup> Not until the expert testimony was complete and the committee began to debate did the issue of research cloning become the key point of contention.

By the end of the week, the lines had been drawn. Although there was general agreement that human “reproductive cloning” constituted a “threat to human dignity” and therefore should be prohibited,<sup>91</sup> States diverged with respect to the issue of research cloning. States such as France, Germany, and the United Kingdom pushed for the “focused” approach, a ban on “reproductive cloning” alone, emphasizing the importance of consensus, while some stressed the potential benefits that research cloning could produce in the realm of stem cell research.<sup>92</sup> States such as Costa Rica and the United States, by contrast, sought a “comprehensive approach,” a ban on both “reproductive” and research cloning, arguing that to ban

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86. *Exchange of Information*, *supra* note 80.

87. *Biographies*, *supra* note 79.

88. *Exchange of Information*, *supra* note 80.

89. See General Assembly Press Release, Feb. 25, 2002, *supra* note 70.

90. *Id.* Dr. Carmel Shalev suggested that perhaps “what jarred moral sensibility was the intention to treat a human being as a means to the ends of others,” in which case the use of embryos “in research . . . was also a form of instrumentalization,” as well as their use in reproductive cloning. *Id.*

91. General Assembly Press Release, Feb. 26, 2002, *supra* note 6.

92. *Id.* (statement by China).

“reproductive cloning” alone is by inference to allow research cloning, a step that the comprehensive approach supporters were not prepared to take.<sup>93</sup> One justification for such a stance was that if research cloning were not banned, “reproductive cloning” would be impossible to control.<sup>94</sup> Once cloned embryos had been legally created for research purposes and the techniques for doing so perfected, it would be inevitable that some embryos would be implanted for reproductive purposes.<sup>95</sup> If a clonal pregnancy were discovered, what would the remedy be? Would a woman be compelled to have an abortion?<sup>96</sup>

Moreover, some delegations argued that research cloning encourages the creation of embryos for their inevitable destruction.<sup>97</sup> The representative for the United States cautioned that a ban prohibiting only “reproductive cloning” “would essentially authorize the creation and destruction of human embryos explicitly and solely for research and experimentation,” which was “repugnant to many people, including those who did not believe that the embryo was a person.”<sup>98</sup> Spain echoed that concern, stating that “[e]mbryos in all stages of development deserved a minimum of respect that ruled out their destruction for utilitarian purposes.”<sup>99</sup> Ghana stated its support of the comprehensive approach because of the importance of scientific advancement remaining “within the context of the safeguards and guarantees provided by the Universal Declaration of Human Rights.”<sup>100</sup>

Other States disagreed, arguing that policy on research cloning, which affected embryonic stem cell research, should be regulated domestically. China emphasized that a distinction be

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93. Press Release, Statement by Carolyn Willson, Legal Adviser, U.S. Mission to the United Nations, in the Ad Hoc Comm. on the Int'l Convention Against the Reproductive Cloning of Human Beings (Feb. 26, 2002).

94. *Id.*

95. *Id.*

96. *Id.*

97. General Assembly Press Release, Feb. 25, 2002, *supra* note 70; General Assembly Press Release, Feb. 26, 2002, *supra* note 6; see Press Release, U.S. Mission to the United Nations, *supra* note 93.

98. General Assembly Press Release, Feb. 26, 2002, *supra* note 6.

99. *Id.*

100. Press Release, Gen. Assembly, Ethical Issues Stressed as Legal Committee Continues Debate on Two Draft Texts on Human Cloning: United States Among Those Arguing for Total Ban, Others Seek Exceptions for Research; Most Say Consensus Urgently Needed, U.N. Doc. GA/L/3258 (Oct. 22, 2004) [hereinafter General Assembly Press Release, Oct. 22, 2004], available at <http://www.un.org/News/Press/docs/2004/gal3258.doc.htm>.

drawn between research and “reproductive cloning.”<sup>101</sup> While practices that “might harm human dignity” (such as “reproductive cloning”), should be prohibited, “those that could benefit mankind should not be banned.”<sup>102</sup> Regardless of an individual State’s choice, “domestic policies should be respected, as should the various philosophical, cultural and religious circumstances that had led to the legislation.”<sup>103</sup> Carmel Shalev, one of the experts invited to testify, had similarly noted that the right to “shar[e] in scientific progress was . . . [a] part of the right to participate in culture,” and therefore “there must be very compelling reasons to justify limiting the right to research.”<sup>104</sup>

An additional argument in favor of the comprehensive approach was that research cloning would require a large supply of human eggs. This issue proved to be of particular import to developing countries, concerned that scientists would outsource the high demand for eggs to poor women, who would be more ready participants.<sup>105</sup> During the expert testimony, Dr. Shalev had emphasized that stem cell research required eggs, and “egg donation [can] hardly be considered a minimal risk.”<sup>106</sup> When asked whether financial compensation for healthy volunteers would sufficiently protect women’s interests, Dr. Shalev “warned of the potential for exploitation of poor women.”<sup>107</sup> Indeed, she explained that there were institutions already in place which “transported women from one area to another” so that they could donate their eggs for money.<sup>108</sup> Developing countries are at risk of becoming a ready source of inexpensive eggs.<sup>109</sup> Given the

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101. General Assembly Press Release, Feb. 26, 2002, *supra* note 6.

102. *Id.*

103. *Id.*

104. General Assembly Press Release, Feb. 25, 2002, *supra* note 70.

105. See *infra* text accompanying notes 165–169.

106. General Assembly Press Release, Feb. 25, 2002, *supra* note 70.

107. *Id.*

108. *Id.* According to one widely cited study, approximately one hundred human oocytes would be required to customize a stem cell line to treat one individual patient. Peter Mombaerts, *Therapeutic Cloning in the Mouse*, 100 PROC. NAT'L ACAD. SCI. USA 11924, 11925 (2003), available at <http://www.pnas.org/cgi/reprint/1934141100v1>. Since it is claimed that many millions of people stand to benefit from stem cell therapies, scientists will require hundreds of millions of eggs in order to meet demand. Stephen S. Hall, *Bush's Political Science*, N.Y. TIMES, June 12, 2003, at A35.

109. Indeed, women in Romania have already become a source of eggs for women undergoing *in vitro* fertilization (IVF) treatments in the United Kingdom, a practice which has recently received attention from the European

risks involved in egg donation, which can lead to death,<sup>110</sup> many developing countries felt that the only way to protect their female citizens, who they feared would be enticed by fees paid to egg donors, would be to ban cloning entirely.<sup>111</sup> The United States pointed out that research cloning “risked making women’s bodies a commodity, with women being paid to undergo risky drug treatment so they would produce the many eggs needed for cloning.”<sup>112</sup>

By the end of the week, the Ad Hoc Committee had uncovered the points of contention that would need to be reconciled before a convention could be agreed upon. What had appeared at the outset to be a relatively simple issue to be settled by consensus was quickly turning into a major political storm, not least because the comprehensive approach called in to question domestic policy in such States as the United Kingdom<sup>113</sup> and South Korea.<sup>114</sup> Although support for the

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Parliament. EUR. PARL. DOC. (B6-0204) 2, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B6-2005-0204+0+DOC+PDF+V0//EN>.

110. Duke Fertility Services, Diagnoses: Ovarian Hyperstimulation Syndrome, <http://www.dukehealth.org/Services/Fertility/Resources/Diagnoses/OvarianHyperstimulationSyndrome> (last visited July 29, 2007); University of Utah Health Sciences Center—Department of Obstetrics & Gynecology—Ovarian Hyperstimulation Syndrome, <http://uhsc.utah.edu/obgyn/rei/ISohss.html> (last visited Oct. 6, 2007).

111. See *infra* text accompanying notes 165–169.

112. General Assembly Press Release, Feb. 26, 2002, *supra* note 6. Despite this warning, egg donation, generally used for IVF purposes, is currently an unregulated industry in the United States. In 2006, it was estimated to be an industry worth \$40 million per year. *Inside the Business of Egg Donation: The Right’ DNA Can Fetch \$35,000, But Women May Not Consider Emotional Risks* (CBS Evening News with Katie Couric television broadcast May 17, 2006, [http://www.cbsnews.com/stories/2006/05/17/eveningnews/main1626874.shtml?source=search\\_story](http://www.cbsnews.com/stories/2006/05/17/eveningnews/main1626874.shtml?source=search_story)).

113. See *supra* text accompanying notes 45–49.

114. South Korean law is fairly lenient, prohibiting in general the creation of embryos for research purposes, but allowing research on embryos that were created for “reproductive” purposes, as well as limited research on cloned embryos. Life Ethics Law, Jan. 29, 2004 (S. Korea); see also Rosario M. Isasi et al., *Legal and Ethical Approaches to Stem Cell and Cloning Research: A Comparative Analysis of Policies in Latin America, Asia, and Africa*, 32 J.L. MED. & ETHICS 626, 628, 633–34 (2004) (categorizing South Korea as having a “pragmatic” approach to regulation of embryo and stem cell research, extending “very limited or no regulation at the national level, . . . grant[ing] high autonomy to professionals guidelines/oversight”). This approach has allowed scientists such as the now-infamous scientist Hwang Woo Suk to move forward at a rapid pace in their attempts to extract stem cells from a cloned embryo. Choe Sang-Hun, *Lesson in South Korea: Stem Cells Aren’t Cars or Chips*, N.Y. TIMES, Jan. 11, 2006, at A16. Suk, heralded as the first scientist to extract stem

comprehensive approach started out small—initially, some diplomats were reported as commenting that the Franco-German approach was supported by “a consensus minus one” (a reference to opposition from the United States)<sup>115</sup>—support for its position steadily grew through the years of debate in light of the three concerns noted above.

#### B. FALL 2002: THE WORKING GROUP OF THE SIXTH COMMITTEE

The Working Group of the Sixth Committee reconvened from September 23 to 27, 2002, “to consider the elaboration of a mandate for the negotiation of an international convention against the reproductive cloning of human beings.”<sup>116</sup> Three proposals had been submitted offering potential language for the Convention—one from France and Germany (see Annex 2a), another from Mexico (see Annex 2b), and the third from the Holy See (see Annex 2c).<sup>117</sup> The Franco-German proposal advocated a “step-by-step approach” in which the Ad Hoc Committee would prepare, “as a matter of urgency,” an international convention against the “reproductive cloning” of human beings, by the end of 2003.<sup>118</sup> Once this had been accomplished, the draft stated that it would “favourably consider any proposal to launch negotiations on a further legal instrument on other forms of cloning of human beings . . .”<sup>119</sup> The language arranging for a “step-by-step approach” was not the original text—it was added in an amendment which was submitted before the Ad Hoc Committee report was released.<sup>120</sup> The language seems to be an offering to States that wanted a comprehensive approach. Such an attempt to meet in the middle to find a consensus in this debate was distinct to the early fall of 2002, after which the two sides began to diverge. Part of the impetus behind the desire to

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cells from a cloned human embryo, was discredited in 2005 for falsifying his research. *Id.*

115. *U.N. to Reach Final Decision on Human Cloning*, NEWSMAX WIRES, Nov. 19, 2004, <http://www.newsmax.com/archives/articles/2004/11/18/221110.shtml>.

116. Gen. Assembly, Sixth Comm., Working Group, *International Convention against the Reproductive Cloning of Human Beings*, U.N. Doc. A/C.6/57/L.4 (Sept. 30, 2002).

117. *Id.*

118. *Id.* (revised proposal submitted by France and Germany).

119. *Id.*

120. See *infra* note 320 and accompanying text (noting that bolded language, including “step-by-step approach,” had been added later).

reach consensus stemmed from an announcement by doctors Panos and Antinori that they expected the first cloned baby would be born shortly.<sup>121</sup> In response to concern that a ban on “reproductive cloning” would imply acceptance of research cloning, the draft further stated that “the prohibition of the reproductive cloning of human beings does not imply the authorization of other forms of cloning of human beings.”<sup>122</sup>

The Mexican proposal, shorter than the others, left ambiguous whether it intended to ban all cloning, or merely “reproductive.” The language stated, in part, that States “shall not permit any research, experiment, development or application in their territories or areas under their jurisdiction or control of any technique aimed at the cloning of human beings.”<sup>123</sup> Although this would appear to be a comprehensive ban, some States interpret “cloning of human beings” as applying to “reproductive cloning” alone.

Although the Holy See’s proposal used language similar to Mexico’s in that it called upon States to “prohibit any research . . . of any technique aimed at the cloning of human beings,” earlier in the text, the Holy See specified what it meant by that term.<sup>124</sup> It referred to both research and “reproductive cloning,” recognizing “the fact that all forms of human cloning are in essence reproductive.”<sup>125</sup>

Several States submitted revisions to the Franco-German proposal. Among these were Brazil (see Annex 2d), the United Kingdom (see Annex 2e), Mexico (see Annex 2f), and China (see Annex 2g).<sup>126</sup> Brazil’s changes emphasized considering the use of adult stem cells as alternative cures, and otherwise encouraging non-human cloning techniques available in the realm of science.<sup>127</sup> The United Kingdom’s, alternatively, sought to restrict the Franco-German draft’s commitment to revisiting

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121. General Assembly Press Release, Oct. 17, 2002, *supra* note 18.

122. U.N. Doc. A/C.6/57/L.4, *supra* note 116 (revised proposal submitted by France and Germany).

123. *Id.* (proposal submitted by Mexico).

124. *Id.* (proposal submitted by the Holy See containing a synthesis of the Franco-German proposal).

125. *Id.* (Holy See proposal).

126. *Id.* (revisions to the revised proposal submitted by France and Germany proposed by Brazil, the United Kingdom, Mexico and China). Spain submitted a memorandum (see Annex 2h at p. 217) which sets forth the points formalized in its draft resolution submitted in November. See *infra* text accompanying note 127.

127. U.N. Doc. A/C.6/57/L.4, *supra* note 116 (proposal submitted by Brazil concerning the revised proposal submitted by France and Germany).

the issue of research cloning, proposing that the “step-by-step approach” provide for the mere “possibility of the elaboration of a separate international instrument” addressing research cloning.<sup>128</sup> Mexico similarly submitted a revision that restricted the document’s emphasis on revisiting research cloning, inserting the phrase “that are contrary to human dignity” as a qualifier to the “other forms of cloning of human beings” that could be revisited.<sup>129</sup> Finally, China changed the language of one clause. Rather than stating that the ban on “reproductive cloning” “does not imply the *authorization* of other forms of cloning of human beings,”<sup>130</sup> China would have it read that the ban “does not imply the *endorsement* of other forms of the cloning of human beings.”<sup>131</sup> At this point, the protagonists on both sides were the closest to coming to an accommodation that could result in a consensus Convention.

In the following month, October of 2002, the process went into reverse. While talk of consensus continued, two fundamentally divergent drafts that would become the center of debate for the next two years were submitted in the report from the Sixth Committee. The first of these was the latest draft of the Franco-German proposal, which at the time had twenty-two sponsors.<sup>132</sup> In a dramatic shift of position, the draft abandoned the search for consensus.<sup>133</sup> First, the draft deleted the commitment to address cloning “through a step-by-step approach,” revisiting the issue of research cloning at a later time.<sup>134</sup> Furthermore, where the document had previously expressed a commitment to “favourably” consider proposals to “launch negotiations on a further legal instrument” that would

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128. *Id.* (proposal submitted by the United Kingdom regarding the revised Franco-German proposal) (emphasis added).

129. *Id.* (proposal submitted by Mexico regarding the revised Franco-German proposal).

130. *Id.* (revised proposal submitted by France and Germany) (emphasis added).

131. *Id.* (proposal submitted by China regarding the revised Franco-German proposal) (emphasis added).

132. Gen. Assembly, Sixth Comm., Working Group, *International Convention against the Reproductive Cloning of Human Beings*, U.N. Doc. A/57/569 (Nov. 11, 2002).

133. *Id.*

134. *Id.* The change advocated by China to replace “authorization” with “endorsement” was also present. *Id.*

address “other forms of cloning,”<sup>135</sup> the revision instead omitted the word “favourably,” and emphasized that any “separate international instruments” addressing other forms of cloning be “appropriate.”<sup>136</sup>

The chief competition to the Franco-German initiative was a proposal sponsored by Spain which included the United States among a total of thirty-seven sponsors.<sup>137</sup> The resolution requested the Ad Hoc Committee to “prepare, as a matter of urgency, the draft text of an international Convention against human cloning, bearing in mind that it will not prohibit the use of nuclear transfer or other cloning techniques to produce DNA molecules, organs, plants, tissues, cells other than human embryos or animals other than humans.”<sup>138</sup> The text’s distinction between “human cloning” and the other uses of nuclear transfer implies that this text would ban both research and reproductive cloning. This interpretation is confirmed in clause four, in which States are called upon not to “permit any research, experiment, development or application in their territories or areas under their jurisdiction or control of *any technique aimed at human cloning*,” prior to the adoption of the Convention.<sup>139</sup>

Some delegations responded to this draft resolution in strong terms: “[a]n all-out approach that led to nothing benefited the wrong side, that of irresponsible researchers, of fraudulent doctors and obscure religious sects.”<sup>140</sup> Those attempting to mandate policy on both “reproductive” and research cloning would actually ensure that there was no policy on either one. Indeed, the German legal advisor went so far as to call the comprehensive approach “morally questionable” because it was unlikely that a total ban would gain a majority in the United Nations.<sup>141</sup> The OIC<sup>142</sup> stated that it was primarily concerned

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135. General Assembly, U.N. Doc. A/C.6/57/L.4, *supra* note 116 (revised proposal submitted by France and Germany) (emphasis added).

136. General Assembly, U.N. Doc. A/57/569, *supra* note 132.

137. *Id.*

138. *Id.*

139. *Id.* (emphasis added).

140. General Assembly Press Release, Oct. 17, 2002, *supra* note 18.

141. Austin Ruse, *German Parliament Calls for Comprehensive Cloning Ban at UN*, JUNTO SOC’Y, Feb. 21, 2003, [http://www.juntosociety.com/guest/ruse/ar\\_gbc022003.html](http://www.juntosociety.com/guest/ruse/ar_gbc022003.html).

142. The OIC is an “inter-governmental organisation” which was established as a unified coalition of Islamic countries acting to protect Muslim interests. Since its establishment in 1969, it has grown to 57 Members, with the most recent joining in 2001. Organisation of the Islamic Conference, <http://www.oic->

with expediting the process to prevent “reproductive cloning,” wishing to revisit negotiations regarding research cloning only after the ban on “reproductive cloning” had gone through.<sup>143</sup> The United States responded that the comprehensive approach addressed concerns regarding both the ethics of “creating and destroying human embryos for experimentation,” and the practicality of enforcing “[a] ban on reproductive cloning . . . in an environment that permitted therapeutic cloning in laboratories.”<sup>144</sup> Costa Rica, another advocate for the comprehensive approach, further reasoned that the “medical value of the research had not been proven at present.”<sup>145</sup> Representatives of the developing countries of Cameroon and Senegal voiced concern about “reproductive cloning,” but acknowledged that research cloning could be used for beneficial scientific purposes and therefore, although it should be regulated, perhaps should not be unilaterally banned.<sup>146</sup>

Unable to come to consensus on the drafts proposed, on November 7, 2002, the Sixth Committee determined that it would reconvene in September of 2003 to resume debate.<sup>147</sup> This outcome met with a positive response from those advocating a comprehensive ban, perhaps because a delay left open the possibility for movement toward their position.<sup>148</sup> Advocates of the focused approach, however, raised concerns that the delay would merely increase the risk that a cloned human being could be born before UNGA could come to a consensus.<sup>149</sup> Nevertheless, despite their concern for urgent action in respect of “reproductive cloning,” those delegations advocating a focused approach were equally unwilling to change their position, as evidenced by their continued refusal to compromise.

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oci.org (go to “About OIC”) (last visited Nov. 14, 2007).

143. General Assembly Press Release, Oct. 17, 2002, *supra* note 18.

144. *Id.*

145. *Id.*

146. *Id.*

147. Press Release, Gen. Assembly, Work to Continue Towards Convention to Ban Human Cloning; Concern Expressed at Lack of Temporary Moratorium, U.N. Doc. GA/L/3227 (Nov. 7, 2002), available at <http://www.un.org/News/Press/docs/2002/gal3227.doc.htm>.

148. *Id.*

149. *Id.*

### C. FALL 2003: THE DEBATE CONTINUES IN THE WORKING GROUP

In a remarkable turn of events, between September 29 and October 3, 2003 the Franco-German position had collapsed. In response to political pressure from its citizens and debate in the *Bundestag*, Germany had withdrawn as a sponsor of the focused approach.<sup>150</sup> France similarly withdrew. Belgium, whose domestic policy on cloning was in line with the focused approach, stepped in as the chief sponsor, with support from twenty-two other States (see Annex 4a).<sup>151</sup> Belgium deleted all reference to UNGA revisiting the issue of research cloning in future initiatives. All that remained of the effort at consensus was a vague call on Member States to impose a moratorium on “other forms of human cloning” pending the adoption of the Convention.<sup>152</sup> Interestingly enough, the conditional clause that the moratorium need only be applied to other forms of cloning “that are contrary to human dignity” was deleted.<sup>153</sup>

Costa Rica, revising the earlier Spanish proposal,<sup>154</sup> sponsored the resolution advocating the comprehensive approach (see Annex 4b).<sup>155</sup> In a striking demonstration of the shift of direction of the debate, the Costa Rican proposal harvested fifty-six co-sponsors, nearly three times the number of those backing Belgium.<sup>156</sup> Although harboring the same intent as the Spanish approach presented in 2002, the Costa Rican draft was more emphatic that both research and “reproductive” cloning would be prohibited by the Convention. In particular, the draft emphasizes that “human cloning, for any purpose whatsoever, is unethical, morally repugnant and contrary to due respect for the

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150. See *infra* notes 282–288.

151. Gen. Assembly, Sixth Comm., Working Group, *International Convention against the Reproductive Cloning of Human Beings*, U.N. Doc. A/58/520 (Nov. 11, 2003), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N03/609/65/PDF/N0360965.pdf?OpenElement>.

152. *Id.*

153. *Id.*

154. Why Spain withdrew as sponsor in the fall of 2003 is unclear, though the move possibly was in anticipation of the March 2004 elections, in which José Luis Rodríguez Zapatero, leader of the Spanish Socialist Workers Party (PSOE), defeated the Popular Party (PP) leader, Mariano Rajoy. Matthew Campbell, *Accidental Premier Sets Out to Heal Spain*, SUNDAY TIMES (U.K.), Mar. 28, 2004, at 23. Since Zapatero’s election, Spain has enacted a controversial law permitting cloning for research purposes, a position that the Popular Party strongly opposes. Álvaro De Cózar, *Controversial Cloning Law Passes, Despite Moral Concerns of Right*, EL PAÍS, July 6, 2007, at 3.

155. Sixth Comm., Working Group, *Convention against Reproductive Cloning*, Nov. 11, 2003, *supra* note 151.

156. *Id.*

human person, and . . . it cannot be justified or accepted.”<sup>157</sup> The draft resolution underscores this statement by recalling the Universal Declaration of Human Rights, which affirms the “inherent dignity and equal and inalienable rights of all members of the human family.”<sup>158</sup> The draft also includes a clause emphasizing alarm that human cloning “may cause the exploitation of women,” a concern that was greatly in focus during the fall 2003 debates.<sup>159</sup> Lingering hope of consensus now seemed even less likely. On each side, conciliatory language intended to facilitate consensus had been deleted. In its place language was added which the other side would deem unacceptable.

Those opposed to the comprehensive prohibition fell into two groups. Some, such as the United Kingdom, South Korea, and Belgium, opposed an approach which would run counter to domestic policy and imply they were out of step with the international community.<sup>160</sup> Others, such as Germany, which had long since banned research cloning domestically, opposed such a prohibition at UNGA on the ground that it was unlikely to obtain consensus, and would therefore fail to affect either research or “reproductive cloning,” thereby accomplishing nothing.<sup>161</sup> Both France and Germany emphasized that “consensus was the right approach on the question of cloning” for the General Assembly, and “urged the exploration of solutions that could be adopted by consensus.”<sup>162</sup> The United States responded to the latter approach by stating that the goal should

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157. *Id.*

158. *Id.*

159. *Id.*

160. For domestic policy in the United Kingdom, see *supra* text accompanying notes 45–49. For domestic policy in South Korea, see *supra* note 114. Domestic policy in Belgium is also quite lenient. In late 2002, the Senate passed a law which allows (by default) research cloning, and even permits the creation of embryos for research purposes when the researcher’s objective cannot be achieved by using supernumerary embryos and “the conditions of the law are fulfilled.” G. Pennings, *New Belgian Law on Research on Human Embryos: Trust in Progress Through Medical Science*, 20 J. ASSISTED REPROD. & GENETICS 343, 343–44 (2003).

161. General Assembly Press Release, Nov. 7, 2002, *supra* note 147.

162. Press Release, Gen. Assembly, Legal Committee Ends Debate on Merits of Differing Draft Texts on Human Cloning Efforts to Find Consensus Urged, U.N. Doc. GA/L3236 (Oct. 21, 2003) [hereinafter General Assembly Press Release, Oct. 21, 2003], available at <http://www.un.org/News/Press/docs/2003/gal3236.doc.htm>.

not be to reach a consensus as an end in itself, but rather to ban all cloning of human beings.<sup>163</sup> Senegal echoed this sentiment, warning States not to “hold out for consensus on a comprehensive convention only to stand by and observe ‘a slippage into disaster.’”<sup>164</sup>

Although the debates in the fall of 2003 revisited concerns that had already been raised in the first two years, one distinction that marked the 2003 debates was widespread discussion of the potential for the exploitation of women through egg harvesting if the focused approach were implemented. Developing countries were particularly vocal.<sup>165</sup> The representative for Nigeria stated that “[a]s a result of prevalent poverty and ignorance, women from [developing countries, particularly in Africa] were likely to be used as guinea pigs in experiments.”<sup>166</sup> An additional concern regarding the exploitation of women under the focused approach was vocalized by the representative of Sierra Leone: namely, since the focused approach did not adequately prevent “reproductive cloning,” poor women were again potential targets for scientists wishing to rent wombs in order to bring cloned babies to term.<sup>167</sup> He stated that “[t]he women who would be the objects for those people [who sought to engage in “reproductive cloning”] would, as usual, be the poor ones. There [is] no point in a convention that le[aves] the door open for disaster.”<sup>168</sup> The representative of Fiji summarized the concerns of developing countries that led so many of them to support the comprehensive approach, saying, “[t]he rights of children, women and the disabled, [a]re at stake. . . . [O]nly the rich, developed, industrialized countries would benefit from cloning; developing countries would bear the burden. Science must not be a dictator,” but “a servant to humankind.”<sup>169</sup>

At the close of the Working Group debate on November 6, 2003, the Costa Rican proposal advocating the comprehensive

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163. *Id.* (“The convention, not consensus, [is] the goal.”).

164. *Id.*

165. The definition for “developing” in this case is the countries who are Members of the G-77. *See infra* note 304.

166. General Assembly Press Release, Oct. 21, 2003, *supra* note 162 (quoting the representative for Nigeria in the 2003 Working Group debates).

167. *Id.*

168. *Id.* (quoting the representative for Sierra Leone in the 2003 Working Group debates).

169. *Id.* (quoting the representative for Fiji in the 2003 Working Group debates).

approach had gained increased support, particularly from the developing countries concerned over the likely exploitation by researchers of their female citizens for eggs.<sup>170</sup> By this stage, sixty out of the 192 U.N. Member States co-sponsored the Costa Rican proposal, with a further forty having expressed their intention of supporting it—enough to ensure a majority.<sup>171</sup> Nevertheless, States such as the United Kingdom, Belgium and South Korea remained equally committed to the focused approach.<sup>172</sup> The result was a stalemate.<sup>173</sup> The representative of Iran, on behalf of the OIC, made a motion under Assembly Rule 116 to defer the discussion for two years, an action that he indicated had been agreed upon by the OIC at the ambassadorial level on October 28, 2003.<sup>174</sup> He expressed his concern that no consensus had been reached and encouraged Members to use the additional time to study the issue and come to a basis for consensus.<sup>175</sup> He stated that the OIC “did not intend to take sides with either resolution.”<sup>176</sup> Nevertheless, supporters of the comprehensive approach argued that the motion was motivated by concern that the comprehensive approach was gaining ground in the debate.<sup>177</sup> Furthermore, it was generally believed that the reason an unusual two-year delay was sought stemmed from the upcoming election in the United States, with the prospect of a change of administration to a Democratic president who was known to be supportive of “therapeutic cloning” and would therefore shift the negotiating position of the United States at UNGA.<sup>178</sup> Indeed, the Democratic candidate, Senator John F.

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170. *Id.*; see *supra* text accompanying notes 165–169.

171. General Assembly Press Release, Oct. 22, 2004, *supra* note 100; Reuters, *UN Defers Cloning Ban / Debate Between Therapeutic, Human Research Continues*, NEWSDAY, Nov. 7, 2003, at A48.

172. General Assembly Press Release, Oct. 22, 2004, *supra* note 100.

173. Press Release, Gen. Assembly, Legal Committee, Ending Session, Recommends that General Assembly Defer for Two Years Consideration of Human Cloning: Action on Pending Drafts Not Taken; Texts Approved on Effects of Sanctions on Third States, Backlog of Two Publications, International Law Commission Report, U.N. Doc. GA/L/3246 (Nov. 6, 2003) [hereinafter General Assembly Press Release, Nov. 6, 2003], available at <http://www.un.org/News/Press/docs/2003/gal3246.doc.htm>.

174. *Id.*

175. *Id.*

176. *Id.*

177. *UN Postpones Vote on Human Cloning*, CFAM, Nov. 7, 2003, <http://newsmax.com/archives/articles/2003/11/6/224519.shtml>.

178. Arsanjani, *supra* note 4, at 173.

Kerry, had co-sponsored a bill in the United States Senate taking just such a “focused” approach in domestic policy.<sup>179</sup>

The motion to delay for two years was passed by the narrowest possible margin: eighty in favor,<sup>180</sup> seventy-nine against,<sup>181</sup> with fifteen abstentions (see Annex 5).<sup>182</sup> Of the eighty States voting in favor of the motion, twenty-nine opposed the comprehensive approach in the final vote in 2005, nineteen voted for it, and twenty-two abstained.<sup>183</sup> Of the seventy-nine who opposed the motion, thereby indicating their desire to proceed with a vote on the language of the Convention, only two

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179. Dan Vergano, *Embryonic Imbroglio*, USA TODAY, Oct. 27, 2004, at 6D.

180. Algeria, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Belarus, Belgium, Botswana, Brazil, Brunei Dar-Salam, Bulgaria, Cambodia, China, Comoros, Croatia, Cuba, Cyprus, Czech Republic, Democratic Peoples Republic of Korea, Denmark, Djibouti, Egypt, Estonia, Finland, France, Gabon, Germany, Greece, Hungary, Iceland, India, Indonesia, Islamic Republic of Iran, Japan, Jordan, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Monaco, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Niger, Oman, Pakistan, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovenia, South Africa, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tonga, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Vietnam, Yemen and Zimbabwe. General Assembly, U.N. Doc. A/58/520, *supra* note 151.

181. Albania, Andorra, Angola, Antigua and Barbuda, Australia, Austria, Barbados, Belize, Bolivia, Bosnia and Herzegovina, Burundi, Central African Republic, Chile, Costa Rica, Democratic Republic of Congo, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gambia, Georgia, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, Ireland, Israel, Italy, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Madagascar, Malawi, Malta, Marshall Islands, Micronesia (the Federated States of), Nauru, Nepal, Nicaragua, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Somalia, Spain, Suriname, Tajikistan, Timor-Leste, Trinidad and Tobago, Tuvalu, Uganda, United Republic of Tanzania, United States of America, Uzbekistan, Vanuatu, Venezuela and Zambia. *Id.*

182. Bangladesh, Bhutan, Burkina Faso, Cameroon, Canada, Cape Verde, Colombia, Jamaica, Peru, Republic of Moldova, Romania, Serbia and Montenegro, The Former Yugoslav Republic of Macedonia, Ukraine, Uruguay. *Id.*; General Assembly Press Release, Nov. 6, 2003, *supra* note 173.

183. General Assembly Press Release, Nov. 6, 2003, *supra* note 173; Press Release, Gen. Assembly, General Assembly Adopts United Nations Declaration on Human Cloning by Vote of 84-34-37, U.N. Doc. GA/10333 (Mar. 8, 2005) [hereinafter General Assembly Press Release, Mar. 8, 2005], available at <http://www.un.org/News/Press/docs/2005/ga10333.doc.htm> (noting that ten of the States, namely Armenia, Botswana, Greece, Mali, Mauritania, Niger, Russian Federation, Senegal, Swaziland, and Vietnam, did not vote on the final language of the Declaration).

opposed the comprehensive approach in the final vote, while fifty-eight voted for it, and five abstained.<sup>184</sup> Finally, of the fifteen who abstained, two opposed the comprehensive approach in the final vote, two voted for it, and nine abstained.<sup>185</sup> These numbers indicate that chiefly the States in favor of the focused approach advocated the delay, while the States in favor of the comprehensive approach preferred to submit the Convention language to a vote. This further supports the theory that, although the motion to delay garnered support from both sides, the main impetus to put off a vote arose from concern that the comprehensive approach would prove successful.

The leading advocates of the focused approach, who had emphasized the importance of speedy action to prevent a wayward scientist from cloning a human being before UNGA could formalize a position against it, were the most prominent advocates for delay. Belgium, the focused approach lead sponsor, even reasoned that the motion to defer only affirmed the importance of the question on cloning, and that the delay would provide “the additional time needed for consideration of the issue.”<sup>186</sup> In contrast, Uganda, both a co-sponsor of the comprehensive approach and a Member of the OIC (which had taken the lead in proposing the deferral), voted against the delay on the ground that “[t]he issue had been urgent when France and Germany had first brought the item to the Assembly agenda. It had not become any less important. It could not wait two years.”<sup>187</sup> Spain also opposed the motion on the ground that delay did not send the right message to the international community regarding the importance of regulating cloning, besides which, a motion to defer “was contrary to the Assembly’s rules of procedure.”<sup>188</sup>

However, the Sixth Committee’s vote was not the final word.

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184. General Assembly Press Release, Nov. 6, 2003, *supra* note 173; General Assembly Press Release, Mar. 8, 2005, *supra* note 183 (noting that fourteen of the States, namely Antigua and Barbuda, Central African Republic, Dominica, Fiji, Gambia, Guinea, Kyrgyzstan, Malawi, Nauru, Nigeria, Papua New Guinea, Tuvalu, Vanuatu, and Venezuela, did not vote on the final language of the Declaration).

185. General Assembly Press Release, Nov. 6, 2003, *supra* note 173; General Assembly Press Release, Mar. 8, 2005, *supra* note 183 (noting that two States, namely Bhutan and Peru, did not vote on the final language of the Declaration).

186. General Assembly Press Release, Nov. 6, 2003, *supra* note 173.

187. *Id.*

188. *Id.*

Its recommendation to the General Assembly needed to be sustained by the Assembly itself. Since the Committee is open to all Members, the vote of the Committee is generally mirrored in the vote of the General Assembly. The plenary General Assembly, meeting on December 9, 2003, was presented with both the Sixth Committee decision and a proposal from Costa Rica, but instead decided to reconvene the Ad Hoc Committee a year later.<sup>189</sup> The Costa Rican proposal sought not to reverse the two-year delay, but to instruct the Sixth Committee to develop a Convention on “human cloning” instead of “human reproductive cloning” (see Annex 6).<sup>190</sup> The proposal was, however, able to garner sufficient support to obtain a shortened delay. The General Assembly passed a resolution implementing a one-year delay, emphasizing that when the Sixth Committee reconvened in the fall of 2004, it was to finalize “as a matter of urgency, the draft text of [the Convention].”<sup>191</sup> Prior to that time, “any research, experiment, development or application . . . of *any* technique aimed at human cloning” should be prohibited by Member States.<sup>192</sup>

The General Assembly’s decision to shorten the delay time led to strong responses, illustrating a move away from a search for consensus and a concern on the part of advocates of the focused approach that their position was progressively weakening. The United Kingdom was “profoundly disappointed” by the General Assembly’s actions, stating it “would never be party to any convention that aimed to introduce a global ban on therapeutic cloning.”<sup>193</sup> Rather, “[t]herapeutic cloning research will continue to be permitted in the United Kingdom.”<sup>194</sup> In other words, if UNGA were to pass a Convention banning research cloning, the United Kingdom would not sign it. Egypt, a Member of the OIC that had supported the two-year delay in the Sixth Committee and eventually abstained in the final

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189. See Press Release, Gen. Assembly, General Assembly Decides to Include Item on Reproductive Cloning in Its Agenda for 59th Session in 2004, U.N. Doc. GA/10218 (Dec. 9, 2003) [hereinafter General Assembly Press Release, Dec. 9, 2003], available at <http://www.un.org/News/Press/docs/2003/ga10218.doc.htm>; G.A. Draft Res., Costa Rica: International Convention against the Reproductive Cloning of Human Beings, U.N. Doc. A/58/L.37 (Dec. 5, 2003) [hereinafter Costa Rica: Draft Resolution].

190. See Costa Rica: Draft Resolution, *supra* note 189.

191. General Assembly Press Release, Dec. 9, 2003, *supra* note 189.

192. *Id.* (emphasis added).

193. U.N. GAOR, 58th Sess., 72d Plenary Meeting at 10–11, U.N. Doc. A/58/PV.72, (Dec. 9, 2003).

194. *Id.* at 11.

vote,<sup>195</sup> was equally concerned that the Assembly deviated from the recommendation of the Sixth Committee, and asserted that such action might strain relations between the Assembly and its Committees.<sup>196</sup>

#### D. FALL 2004: THE SIXTH COMMITTEE DEBATES

On September 21, 2004, President George W. Bush addressed the UNGA.<sup>197</sup> His speech specifically referenced the cloning initiative, affirming his support for the Costa Rican proposal, stating:

Because we believe in human dignity, we should take seriously the protection of life from exploitation under any pretext. In this session, the U.N. will consider a resolution sponsored by Costa Rica calling for a comprehensive ban on human cloning. I support that resolution and urge all governments to affirm a basic ethical principle: No human life should ever be produced or destroyed for the benefit of another.<sup>198</sup>

In the course of the U.N. debates, the United States representative also quoted the President, who expressed concern that the focused approach would “create a massive national [*sic*] market for eggs and egg donors, and exploitation of women’s bodies that we cannot and must not allow.”<sup>199</sup> That the President addressed this issue only underscores the international attention that the Declaration received during the four years that it remained on the docket at the United Nations.

Less than a month later on October 21, 2004, the Sixth Committee resumed debate on the Convention with the intent of coming to a resolution by the end of that session.<sup>200</sup> Although many delegations made statements encouraging a consensus approach, support for the two competing positions had not significantly altered, and there seemed little prospect of reaching

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195. Press Release, Gen. Assembly, Legal Committee Recommends UN Declaration on Human Cloning to General Assembly: Vote: 71-35-43, U.N. Doc. GA/L3271 (Feb. 18, 2005) [hereinafter General Assembly Press Release, Feb. 18, 2005], available at <http://www.un.org/News/Press/docs/2005/gal3271.doc.htm> (listing the final vote for the Declaration of Human Cloning).

196. *Id.*

197. Press Release, Office of the Press Sec'y, President Speaks to the United Nations General Assembly (Sept. 21, 2004), <http://www.whitehouse.gov/news/releases/2004/09/20040921-3.html>.

198. *Id.*

199. General Assembly Press Release, Oct. 22, 2004, *supra* note 100. The use of “national” seems to be in error, as the context suggests “international.”

200. *Id.*

a middle ground.<sup>201</sup>

This is not to say that nothing changed in the course of the year-long delay. Throughout the whole process, NGOs and other independent groups on both sides of the issue lobbied heavily for support.<sup>202</sup> One U.N. diplomat noted that the scientific community's involvement in this debate was unprecedented at the United Nations.<sup>203</sup> In addition to appeals to the United Nations, as a whole, interested parties also lobbied individual States in their capitals.

Although the comprehensive ban was evidently gaining support,<sup>204</sup> some delegations, such as the United Kingdom<sup>205</sup> and China,<sup>206</sup> opposed it because to do otherwise would be contrary to their domestic laws and practices. Therefore, on November 19, 2004, the Committee Chairman from Morocco recommended that a Working Group be established to draft a Declaration, rather than a legally binding Convention, whose text would be addressed in a session in February, 2005.<sup>207</sup> The Declaration would call on States to adopt and implement their own national legislation prohibiting attempts to create human life through cloning and genetic engineering techniques contrary to human dignity.<sup>208</sup> Under the Declaration, States would be obligated to ban "reproductive human cloning" and to take legislative measures to ensure that results of research cloning did not advance "reproductive cloning."<sup>209</sup>

A Declaration exercises political and moral suasion on States to take a certain position, even though it is not a legally

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201. *See id.*

202. Ismail, *supra* note 4.

203. *Id.*

204. General Assembly Press Release, Oct. 22, 2004, *supra* note 100 (statement by the representative for Nigeria).

205. General Assembly Press Release, Oct. 21, 2004, *supra* note 18 ("[T]he United Kingdom understood and respected the cultural, social and religious difference that might lead other countries to reach different conclusions on what type of research they permitted. It would be totally wrong for the United Nations to attempt to over-ride the position reached in the United Kingdom.").

206. General Assembly Press Release, Feb. 26, 2002, *supra* note 6 ("[D]omestic legislation in various countries should treat therapeutic cloning differently. Whatever their choices in that regard, domestic policies should be respected.").

207. Press Release, Gen. Assembly, Legal Committee Text Calls for Further Discussions on Human Cloning Aimed at 'Declaration,' U.N. Doc. GA/L/3270 (Nov. 19, 2004), available at <http://www.un.org/News/Press/docs/2004/gal3270.doc.htm>.

208. *Id.*

209. *Id.*

binding and enforceable treaty among signatories.<sup>210</sup> Although many States expressed frustration that the United Nations had been unable to agree upon a Convention,<sup>211</sup> the lack of legal enforceability need not detract from the import of the document. While conventions are binding on States that choose to sign and ratify them, Declarations stand as statements of conscience and political intent on the part of the global community. The Universal Declaration of Human Rights illustrates the impact of a declaration and its moral power: this Declaration, passed in the wake of World War II, is regarded as the preeminent document standing as “a bulwark against oppression and discrimination,” marking “the first international recognition that human rights and fundamental freedoms are applicable to every person, everywhere.”<sup>212</sup> Eleanor Roosevelt postulated that this document “may well become the international Magna Carta of all men everywhere.”<sup>213</sup>

The Working Group gathered to consider drafts for the U.N. Declaration against Human Cloning on February 14, 15, and 18 of 2005.<sup>214</sup> Two draft resolutions were considered—one from Italy (see Annex 7),<sup>215</sup> the other from the Chairman of the Ad

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210. *See id.*

211. General Assembly Press Release, Feb. 18, 2005, *supra* note 195.

212. A United Nations Priority, Universal Declaration of Human Rights, <http://www.un.org/rights/HRToday/declar.htm> (last visited Oct. 12, 2007).

213. Eleanor Roosevelt, Chairman, U.N. Comm'n on Human Rights, Address at the U.N. General Assembly (Dec. 9, 1948), *available at* <http://london.usembassy.gov/humrts133.html>. This prediction seems to have proven true, as the Declaration is still regarded as “undoubtedly one of the most influential documents in history,” having been translated into nearly two-hundred-fifty national and local languages and remaining the best known and most cited human rights document in the world. Press Release, Gen. Assembly, International Human Rights Defenders Honoured as General Assembly Marks Fifty-Fifth Anniversary of Universal Declaration, U.N. Doc. GA/10220 (Dec. 10, 2003), *available at* <http://www.un.org/News/Press/docs/2003/ga10220.doc.htm> (statement by Marcello Spatafora on behalf of the EU); A United Nations Priority, *supra* note 212. It is referenced in the preamble to many UN resolutions, including the Declaration on Human Cloning itself. *See* United Nations Declaration on Human Cloning, *supra* note 32. Therefore, although declarations are nonbinding, they have the potential to be as influential as conventions.

214. Gen. Assembly, Sixth Comm., Working Group, *Report of the Working Group Established Pursuant to General Assembly Decision 59/547 to Finalize the Text of a United Nations Declaration on Human Cloning*, U.N. Doc. A/C.6/59/L.27/Rev.1, at 1 (Feb. 23, 2005).

215. *Id.* at 5–6.

Hoc Committee (see Annex 8).<sup>216</sup> Italy's text called upon States to prohibit "any attempts to create human life through cloning processes and any research intended to achieve that aim," and "ensure that . . . human dignity is respected in all circumstances and, in particular, that women are not exploited."<sup>217</sup> The Chairman's text called upon members to "protect adequately human life in the application of life sciences" and "prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life."<sup>218</sup> In addition, the resolution called upon members "to prevent the exploitation of women in the application of life sciences," and subsequently to implement national legislation in light of these recommendations.<sup>219</sup> When no consensus could be reached on the Chairman's text, the Chairman withdrew it from consideration.<sup>220</sup> The representative from Honduras then introduced the Chairman's text as a proposal from Honduras.<sup>221</sup>

Prior to the vote, many States were frustrated that no consensus had been reached despite years of negotiation. Turkey, on behalf of the OIC, asserted that a Declaration on cloning "will be valuable only if it is able to receive approval" from all members, and announced that the OIC had agreed to abstain in the final vote.<sup>222</sup> Other States either abstained or opposed the Declaration on the basis of this rationale.<sup>223</sup>

At this point the single most notable event in the entire process came to light, when Germany, co-sponsor of the original "focused" resolution, announced a full and final shift in its position to the "comprehensive" camp by speaking in support of the Honduran proposal.<sup>224</sup> The continuing impact of domestic pressure had, by several stages, brought about a complete

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216. *Id.* at 1.

217. *Id.* at 5–6.

218. *Id.* at 3.

219. *Id.* at 4.

220. *Id.* at 2.

221. *Id.*

222. Video: Sixth Committee: On the Convention against the Reproductive Cloning of Human Beings, (U.N. Webcast Archives Feb. 18, 2005), at 12:14, available at <http://www.un.org/webcast/2005a.htm>; see General Assembly Press Release, Feb. 18, 2005, *supra* note 195. Although abstention was the OIC's formal position, the final tally of votes reveals that more OIC Member States voted in favor of the ultimately successful proposal than abstained. See *infra* text accompanying notes 239–241.

223. See General Assembly Press Release, Feb. 18, 2005, *supra* note 195.

224. See General Assembly Press Release, Oct. 22, 2004, *supra* note 100.

reversal in the German position.<sup>225</sup> In its statement, the German representative emphasized Germany's newfound support of the comprehensive ban, stating that its "national laws prohibited all forms of cloning, and it favoured that being a worldwide standard."<sup>226</sup>

#### E. THE FINAL STAGE: THE VOTES

The Working Group first focused its attention on the Honduran proposal. Belgium proposed a series of amendments (see Annex 9), the effect of which would be to pull the predominant emphasis of the Honduran proposal from the comprehensive approach to a version of the focused position.<sup>227</sup> Of the three amendments proposed, only one was passed, though all three votes were close.<sup>228</sup> The rejection of two of the three amendments emphasizes that the majority of those who voted were committed to regulating research cloning as well as "reproductive cloning."<sup>229</sup>

Finally, the Sixth Committee moved to adopt the Honduran resolution as amended (see Annex 10).<sup>230</sup> The Declaration

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225. *Id.*

226. *Id.*

227. The representative from Belgium proposed three changes, which were voted on in succession. See Annex 9. General Assembly Press Release, Feb. 18, 2005, *supra* note 195. The first amendment added the following text to the end of the second paragraph of the preamble of the draft Declaration: "and in particular article 11 thereof, which States that practices which are contrary to human dignity, such as the reproductive cloning of human beings, shall not be permitted." *Id.* The amendment was adopted by a recorded vote of fifty-nine in favor to forty-seven against, with forty-one abstentions. *Id.* The second amendment would have deleted operative paragraph (a), "[m]ember States are called upon to adopt all measures necessary to protect adequately human life in the application of life sciences," but was rejected by a recorded vote of fifty-seven against to forty-eight in favor, with forty-two abstentions. *Id.*; see Annex 8 (draft language of operative paragraph (a)). The third amendment would have replaced paragraph (b), "[m]ember States are called upon to prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life" with: "[m]ember States are called upon to prohibit *the reproductive cloning* of human beings; they are also called upon to prohibit *other forms* of human cloning inasmuch as they are incompatible with human dignity," but was rejected by a recorded vote of fifty-five against to fifty-two in favor, with forty-two abstentions. General Assembly Press Release, Feb. 18, 2005, *supra* note 195 (emphasis added); see Annex 8 (draft language of operative paragraph (b)).

228. General Assembly Press Release, Feb. 18, 2005, *supra* note 195.

229. *See id.*

230. *Id.*

passed with seventy-one in favor,<sup>231</sup> thirty-five in opposition,<sup>232</sup> and forty-three abstentions.<sup>233</sup> This outcome then went to the United Nations General Assembly for a vote, and on March 8, 2005, the Declaration against Human Cloning was adopted after a vote of eighty-four in favor, thirty-four against, and thirty-seven abstentions.<sup>234</sup> After the vote, Antigua and Barbuda, Gambia, Kyrgyzstan, the Libyan Arab Jamahiriya, Nigeria, Peru, and the Russian Federation informed the Secretariat that had they voted, they would have voted in favor of the Declaration; Greece, that it would have voted against; and Botswana and Mali that they would have abstained,<sup>235</sup> which would have given totals of ninety-one, thirty-five, and thirty-nine respectively.

Many States, such as France, cited the lack of consensus as the basis for voting against or abstaining from voting on the Declaration.<sup>236</sup> Although Turkey represented the OIC as a united front that abstained from the vote because of the lack of consensus, seventeen of the forty-one OIC Member States who

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231. Albania, Andorra, Antigua and Barbuda, Australia, Austria, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Brunei Darussalam, Burundi, Chile, Comoros, Costa Rica, Croatia, Democratic Republic of the Congo, Ecuador, El Salvador, Eritrea, Ethiopia, Gambia, Georgia, Germany, Grenada, Guatemala, Guyana, Haiti, Honduras, Hungary, Ireland, Italy, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Liechtenstein, Madagascar, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Morocco, Nicaragua, Nigeria, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Portugal, Qatar, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, San Marino, Saudi Arabia, Slovakia, Slovenia, Sudan, Suriname, Switzerland, the Former Yugoslav Republic of Macedonia, Timor-Leste, Uganda, United Arab Emirates, United Republic of Tanzania, United States of America, Uzbekistan. *Id.*

232. Belarus, Belgium, Brazil, Bulgaria, Cambodia, Canada, China, Colombia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Estonia, Finland, France, Greece, Iceland, India, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Poland, Republic of Korea, Singapore, Sweden, Thailand, Tonga, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of). *Id.*

233. Algeria, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Barbados, Botswana, Burkina Faso, Congo, Djibouti, Egypt, Ghana, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Malaysia, Maldives, Mali, Mongolia, Namibia, Nepal, Niger, Oman, Pakistan, Republic of Moldova, Romania, Senegal, Serbia and Montenegro, Sierra Leone, South Africa, Spain, Sri Lanka, Syrian Arab Republic, Tunisia, Turkey, Ukraine, Uruguay, Yemen, Zimbabwe. *Id.*

234. General Assembly Press Release, Mar. 8, 2005, *supra* note 183.

235. *Id.*; General Assembly, U.N. Doc. A/59/PV.82, Mar. 8, 2005, at 3.

236. General Assembly Press Release, Feb. 18, 2005, *supra* note 195.

voted in the Sixth Committee actually voted in favor of the Declaration,<sup>237</sup> with the remainder abstaining.<sup>238</sup> Even more remarkable, in the plenary General Assembly vote, more States from the OIC actually approved the Declaration than opposed and abstained, with the tally at twenty-three for,<sup>239</sup> one against,<sup>240</sup> and eighteen abstaining.<sup>241</sup>

Thus, the focused approach which would have prohibited only “reproductive cloning,” initially referred to as having the support of “a consensus minus one,” was rejected by a ratio of nearly three-to-one.

### III. ANALYSIS

#### A. THE ROLE OF THE ORGANISATION OF THE ISLAMIC CONFERENCE

Since the OIC comprises between one-quarter and one-third of the Member States of the United Nations (57 out of 191),<sup>242</sup> and since the OIC chose to play a role in influencing the outcome of the process, the OIC’s position should have had a major impact on the outcome. However, the OIC’s official position, and the way some commentators have portrayed it, is out of harmony with both the actual views of many of its members and how they cast their votes. Its influence declined as the process came to a conclusion, and the final voting pattern offered a humiliating rebuff for OIC efforts at presenting a united front.

The OIC’s first major intervention in the debates occurred at

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237. Albania, Bangladesh, Brunei Darussalam, Comoros, Gambia, Guyana, Kazakhstan, Kyrgyzstan, Morocco, Nigeria, Qatar, Saudi Arabia, Sudan, Suriname, Uganda, United Arab Emirates, Uzbekistan. *Id.*

238. Algeria, Azerbaijan, Bahrain, Burkina Faso, Djibouti, Egypt, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Malaysia, Maldives, Mali, Niger, Oman, Pakistan, Senegal, Sierra Leone, Syria, Tunisia, Turkey, Yemen. *Id.*

239. Afghanistan, Albania, Bahrain, Bangladesh, Benin, Brunei Darussalam, Comoros, Côte d’Ivoire, Djibouti, Guyana, Iraq, Kazakhstan, Kuwait, Morocco, Qatar, Saudi Arabia, Sierra Leone, Sudan, Suriname, Tajikistan, Uganda, United Arab Emirates, Uzbekistan. General Assembly Press Release, Mar. 8, 2005, *supra* note 183.

240. Gabon. *Id.*

241. Algeria, Azerbaijan, Burkina Faso, Cameroon, Egypt, Indonesia, Iran, Jordan, Lebanon, Malaysia, Maldives, Oman, Pakistan, Somalia, Syria, Tunisia, Turkey, Yemen. *Id.*

242. OIC, Member States Information, <http://www.oic-oci.org> (go to “About OIC”; then go to “Members”) (last visited Oct. 15, 2007).

the end of 2003 when Iran, speaking on behalf of the OIC, proposed the two-year deferral.<sup>243</sup> In the Sixth Committee vote for this deferral, passed by the narrowest margin of eighty to seventy-nine, thirty OIC Member States supported the motion,<sup>244</sup> thirteen opposed it,<sup>245</sup> and three abstained.<sup>246</sup> The representative of Iran justified the deferral as an opportunity to study further the issue of research cloning and “come up with a better basis for consensus.”<sup>247</sup> Although Iran emphasized that the OIC “did not intend to take sides with either resolution,”<sup>248</sup> the most prominent advocates for the focused approach supported the delay, while the most prominent advocates for the comprehensive approach opposed it.<sup>249</sup> Indeed, the representative of the United Kingdom, one of the strongest supporters for the focused approach, went on to express his “profound” disappointment when the delay was later reduced from two years to one.<sup>250</sup> This indicated that the United Kingdom saw support for continuing debate as equivalent to support of the comprehensive approach. The two-year delay was widely perceived as a crushing blow to proponents of the comprehensive approach, which had been steadily gaining ground throughout the 2003 debates.<sup>251</sup>

Yet while the OIC appeared to be acting in concert to press for delay and thereby undercut the comprehensive approach, the actual position of their Member States was by no means uniform. At the time of the deferral vote, twelve OIC States were signed

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243. General Assembly Press Release, Nov. 6, 2003, *supra* note 173.

244. Algeria, Azerbaijan, Bahrain, Brunei Darussalam, Comoros, Djibouti, Egypt, Gabon, Indonesia, Iran, Jordan, Kuwait, Lebanon, Malaysia, Maldives, Mali, Mauritania, Morocco, Niger, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Sudan, Syria, Tunisia, Turkey, United Arab Emirates, Yemen. *Id.*

245. Albania, Gambia, Guinea, Guyana, Kazakhstan, Kyrgyzstan, Nigeria, Sierra Leone, Somalia, Suriname, Tajikistan, Uganda, Uzbekistan. *Id.*

246. Bangladesh, Burkina Faso, and Cameroon. *Id.*

247. *Id.*

248. *Id.*

249. See *supra* text accompanying notes 182–184; see also LeRoy Walters, *The United Nations and Human Cloning: A Debate on Hold*, HASTINGS CENTER REP., Jan. 1, 2004, at 5.

250. General Assembly Press Release, Dec. 9, 2003, *supra* note 189.

251. Walters, *supra* note 249. Bernie Siegel, Executive Director of the Genetics Policy Institute, an advocacy group for stem cell research located in Florida heavily involved in lobbying for the focused approach, commented that the deferral “marks a definite erosion of the US plan to ban therapeutic cloning.” Gregory M. Lamb, *UN Delay: A Boost for Cloning Advocates*, CHRISTIAN SCI. MONITOR, Oct. 25, 2004, <http://www.csmonitor.com/2004/1025/p12s01-stgn.html>.

on as sponsors to the Costa Rican (comprehensive) ban,<sup>252</sup> whereas none had sponsored the Belgian (focused) text. Indeed, Nigeria and Uganda, both OIC Member States, were not only co-sponsors but spoke against the two-year deferral.<sup>253</sup> Nigeria opposed the deferral because of its explicit support for the comprehensive approach, citing exploitation of women, particularly those in developing countries, as the rationale.<sup>254</sup> Uganda, acknowledging the difficult position of being both a co-sponsor of the comprehensive approach and a Member of the OIC, nevertheless refused support for the OIC motion, expressing the need for urgency.<sup>255</sup> Uganda stated that the issue remained as pressing as it had been when raised by France and Germany two years prior.<sup>256</sup>

The influential members of the OIC are widely considered to have favored the focused approach. One scholarly review of the debate suggests that in the fall of 2003, in the face of support for the comprehensive approach by at least sixty-eight States, “members of the OIC were not ready to accept a comprehensive ban and in effect supported the limited ban proposed by France and Germany.”<sup>257</sup> This judgment is given added weight by the fact that its author is Deputy Director in the U.N. Office of Legal Affairs. It implies disingenuousness on the part of the OIC leadership’s claim that it was not taking sides, and sets the scene for the denouement of OIC voting in the plenary General Assembly.

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252. Benin, Côte d’Ivoire, Gambia, Kazakhstan, Kyrgyzstan, Nigeria, Sierra Leone, Suriname, Tajikistan, Turkmenistan, Uganda and Uzbekistan. Gen. Assembly, Sixth Comm., *International Convention against the Reproductive Cloning of Human Beings, Draft Resolution*, U.N. Doc. A/C.6/58/L.2 (Nov. 11, 2003), available at <http://daccessdds.un.org/doc/UNDOC/LTD/N03/533/61/PDF/N0353361.pdf?OpenElement>.

253. General Assembly Press Release, Nov. 6, 2003, *supra* note 173.

254. Cf. *id.* (stating that “[d]eveloping countries would be the source of the millions of embryos needed for scientific experimentation with clones”).

255. *Id.*

256. *Id.*

257. Arsanjani, *supra* note 4, at 172. In fact, by the fall of 2003, both Germany and France had withdrawn as sponsors of their original proposal. See *supra* text accompanying notes 149–150. An interesting question for future research would be the influence of the OIC, France (as original co-sponsor and consistent supporter of the focused approach) and the United Kingdom in depressing support for comprehensive approach among developing nations, especially in both Francophone and Anglophone Africa, where the influence of the former colonial powers—particularly France—remains considerable.

The second major intervention by the OIC was to urge abstention in any move that failed to obtain consensus among Member States.<sup>258</sup> So, in the fall of 2004, the OIC, represented by Turkey, stated that it would support only an approach that achieved consensus.<sup>259</sup> OIC States that spoke advocating consensus included Indonesia, Sudan, and Senegal, and indicated that a text speaking to “reproductive cloning” alone would be the most effective means of achieving a consensus.<sup>260</sup> When in the spring of 2005, unable to reach consensus, the Sixth Committee initiated its decisive vote on the Honduran proposal, the OIC pro-abstention position began to collapse. While seventeen of the forty-one voting OIC States supported the abstention,<sup>261</sup> twenty-three voted in favor of the comprehensive approach.<sup>262</sup> Then the collapse became complete. In the General Assembly vote shortly thereafter, a majority of the forty-two OIC Member States who voted actually supported the Declaration (twenty-three, compared with eighteen abstentions and one against).<sup>263</sup>

Nevertheless, the official statement from the OIC after the Sixth Committee vote, again submitted by Turkey, was one of a putative unified voice—that the Member States of the OIC “had abstained in the vote on the draft resolution, regretting that a vote had been required on the issue and that consensus could not be reached.”<sup>264</sup> OIC member Syria had supported abstention, feeling that “[t]he expression ‘human life’ should be left to individual states’ interpretation.”<sup>265</sup> The representative of Nigeria, an OIC Member that declined to support the OIC position, stated that “every form of cloning, including reproductive and therapeutic cloning, [is] an unnecessary invasion of the sanctity of life and human dignity.”<sup>266</sup> Beyond being “unethical” and “against civilized moral values,” he said, “[it] also exposes women, especially from developing countries, to

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258. General Assembly Press Release, Oct. 21, 2004, *supra* note 18 (“[Turkey], speaking for the Organization of the Islamic Conference (OIC), . . . [said that c]onsensus must be reached on the question and neither side must force a vote. He supported a total ban on reproductive cloning of human beings and called for consensus on how to deal with all forms of human cloning.”).

259. *Id.*; Arsanjani, *supra* note 4, at 175.

260. General Assembly Press Release, Oct. 22, 2004, *supra* note 100.

261. See *supra* note 237.

262. See *supra* note 239.

263. See *supra* notes 239–241.

264. General Assembly Press Release, Feb. 18, 2005, *supra* note 195.

265. *Id.*

266. *Id.*

degradation and exploitation.”<sup>267</sup> The Nigerian representative reiterated a call “for [a] total ban on all forms of human cloning” and for “further action by the United Nations to elaborate a convention banning all forms of cloning.”<sup>268</sup>

The fact that several OIC Member States moved from abstention to support in between the Sixth Committee and the plenary General Assembly vote reveals that, even though they had chosen to align with the formal OIC position, such States were substantively in favor of the comprehensive approach. This raises the question of whether the comprehensive approach would have enjoyed more support from OIC Member States earlier, both at the time of the deferral vote, and during the final votes on the Declaration, had the OIC not pressed a single “consensus” position that was plainly unrepresentative of its members.<sup>269</sup> It also suggests that the OIC’s role may have proved pivotal in the derailing of the move toward a Convention. Since this is also the judgment of a senior U.N. legal official,<sup>270</sup> it suggests that the OIC was, whether wittingly or not, acting as surrogate for those States most opposed to the comprehensive approach.

#### B. THE ROLE OF NGOS

Although lobbying among Member States is a common element of the United Nations political process, the cloning Declaration was unusual in that it garnered extensive input from relentless lobbying efforts by NGOs and other independent groups on both sides of the issue.<sup>271</sup> NGOs on both sides hosted briefings in an attempt to influence the representatives, garnered support through the joint efforts of advocacy groups and scientists, and exercised political influence in capitals.

One diplomat commented that involvement from the scientific community was unprecedented for any issue at the U.N. level.<sup>272</sup> Indeed, lobbyists entered the debate even before the main point of contention became clear. In February, 2002, a

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267. *Id.*

268. *Id.*

269. The manner in which the OIC came to its “official” positions and the pressures on key Member States to take such a stance are interesting issues for future research.

270. Arsanjani, *supra* note 4, at 175.

271. Ismail, *supra* note 4.

272. *Id.*

group of NGOs organized a joint briefing that included experts in science, law and ethics.<sup>273</sup> At that point, the main focus was still “reproductive cloning,” and the aim of the briefing was to press support for the Franco-German initiative. The NGOs emphasized that “no science or religion ‘has the moral warrant to change the definition of what it means to be human,’” besides which, there is “‘no ethical way’ to get a successful clone” because it involves experimenting on human beings.<sup>274</sup> Reproductive cloning, in essence, “opens the door to the reconfiguration of the human species.”<sup>275</sup>

As the focus of the debate shifted to the question of whether or not to ban research cloning, groups on both sides of the issue pitched their perspectives. Although most of the NGOs supporting the comprehensive ban were described as religious and pro-life groups and most of those supporting the focused ban were described as patients’ rights groups (e.g. the Parkinson’s Action Network and the Coalition for the Advancement of Medical Research),<sup>276</sup> to summarize the debate as a discussion between religion and science is a considerable oversimplification.<sup>277</sup> United States NGOs lobbying the General Assembly in the way they are used to lobbying Congress was especially unusual.

In the fall of 2003, a group of scientists which included fifty Nobel laureates formed a global coalition to lobby for research cloning.<sup>278</sup> The group warned U.N. delegations that the comprehensive approach might wipe out research that could lead to cures for diseases such as cancer, blood disorders or spinal cord injuries.<sup>279</sup>

In October 8, 2004, in anticipation of the Ad Hoc Committee meeting in which a draft resolution was to be agreed upon, the Coalition for the Advancement of Medical Research sent an open

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273. Jim Wurst, *Cloning: UN Debate Centers On Total Ban Or Allowance For Research*, CENT. FOR GENETICS & SOC’Y, Feb. 28, 2002, [http://www.genetics-and-society.org/resources/items/20020228\\_unwire\\_wurst.html](http://www.genetics-and-society.org/resources/items/20020228_unwire_wurst.html).

274. *Id.* (quoting George Annas and Stuart Newman).

275. *Id.*

276. Ismail, *supra* note 4.

277. See *infra* Part III.D.

278. Ismail, *supra* note 4.

279. *Scientists Urge UN to Allow Human Cell Cloning*, TRANSPLANT NEWS, Apr. 30, 2004. Another journalist described the lobbyist group as calling on the United Nations to “allow stem cell research to proceed with strict regulations.” Ismail, *supra* note 4. Again, this statement reflects either a misunderstanding of the issue on the part of the reporter or a misconstruing of the issue on the part of scientists.

letter to the President of the General Assembly opposing the comprehensive approach.<sup>280</sup> The letter was signed by 125 health, research, educational and other groups, including the American Diabetes Association, the Christopher Reeve Paralysis Foundation, the Michael J. Fox Foundation for Parkinson's Research, the Association of American Universities, the Association of American Medical Colleges, and the American Association for the Advancement of Science.<sup>281</sup> While the presence of NGOs and other lobbyists affected the tone of the debate, it seemed that their influence was limited. The impact of activists in turning the tide was felt most strongly in the domestic debates in Germany.

### C. THE COLLAPSE OF THE GERMAN POSITION

Germany, co-sponsor of the original proposal for a "reproductive cloning" ban, was forced by domestic pressure into a series of humiliating withdrawals: first, from the sponsorship of its own resolution; then, from a "two-stage" approach that left the door open for later action on research cloning; and next from the support of Belgium, which took on the Franco-German position as a surrogate. Finally, Germany not only shifted to support of the comprehensive ban, but spoke strongly in its favor. This shift had a major impact in buttressing the comprehensive position that was finally successful.

After the February, 2002 Working Group had agreed to continue discussion of the cloning Convention in the fall, the German government was overwhelmed with both popular and political opposition to its advocacy of the focused approach.<sup>282</sup> On January 17, 2003, the German *Bundestag* (including majorities in both the Social Democratic and Green parties that constituted the German government) overwhelmingly approved a motion urging the German government to change its position at the United Nations and support a comprehensive ban on cloning.<sup>283</sup> Citing Germany's domestic comprehensive ban,

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280. Edward W. Lempinen & Carol Hoy, *AAAS Joins Call Against Proposed United Nations Ban on Therapeutic Cloning*, AAAS (Oct. 14, 2004), available at <http://www.aaas.org/news/releases/2004/1014cloning.shtml>.

281. *Id.*

282. See Ned Stafford, *German Cloning Clash: Government Under Fire from Doctors and Politicians for Not Backing Universal Ban*, THE SCIENTIST.COM, Oct. 21, 2003, <http://www.the-scientist.com/news/20031021/05/>.

283. Jean Morse-Chevrier, *Say No to Human Cloning: Support Grit MP Paul*

members of the *Bundestag* entreated the German government to adhere to Germany's national policy.<sup>284</sup> Although the *Bundestag* motion was non-binding, it led Germany to withdraw as co-sponsor of the focused approach.

*Bundestag* leaders expected the German government to embrace the United States' position, which would influence France to join them, and gain further momentum for a total ban on cloning at UNGA.<sup>285</sup> In the motion expressing this objective, the *Bundestag* requested that, as there is "no differentiation between reproductive cloning on the one hand and so-called therapeutic cloning on the other," the Federal Government "work towards a U.N. agreement and further international agreements that prohibit both reproductive and so-called therapeutic cloning and attempt to win support of as many countries as possible for such agreements."<sup>286</sup> Nevertheless, a week before the session resumed in New York City, the German government announced that while it had withdrawn its sponsorship, it would continue to support the focused approach, now sponsored by Belgium.<sup>287</sup> Germany cited "strategic" reasons for the decision, stating that a total ban would have no value if it were backed only by a small majority that was exclusive of the States doing the majority of cloning research, such as the United Kingdom and China.<sup>288</sup> The German government again criticized the United States, accusing it of failing to negotiate, and noted that the United States did not have national legislation banning cloning.<sup>289</sup>

This strategy came under heavy criticism at home. The German Medical Association, the Marburger Bund physicians

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Szabo's Motion, HILL TIMES, Apr. 7, 2003; BTDrucks 15/463 (noting a motion at the German *Bundestag* brought by SPD, CDU/CSU and Alliance 90/Greens parliamentary groups to begin a new initiative for an international ban on the cloning of human embryos) (on file with author).

284. Stafford, *supra* note 282.

285. *See id.*

286. BTDrucks, *supra* note 283. The other requests included (1) that the Federal Government use the time remaining before the debate in the United Nations resumed to achieve "the most comprehensive ban possible on cloning at an international level" and (2) to move the Franco-German initiative "actively in the direction of a comprehensive ban on the cloning of humans and human embryos," as well as to "seek talks with those countries which have already expressed support for a UN convention on the complete prohibition of all forms of cloning." *Id.*

287. Cf. Stafford, *supra* note 282.

288. See German UN Reps Reject German Parliament Call for Comprehensive Ban on Cloning, LIFESITE, Sept. 26, 2003, <http://www.lifesite.net/ldn/2003/sep/03092605.html>.

289. *Id.*

group, and Members of the Christian Democratic Union (CDU, the conservative opposition party) issued statements encouraging the Foreign Ministry to support the Member States endorsing the comprehensive approach.<sup>290</sup> According to Maria Böhmer, a leading CDU official, “Foreign Minister Fischer is urged to finally carry out the will of the German Bundestag with no ifs, ands, or buts. We should not squander the chance (for a total ban) that is now offered to us.”<sup>291</sup> Those in support of the German foreign minister’s position were forced to concede that “Germany’s full public support might help produce a majority vote in favor of a total human cloning ban,” but the German foreign minister said that he would continue “the strategy of not giving German support until he believe[d] a treaty ha[d] majority U.N. support.”<sup>292</sup> However, the German position continued to erode, and in the final debate in 2005, Germany not only voted to pass the comprehensive approach, but spoke strongly in its favor.<sup>293</sup>

#### D. IS THE DECLARATION AN IMPROPER IMPOSITION OF MORALITY?

Several commentators, both during and after the debate, summarized the comprehensive approach as being a “religious” response to scientific advancement or one derived from particular moral concerns that are not shared by many in other cultures and traditions. Reflecting upon the U.N. Declaration, one author commented that “[p]erspectives that are unique to a particular religion and lack the same degree of commitment in other religious or nonreligious practices do not easily win international acceptability and priority.”<sup>294</sup> He went on to say that “States approaching the matter from a secular point of view objected to any universal imposition of a religious perspective,” regarding such arguments as equivalent to objections to anesthetics or *in vitro* treatments.<sup>295</sup> The imposition by “one value system or religion . . . [of] its tenets on the rest of humanity” was seen as “inappropriate in a world composed of diverse peoples, with diverse beliefs and circumstances.”<sup>296</sup>

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290. Stafford, *supra* note 282.

291. *Id.*

292. *Id.*

293. See *supra* text accompanying note 226.

294. Arsanjani, *supra* note 4, at 165.

295. *Id.* at 169.

296. *Id.*

To couch the debate in these terms, however, overlooks the bases upon which most of the States who voted for the comprehensive approach did so. First, there are the Member States which, though supporting the comprehensive approach on the basis of “ethical” principles, are nonetheless “secular” States. Additionally, some Member States supported the comprehensive approach on practical, rather than ethical, bases such as concern for their citizens or acknowledgement that the most effective means of regulating “reproductive cloning” was to prohibit cloning of all kinds.

Many of the States that supported the comprehensive ban on the basis of “ethical” principles argued that research cloning was a violation of human dignity. Although those States claimed this violation of human dignity was a “religious” justification, the states may not necessarily have been acting under the impetus of religion. Germany, which is generally regarded as a secular State, is a perfect example. In a debate in the *Bundestag* prior to Germany’s official change of position to the comprehensive approach, a member of the socialist SPD political party commented on the need for “protection of human life,”<sup>297</sup> asserting that cloning of humans is “irresponsible and despicable.”<sup>298</sup> As the representative for Kenya stated, “[t]he question [of whether to regulate research cloning] went beyond cultural or religious differences. . . . [A]n analogy could be drawn with the contrast between cultural relativism and the universality of human rights. A common universal standard applied, despite differences.”<sup>299</sup>

Furthermore, several thoroughly “secular” States, most notably France and Canada, who for varied reasons opposed the comprehensive approach in the U.N. context, nevertheless enforce such a ban in their own domestic law. Conversely, the much more “religious” United States has yet to implement comparable federal policy. Therefore, to distinguish support versus opposition for the comprehensive approach on the basis of religious propensities, particularly when taking domestic policy into account, is untenable.

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297. Deutscher Bundestag, Stenografischer Bericht, Plenarprotokoll 15/28, Feb. 20, 2003, at 2113 (“Dieses Signal bedeutet, dass wir in diesem Hohen Hause eine breite und nachdrückliche Übereinstimmung für den Schutz des menschlichen Lebens”) (on file with author).

298. *Id.* at 2134 (“Wir müssen festhalten: Das Klonen von Menschen ist in jeder Hinsicht verantwortungslos und verwerflich.”).

299. General Assembly Press Release, Oct. 22, 2004, *supra* note 100 (statement by Kenyan representative).

Several States supported the comprehensive approach for practical purposes as well, not the least of which was a concern that research cloning would promote the exploitation of women in the onerous quest for the supply of eggs. A majority of developing countries seem to have supported the Declaration on this rationale. Of the fifty least developed countries,<sup>300</sup> in the final General Assembly vote, twenty-four voted in favor of the comprehensive approach,<sup>301</sup> while only two voted against<sup>302</sup> (eight abstained).<sup>303</sup> Therefore, among the least-developed countries, support for the comprehensive approach was nearly twelve to one. To take another approach: the G-77 group, a self-selecting group of 130 developing countries, which works to promote the economic interests of its Members,<sup>304</sup> also shows overall support for the comprehensive ban. In the final UNGA vote, fifty-eight G-77 States approved the Declaration<sup>305</sup> and twelve opposed it<sup>306</sup> (thirty abstained)<sup>307</sup>—a ratio of almost five

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300. U.N. Statistics Division, Composition of Macro Geographical (Continental) Regions, Geographical Sub-Regions, and Selected Economic and Other Groupings, Developed and Developing Countries, <http://unstats.un.org/unsd/methods/m49/m49regin.htm#developed> (last visited Oct. 17, 2007).

301. Afghanistan, Bangladesh, Benin, Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Haiti, Lesotho, Liberia, Madagascar, Rwanda, Samoa, Sao Tome and Principe, Sierra Leone, Solomon Islands, Sudan, Timor-Leste, Uganda, United Republic of Tanzania, and Zambia. General Assembly Press Release, Mar. 8, 2005, *supra* note 183. One of the absent least developed countries, Gambia, expressed intent to vote for the comprehensive approach. *Id.*

302. Cambodia and Lao People's Democratic Republic. *Id.*

303. Angola, Burkina Faso, Cape Verde, Maldives, Myanmar, Nepal, Somalia and Yemen. *Id.* One of the absent least developed countries, Mali, expressed intent to abstain from the vote. *Id.* Four of those who abstained were Members of the OIC, which could have influenced their vote.

304. The Group of 77 at the United Nations, General Information, <http://www.g77.org> (follow "About the Group of 77") (last visited Oct. 17, 2007).

305. Afghanistan, Bahrain, Bangladesh, Belize, Benin, Bolivia, Bosnia and Herzegovina, Brunei Darussalam, Burundi, Chile, Comoros, Costa Rica, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Grenada, Guatemala, Guyana, Haiti, Honduras, Iraq, Kenya, Kuwait, Lesotho, Liberia, Madagascar, Marshall Islands, Mauritius, Federated States of Micronesia, Morocco, Nicaragua, Panama, Paraguay, Philippines, Qatar, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Solomon Islands, Sudan, Suriname, Timor-Leste, Trinidad and Tobago, Uganda, United Arab Emirates, United Republic of Tanzania, and Zambia. General Assembly Press Release, Mar. 8, 2005, *supra* note 183.

306. Brazil, Cambodia, China, Cuba, Democratic People's Republic of Korea,

to one. Given statements made by developing countries such as Nigeria, Sierra Leone, and Fiji,<sup>308</sup> such support for the comprehensive approach arose, at least in part, from the concern that their women would become egg banks in support of wealthy nations' research.<sup>309</sup>

Still another practical justification behind supporting the comprehensive approach is that once cloned embryos have been created for research purposes, the ability to restrict their implantation becomes inexorably more difficult than it was before they had been created. Kenya expressed this concern in October of 2004, stating that "the fact that therapeutic cloning required such strict state regulation was proof of its high risk. The cloning of humans should not be a national matter left to the whims of States."<sup>310</sup> The representative considered the risk that therapeutic cloning could give rise to a live birth was "too great to allow."<sup>311</sup> This rationale for supporting the comprehensive approach is based on a cost-benefit analysis of the most effective means of regulation.

Finally, to the degree that a prohibition on research cloning is based on moral premises, the desire to prohibit "reproductive cloning"—the impetus behind bringing this issue to UNGA in the first place—is no less so. States who adamantly opposed the comprehensive approach, stating the need for respect of "the various philosophical, cultural and religious circumstances" that guided research cloning policy, would also, in making a case for the prohibition of reproductive cloning, note the need to prevent "serious ethic, social, religious and legal problems."<sup>312</sup> Indeed, whereas the comprehensive approach includes practical

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Gabon, India, Jamaica, Lao People's Democratic Republic, Singapore, Thailand, and Tonga. *Id.*

307. Algeria, Angola, Argentina, Bahamas, Barbados, Burkina Faso, Cameroon, Cape Verde, Colombia, Egypt, Indonesia, Iran, Jordan, Lebanon, Malaysia, Maldives, Mongolia, Myanmar, Namibia, Nepal, Oman, Pakistan, Somalia, South Africa, Sri Lanka, Syria, Tunisia, Uruguay, Yemen, and Zimbabwe. *Id.* Of those who abstained, sixteen were part of the OIC, which could have informed their vote.

308. See *supra* text accompanying notes 165–169.

309. There was also a concern, evident in the text of the Declaration, that resources should be put toward more immediate concerns, such as cures for HIV/AIDS, a very real and pervasive concern for many developing countries, rather than pouring billions of dollars into the far-away hope for cures via stem cell therapies. United Nations Declaration on Human Cloning, *supra* note 32.

310. General Assembly Press Release, Oct. 22, 2004, *supra* note 100.

311. *Id.*

312. General Assembly Press Release, Feb. 26, 2002, *supra* note 6 (statement of representative for China).

justifications, the only justification presented in support of the ban for “reproductive cloning” is an ethical one. Promoters of the focused approach expressed concern that “reproductive cloning” had “far-reaching implications for human dignity,”<sup>313</sup> and therefore needed to be regulated by “an international binding global norm, with its legal and moral power.”<sup>314</sup> Therefore, it seems that those opposed to the comprehensive approach are not concerned that the document would regulate morality, since the regulation of morality is a position they strongly support in the focused approach, but rather that it would regulate a morality that would not conform with their own practices.

#### E. DOES THE DECLARATION PROHIBIT CLONING EMBRYOS FOR RESEARCH?

The central clause in the Declaration, clause (b), calls on Member States to “prohibit all forms of human cloning *inasmuch as they are incompatible with human dignity* and the protection of human life.”<sup>315</sup> Discussion has focused on whether the use of “inasmuch” essentially undermines the claim that the Declaration secures the “comprehensive” position. While “inasmuch as” normally means “because” it can also mean “to the extent that.” That is to say, clause (b) could be interpreted as a call on Member States to prohibit all forms of human cloning *to the extent that* they are considered (by Member States) to be incompatible with human dignity.<sup>316</sup> Under the latter interpretation, States such as the United Kingdom and South Korea could simply take the view that research cloning is *not* incompatible with human dignity and therefore need not be prohibited.

Perhaps the most egregious claim of this kind was the headline announcing the Declaration in *The Scientist*, which read: “UN Bans Reproductive Cloning.”<sup>317</sup> The article argues

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313. General Assembly Press Release, Oct. 17, 2002, *supra* note 18 (statement of the Chairman summarizing the “general agreement” regarding reproductive cloning).

314. General Assembly Press Release, Feb. 26, 2002, *supra* note 6 (statement of representative from Germany when Germany still advocated the focused approach).

315. United Nations Declaration on Human Cloning, *supra* note 32 (emphasis added).

316. Arsanjani, *supra* note 4, at 178.

317. Alison McCook, *UN Bans Reproductive Cloning*, SCIENTIST, Feb. 21,

that the language is ambiguous, quoting the Belgian representative to the effect that “the text is vague enough that countries that want to continue stem cell research should not feel impeded by it.”<sup>318</sup> In fact, such a reading is ruled out by the observation that if “inasmuch” permits an essentially subjective judgment to be made as to the compatibility of cloning with human dignity, it would be equally open to any State to take the view that “reproductive” cloning is not incompatible with human dignity either. Indeed, in the nature of the case in which a State permitted “reproductive cloning,” it would be on the ground that “reproductive cloning” was in harmony with its notion of where human dignity lies. This attempt to undercut the force of the Declaration proves too far reaching. If it does not call for the prohibition of all application of somatic cell nuclear transfer technology to human beings, it must necessarily be read as permitting subjective judgments by individual States as to any and all applications of the technology. While this could be held to be a theoretically legitimate, if obtuse, reading of the text, it also rules out the construction placed on it by *The Scientist*: if the Declaration does not call for the prohibition of research cloning, it cannot be held to call for the prohibition of “reproductive” cloning. Yet these are merely abstract points. Since the text was the product of four years of stormy political debate, its meaning needs to be assessed in a more fruitful and realistic fashion.

Both *The Scientist*’s reading and the more logical *reduction ad absurdum* suggested above are plainly *politically* illegitimate because the clause does not exist in a vacuum, and evidence of legislative intent and the contours of the debates and votes in the Sixth Committee and the plenary General Assembly cannot be set aside. Although critics of the Declaration accuse the document of lacking precision and clarity,<sup>319</sup> three separate factors provide ample evidence of its only legitimate interpretation: “inasmuch” in this context simply means “because.” Therefore, the Declaration calls for a global prohibition of research as well as “reproductive” cloning.

First, the Declaration speaks of “all forms of human cloning.”<sup>320</sup> Since during the nearly four years of debate, the

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2005, at 6, available at <http://www.the-scientist.com/article/display/22606/>.

318. *Id.*

319. Celeste Biever, *UN Abandons Legal Ban on Human Cloning*, NEW SCIENTIST, Mar. 9, 2005, <http://www.newscientist.com/article.ns?id=dn7120>.

320. United Nations Declaration on Human Cloning, *supra* note 32.

Sixth Committee had not considered the possibility of methods other than somatic cell nuclear transfer by which cloning might be effected, the meaning of “all forms” is plainly to include both research cloning and “reproductive cloning.” Second, clause (d) in the Declaration, a call to Member States to “take measures to prevent the exploitation of women in the application of life sciences,”<sup>321</sup> refers chiefly to the harvesting of eggs that would be needed to effect the “therapeutic cloning” model. Third, and most significantly, had the potential ambiguity in the Chairman’s text (which was incorporated into the Honduran proposal) intended to be open to the “proportionate” and therefore subjective reading of “inasmuch,” it would not have become the subject of a divisive series of votes in the Sixth Committee and the plenary General Assembly.

Delegations on all sides of the debate took the view in the Committee and, subsequently, in the General Assembly, that it was to be interpreted as setting forward the “comprehensive” approach. It would have been possible for delegations to take another view, in which case the Honduran text would have become the basis of a consensus; or, conceivably, once the text had been defined in terms of the “focused” approach, a divided vote in which proponents of the comprehensive approach might then have voted against the text.

The representative of the United Kingdom decisively clarified the meaning of the text by his very strong statement of opposition: “[t]he Declaration voted upon today is non-binding and does not reflect a consensus within the Assembly. It does not affect my country’s approach to stem cell research. Therapeutic cloning research will continue to be permitted in the United Kingdom.”<sup>322</sup> Ironically, the United Kingdom, which had consistently opposed the comprehensive approach, failed to take advantage of the latent ambiguity offered by the Honduran text by the simple expedient of drawing attention to it, welcoming it, and joining the proposal as a co-sponsor. The net effect of these steps would have been to redefine the text around its potential ambiguity,<sup>323</sup> declare it to be open to “comprehensive” or

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321. U.N. Doc. A/C.6/59/L.27/Rev.1, *supra* note 214.

322. General Assembly Press Release, Feb. 18, 2005, *supra* note 195.

323. Although, as we have noted, a proportionate and subjective reading of “inasmuch” would make it logically impossible to claim that “reproductive cloning” was prohibited while research cloning could be left to Member States’ judgment as to what constitutes “human dignity.” The text handles “all forms of

“focused” readings, and in effect render nugatory nearly four years of debate. The resulting Declaration would have been less a product of the much-discussed consensus than one meaninglessly open to any interpretation. Curiously, the United Kingdom did not take such a step, which would have yielded a substantial political victory for the most vociferous and staunch opponent of the “comprehensive” approach. The speech of the United Kingdom representative had the reverse effect, defining the latent ambiguity away and handing the proponents of a comprehensive cloning ban the victory that had eluded them for four years. It should be noted that the increased tally of support for the Declaration in the plenary General Assembly came after this removal of possible ambiguity in the text.

#### CONCLUSION

However misjudged and confused its origins, the UNGA cloning process set out to tackle the most evident symbol of the challenges that will be posed to the global community by the “brave new world” of emerging technologies. It was a momentous and commendable step for the General Assembly. The often anguished deliberations about the most fundamental questions during weeks of debate took the lawyers of the Sixth Committee well beyond their normal brief. Unprecedented lobbying was coupled with political agitation in capitals. At a time when Germany and the United States were further apart than they have been for a generation, members of the *Bundestag* from left as well as right called on the Chancellor to work with the United States and comprehensively undermined their own government’s position. At a point when relations between the west and the Islamic world were uniquely uneasy, despite the best efforts of OIC leaders, a majority of its members voted to support a policy that had been laid before the General Assembly by the U.S. President in person. At a time when the United States and the United Kingdom were more closely allied, and isolated, than they have been for many years, U.S. diplomacy was engaged around the globe against a key domestic priority of the U.K. government. In return, the U.K. representative dismissed the Declaration with disdain.

For all the contention that surrounded the crafting of the Declaration, very little has been made of it. The media largely overlooked it, even in the immediate wake of its passage, despite

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human cloning” in exactly the same way.

its interconnection with the major domestic U.S. debates on cloning and stem cell research. Even UNESCO, in the preamble to its 2005 Universal Declaration on Bioethics and Human Rights, makes no specific reference to the Declaration.<sup>324</sup> It is an interesting question whether the consensus-based approach that characterized the UNESCO process and was sought by many in UNGA, or one that recognizes and does not shrink from divided opinion in Member States, will prove the truer harbinger of the global reception of the emerging technologies of the twenty-first century. The pattern evident in the UNGA process—of a search for consensus that fails, and leads to a divided approach in which an international instrument (whether in the form of a convention or a declaration) is owned by some States but not others—may well subsist side-by-side with consensus statements that are framed in generalities. Somewhat ironically, the former approach may actually be better suited to the development of binding but elective instruments (conventions) than political declarations. This theory is illustrated by the contrast between the Council of Europe's 1997 Convention on Human Rights and Biomedicine, which certain States (including both Germany and the United Kingdom, for contrasting reasons) have declined to sign, and the Declaration on Human Cloning, from which certain States such as the United Kingdom have gone to considerable lengths to dissociate themselves, while others, such as Belgium, have somewhat disingenuously sought to explain away. The moral suasion exercised through a declaration passed by a wide majority in the world's most comprehensive deliberative body is not open to easy dismissal.

Within the United States, the lack of reporting of the Declaration coupled with very limited scholarly review of its process and import have hampered efforts to depoliticize the domestic debate about cloning. The issue has instead been too readily framed in terms of wider science policy and ethics issues and not placed in a global context. The evidence of the UNGA cloning process, especially the way it has brought into global focus the domestic policies of such diverse States as Canada and France (countries that consistently opposed the comprehensive

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324. See Universal Declaration on Bioethics and Human Rights, *supra* note 32, though the preambular reference to “other relevant international instruments adopted by the United Nations” includes it by implication.

approach at UNGA while applying it in domestic law; each permitting and funding stem cell research on embryos derived from supernumerary embryos), suggests a fundamental mischaracterization in public understanding and media portrayal of the domestic debate about cloning. It has become the victim, as it were, of having been subsumed at two levels: as a subset of the stem cell debate, which is itself a subset of the abortion debate. It offers a powerful reminder of the wide range of questions at stake in the argument about research as well as “reproductive” cloning.

As the twenty-first century unfolds, new issues will emerge on such fronts as artificial intelligence, the augmentation (and putative “enhancement”) of human capacities, the development of synthetic biology, and the blending of human and machine (into a so-called “cyborg”). It is to be hoped that the policy community both domestic and international will take the initiative to explore their significance for fundamental human rights and freedoms and not be held hostage either by existing paradigms (such as abortion) or an unwillingness to confront questions that are not susceptible to consensus resolution. The alternative scenario is one in which controversy is eschewed and the most flagrant minority positions are permitted veto power over the moral and political direction of an increasingly globalized world. The United Nations Declaration on Human Cloning does not offer a perfect outcome of a perfect process, but it illustrates the effort of the global community to come to terms with the new powers that emerging technologies are placing in human hands. The symbolism of its initiation in the first year of the new millennium is profound; and the Declaration is eloquent in its lessons as we face what lies ahead.

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ANNEX 1: TIMELINE OF EVENTS

|                       |   |
|-----------------------|---|
| <b>6.21.2001</b>      | French and German foreign ministers met in France to lay the groundwork for the U.N. cloning ban.   |
| <b>8.7.2001</b>       | France and Germany submitted a letter to the U.N. Secretary-General to create a Working Group for the purposes of drafting a convention to ban “reproductive cloning.”  |
| <b>9.19.2001</b>      | UNGA added an international convention on reproductive cloning to its agenda and referred the issue to the Sixth Committee.   |
| <b>11.26.2001</b>     | The Sixth Committee submitted to UNGA its intention to form an Ad Hoc Committee that would develop the convention.  |
| <b>12.12.2001</b>     | UNGA adopted the Sixth Committee’s recommendations.   |
| <b>2.25-3.1.2002</b>  | Ad Hoc Committee convened, hearing expert testimony regarding the science and ethics of cloning. Research cloning was first raised as a consideration.  |
| <b>9.23-9.27.2002</b> | Working Group met to further negotiations of the convention. Franco-German, Mexican, and Holy See’s proposals were submitted; responses to Franco-German proposal were submitted by Brazil, the United Kingdom, Mexico and China.                               |
| <b>10.17.2002</b>     | Working Group met with newly-revised Franco-German resolution and Spanish resolution. The delineations between the focused and the comprehensive approach have begun to form.   |
| <b>11.6.2002</b>      | Sixth Committee chairman introduced draft decision to reconvene the Working Group in September of 2003.   |
| <b>11.7.2002</b>      | Motion to reconvene in September 2003 approved.   |
| <b>1.17.2003</b>      | German Parliament passed a Declaration requesting that German foreign ministers conform their position on cloning at UNGA with domestic policy (the comprehensive approach), and further, that they work to garner support for that approach from other States. |

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| <b>9.2003</b>                           | German foreign ministers announced that they will continue to support the focused approach, counter to domestic sentiment, for “strategic” reasons.  |
| <b>9.29-<br/>10.3.2003</b>              | Working Group reconvened. France and Germany withdrew as sponsors of the focused approach, and Belgium took their place. Spain withdrew as sponsor of the focused approach, and Costa Rica took its place .  |
| <b>10.28.2003</b>                       | OIC Member State ambassadors agreed to move to defer the debate for two years.   |
| <b>11.6.2003</b>                        | In the Sixth Committee, Iran, on behalf of OIC Member States, moved to defer the debate for two years; motion passed with 80 in favor, 79 against.   |
| <b>12.9.2003</b>                        | UNGA, presented with both the two-year option to defer recommended by the Sixth Committee and the resolution reflecting the comprehensive approach, elected neither, instead moving to delay debate for only one year, reconvening the Ad Hoc Committee in October of 2004. UNGA emphasized that the Committee was to finalize a draft during that time. |
| <b>9.21.2004</b>                        | President Bush addressed UNGA, speaking in support of the comprehensive approach.  |
| <b>10.21-<br/>22.2004</b>               | The Sixth Committee resumed debate on the Costa Rican draft.   |
| <b>11.19.2004</b>                       | Unable to reach a consensus, the Committee Chairman from Morocco moved that the Committee form a Declaration as opposed to a Convention. This motion was approved.   |
| <b>12.2004</b>                          | Working Group submitted drafts for consideration to the Sixth Committee.   |
| <b>2.14-<br/>15.2005,<br/>2.18.2005</b> | Working Group convened to consider Italy’s and the Chairman’s drafts. Belgium submitted proposed amendments, the first of which was ratified, the last two of which were rejected. The Chairman’s text, resubmitted by Honduras, was approved by a vote of 71 in favor, 35 opposed, 43 abstentions   |
| <b>3.23.2005</b>                        | UNGA approved the Declaration by a vote of 84 in favor, 34 opposed, 37 abstentions.  |

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ANNEX 2A: REVISED PROPOSAL SUBMITTED BY FRANCE AND GERMANY<sup>325</sup>

*The General Assembly,*

*Recalling* the Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997, and in particular article 11 thereof, which states that practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted,

*Recalling also* its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,

*Bearing in mind* Commission on Human Rights resolution 2001/71 of 25 April 2001, entitled "Human rights and bioethics", adopted at the fifty-seventh session of the Commission,

***Mindful of the importance of the development of the life sciences for the benefit of mankind with full respect for the integrity and dignity of the human being,***

*Aware* that the rapid development of the life sciences opens up tremendous prospects for the improvement of the health of individuals and mankind as a whole, but also that certain practices pose potential dangers to the integrity and dignity of the individual,

*Concerned* by the seriousness of problems posed by the development of techniques of reproductive cloning of human beings applied to mankind which may have consequences for respect for human dignity,

*Particularly concerned*, in the context of practices which are contrary to human dignity, at recently disclosed information on research into and attempts at the reproductive cloning of human beings,

*Determined* to prevent, as a matter of urgency, such an attack on the human dignity of the individual,

*Recalling* its resolution 56/93 of 12 December 2001, by which

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325. Language in bold was revised prior to the publication of the Working Group report. Gen. Assembly, Sixth Comm., *Report of the Working Group, International Convention against the Reproductive Cloning of Human Beings*, U.N. Doc. A/C.6/57/L.4 (Sept. 30, 2002) (A/C.6/57/WG.1/CRP.1/Rev.1) (citation omitted).

it decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the elaboration of an international convention against the reproductive cloning of human beings,

**Resolved** to address issues related to other forms of human cloning **through a step-by-step approach**, including through the elaboration of a separate international instrument, as soon as negotiations on a convention against reproductive cloning of human beings have been concluded,

*Bearing in mind* that this purpose does not preclude the possibility of States parties adopting stricter national regulations,

**Determined** to adopt provisional measures at the national level to prevent potential dangers to the human dignity of the individual pending the adoption and entry into force of an international convention against the reproductive cloning of human beings and any other instrument in the field of cloning of human beings,

1. *Welcomes* the report of the Ad Hoc Committee on an International Convention against the Reproductive Cloning of Human Beings on its work from 25 February to 1 March 2002;

2. *Requests* the Ad Hoc Committee to prepare, as a matter of urgency **and if possible by the end of 2003**, the draft text of an international convention against the reproductive cloning of human beings;

3. *Also requests* the Ad Hoc Committee, in developing the draft convention,

(a) To consider, inter alia, the following indicative elements:

(i) Scope (as mentioned in paragraph 2 above);

(ii) Definitions;

(iii) Prohibition of the reproductive cloning of human beings;

(iv) National implementation, including penalties;

(v) Preventive measures;

(vi) Jurisdiction;

(vii) Promotion and strengthening of international cooperation, technical assistance;

(viii) Collection, exchange and analysis of information;

(ix) Mechanisms for monitoring implementation;

(b) To specify that the prohibition of the reproductive cloning of human beings does not **imply the authorization of other forms of cloning of human beings**;

(c) To ensure that States parties shall not be prevented from adopting or maintaining stricter regulations on the prohibition of the reproductive cloning of human beings than those contained in the draft convention;

4. *Further requests* the Ad Hoc Committee to take into consideration the relevant existing international instruments;

4 bis. (a) *Decides* that it will favourably consider any proposal to launch negotiations on a further legal instrument on other forms of cloning of human beings as soon as negotiations on a draft international convention prohibiting the reproductive cloning of human beings have been concluded;

(b) *Requests* the World Health Organization and the United Nations Educational, Scientific and Cultural Organization to start elaborating without delay a joint preparatory document for these negotiations, outlining from a scientific and ethical perspective the issues to be considered, and to submit this document no later than by the end of 2003;

4 ter. *Calls upon* States, pending the entry into force of an international convention against the reproductive cloning of human beings, to adopt at the national level a prohibition of the reproductive cloning of human beings and to control other forms of cloning of human beings through regulations, moratoria or prohibition;

5. *Requests* the Secretary-General to provide the Ad Hoc Committee with the necessary facilities for the performance of its work, to be conducted in two sessions from . . . February 2003 and False. September 2003;

6. *Invites* the Ad Hoc Committee to take into consideration the contributions of United Nations subsidiary bodies, and to closely involve the United Nations Educational, Scientific and Cultural Organization and the World Health Organization in the process of negotiations;

7. *Requests* the Ad Hoc Committee to report on its work to the General Assembly at its fifty-eighth session;

8. *Decides* to include in the provisional agenda of its fifty-eighth session the item entitled "International convention against the reproductive cloning of human beings".

**Aide-memoire relating to the proposal submitted by**

**France and Germany**<sup>326</sup>

1. The speed with which advances are being made in the field of biotechnology and gene technology has reached a level scarcely deemed possible not long ago. Almost every day researchers report new insights into the secret of life itself. More than any scientific discovery in the past, these developments raise issues central to our understanding of human life and existence, posing new challenges both for policy makers and for society at large.

2. The stated intention of certain researchers and laboratories to attempt the reproductive cloning of human beings underlines how crucial it is for the international community to develop an effective response to this challenge. The matter of prohibiting the reproductive cloning of human beings has become more urgent since last February. Some scientists have already announced that they have engaged in attempts to generate a cloned child by implanting cloned embryos in women consenting to such a procedure. With every passing day the risk they will accomplish their aims grows greater.

3. In response to this challenge, France and Germany launched a joint initiative in the United Nations General Assembly to draw up an international convention against the reproductive cloning of human beings. Under its resolution 56/93 of 12 December 2001, co-sponsored by 50 States, an Ad Hoc Committee was established to consider the elaboration of such a convention. The first meeting of the Committee was held in New York from 25 February to 1 March 2002.

4. The meeting began with experts providing background information on scientific, ethical, philosophical and legal issues relevant to the reproductive cloning of human beings. The subsequent exchange of views among the various delegations demonstrated the existence of a clear consensus that the reproductive cloning of human beings had far-ranging implications for human dignity and should therefore be banned.

5. Many delegations shared the view of France and Germany that we are in a race against time, since irresponsible researchers are already working on reproductive cloning. Given this situation, it would be both desirable and appropriate for the next meeting of the Ad Hoc Committee to submit to the General Assembly, on the basis of a broad international consensus, a mandate for the elaboration of a convention against reproductive

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326. *Id.* (A/C.6/57/WG.1/CRP.1/Add.1).

cloning that could then be adopted at the fifty-seventh session of the General Assembly. The negotiations on the text of the convention could then take place in 2003.

6. Some delegations expressed the view that such a convention should address not only reproductive cloning but also other aspects, including therapeutic cloning, arguing that an effective ban on the reproductive cloning of human beings required a ban on all types of cloning, including therapeutic cloning, since the scientific techniques employed were similar in both cases. However, it is important to remember that while there is already an international consensus on the need to ban reproductive cloning, no such consensus exists as far as banning therapeutic cloning or other forms of genetic engineering is concerned. Any attempt to achieve a complete ban would in effect undermine the efforts of the international community to achieve the expeditious drafting of a convention against reproductive cloning. The opportunity to accomplish what can be accomplished before it is too late would be lost. That is something we cannot afford.

7. France and Germany therefore propose that we take a step-by-step approach to these complex bioethical issues, focusing first of all on a ban on the reproductive cloning of human beings, and then at a later stage, by interested States, on measures concerning the regulation of other types of cloning, including through the elaboration of a separate international instrument.

8. Another advantage of such a step-by-step approach would be to make quite clear that a convention against the reproductive cloning of human beings should not be seen as implicitly authorizing all other types of cloning. Hence the work on such a convention would initiate a negotiating process in which other issues would also be addressed. Irrespective of any such process, all countries may opt to regulate all forms of cloning, should they so wish, by means of national legislation.

9. France and Germany do not believe that a prohibition which does not cover cloning for research and therapeutic purposes would necessarily be inefficient, as some delegations asserted during the discussions in the Ad Hoc Committee last February. The efficiency of the proposed convention would be ensured by the obligation on States parties to take appropriate measures to prohibit the reproductive cloning of human beings. Moreover, it would also be possible for States parties to adopt

complementary preventive measures.

10. Time is running out, however. It is imperative that the international community develop a fitting response to the issues cloning has raised. That will be possible if at the next session of the Ad Hoc Committee in September we can together agree on the mandate for the elaboration of the proposed convention banning the reproductive cloning of human beings. Should we fail to do so, it may not be possible to adopt such a convention before it is too late.

11. France and Germany would therefore be grateful if your Government could give instructions to your delegation to the Ad Hoc Committee at its forthcoming session, to be devoted to preliminary work with a view to the elaboration of an international convention against the reproductive cloning of human beings, to support the concept of a mandate for the negotiation of such a convention; limited to that scope, without considering for the time being the issue of the cloning of human beings for research or therapeutic purposes. A draft General Assembly resolution containing such a mandate is enclosed and will be submitted by France and Germany as a working document at the next session of the Ad Hoc Committee.

#### ANNEX 2B: PROPOSAL SUBMITTED BY MEXICO<sup>327</sup>

##### **Preambular paragraphs**

*Mindful* of the importance of the development of the life sciences for the benefit of mankind with full respect for the integrity and dignity of the human being,

*Determined* to adopt provisional measures to prevent potential dangers to the human dignity of the individual pending the adoption and entry into force of an international convention against the cloning of human beings,

##### **Operative paragraphs**

*Solemnly declares* that, pending the adoption of an international convention against the cloning of human beings, States shall not permit any research, experiment, development or application in their territories or areas under their jurisdiction or control of any technique aimed at the cloning of human beings;

*Calls upon* States to adopt such measures as may be necessary to prohibit other techniques of genetic engineering that may have adverse consequences on the respect for human

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327. *Id.* (A/C.6/57/WG.1/CRP.3).

dignity.

**ANNEX 2C: PROPOSAL SUBMITTED BY THE HOLY SEE CONTAINING A SYNTHESIS OF THE FRANCO-GERMAN AND MEXICAN PROPOSALS, AS MODIFIED BY STATE INTERVENTIONS<sup>328</sup>**

*The General Assembly,*

*Recalling* the Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997, and in particular article 11 thereof, which states that practices which are contrary to human dignity, such as the reproductive cloning of human beings, shall not be permitted,

*Recalling also* its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,

*Bearing in mind* Commission on Human Rights resolution 2001/71 of 25 April 2001, entitled "Human rights and bioethics", adopted at the fifty-seventh session of the Commission,

*Mindful* of the importance of the development of the life sciences for the benefit of mankind with full respect for the integrity and dignity of the human being,

*Determined* to adopt the necessary measures to prevent potential dangers to the dignity of human beings pending the adoption and entry into force of an international convention against the cloning of human beings,

*Recalling* its resolution 56/93 of 12 December 2001, by which it decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the elaboration of an international convention against the reproductive cloning of human beings,

*Bearing in mind* that this purpose includes a comprehensive ban on all forms of human cloning, considering the fact that all forms of human cloning are in essence reproductive,

*Bearing in mind also* that this purpose does not preclude the possibility of States adopting additional national regulations,

1. *Welcomes* the report of the Ad Hoc Committee on an International Convention against the Reproductive Cloning of

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328. *Id.* (A/C.6/57/WG.1/CRP.4) (citation omitted).

Human Beings on its work from 25 February to 1 March 2002;

2. *Strongly encourages* States and other entities to direct funds which might have been used for human cloning technologies to pressing global issues in developing countries such as famine and drought, infant mortality, and diseases, including HIV/AIDS;

3. *Calls upon* States, pending the entry into force of an international convention against the cloning of human beings, to prohibit any research, experiment, development or application in their territories or areas under their jurisdiction or control of any technique aimed at the cloning of human beings;

4. *Decides* to include in the provisional agenda of its \_\_\_ session an item entitled “International legal issues related to human cloning”.

ANNEX 2D: PROPOSAL SUBMITTED BY BRAZIL CONCERNING THE REVISED PROPOSAL SUBMITTED BY FRANCE AND GERMANY<sup>329</sup>

*The General Assembly,*  
*Recalling* the Universal Declaration on the Human Genome . . .

. . .  
3. *Requests* the Ad Hoc Committee, in developing the draft convention, (a) To consider, *inter alia*, the following indicative elements:

. . .  
(vii) Promotion and strengthening of international cooperation and technological assistance for the development and improvement of alternative technologies with the use of adult stem cells;

. . .  
4. *Requests* an appropriate subsidiary body of the United Nations to prepare an in-depth study addressing, *inter alia*:

(i) The current state of the art of the human cloning technologies;

(ii) The possible dual use of the existing non-human cloning techniques; and

(iii) Issues involving intellectual property rights in the genomic area and the development of alternative technologies using adult stem cells;

. . .

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329. *Id.* (A/C.6/57/WG.1/CRP.6).

6. *Invites the Ad Hoc Committee to take into consideration the contributions of subsidiary bodies of the United Nations and to closely involve the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Conference on Trade and Development and the Economic and Social Council in the process of negotiations;*

ANNEX 2E: UNITED KINGDOM PROPOSAL TO THE REVISED PROPOSAL TO BE SUBMITTED BY FRANCE AND GERMANY<sup>330</sup>

**Tenth preambular paragraph**

Amend the paragraph to read:

“... through a step-by-step approach, including the **possibility of the elaboration . . .**”

**Twelfth preambular paragraph**

Amend the paragraph to read:

“... potential dangers **to** the human dignity . . .”

**Paragraph 4 bis (a)**

Amend the subparagraph to read:

“Decides that it will **carefully consider, as a priority, proposals for the most appropriate international approach to** other forms of cloning of human beings, **including by the elaboration of** a further legal instrument, as soon as . . .”

**Paragraph 4 bis (b)**

Amend the subparagraph to read:

“... preparatory document **to inform those considerations**, outlining from a scientific and ethical perspective the **relevant issues**, and to submit . . .”

ANNEX 2F: PROPOSAL BY MEXICO REGARDING THE REVISED FRENCH-GERMAN PROPOSAL<sup>331</sup>

**Paragraph 4 ter**

... to control other forms of cloning of human beings **that are contrary to human dignity** through regulations, moratoria or prohibition;

ANNEX 2G: PROPOSAL SUBMITTED BY CHINA REGARDING THE

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330. *Id.* (A/C.6/57/WG.1/CRP.7).

331. *Id.* (A/C.6/57/WG.1/CRP.8).

REVISED FRENCH-GERMAN PROPOSAL<sup>332</sup>

**Paragraph 3(b)**

To specify that the prohibition of the reproductive cloning of human beings does not imply the **endorsement** of other forms of the cloning of human beings;

ANNEX 2H: MEMORANDUM SUBMITTED BY SPAIN: THE SPANISH POSITION ON THE DRAFT INTERNATIONAL CONVENTION ON HUMAN CLONING<sup>333</sup>

The first meeting of a group convened to prepare a draft international convention, in the context of the United Nations, to ban human cloning for reproductive purposes, was held in February 2002 at United Nations Headquarters in New York. However, some countries, notably Spain, proposed that the ban should be extended to cover cloning for therapeutic purposes. The reasons why Spain also proposed a ban on cloning for therapeutic purposes are, among others, the following:

- **Contrary to what is often argued, human cloning for therapeutic purposes also involves experimentation with human embryos and is incompatible with legal and safe scientific research, its aim being to constitute human embryos to be used in research.** In this sense, article 18.2 of the European Convention on Human Rights and Biomedicine (the Oviedo Convention), which was ratified in 1999 by a number of European States and entered into force for Spain in 2000, expressly prohibits “the creation of human embryos for research purposes”. The “creation” of a human embryo in order, by destroying it, to obtain embryonic mother cells, makes cloning an example of exploitation of the human embryo.

- **Along these lines, Spain considers that human cloning for any purpose is an unsafe research practice, contrary to human dignity, and is thus expressly prohibited under its internal legislation.** Spain also firmly believes that the partial prohibition of cloning would be deprived of any legal basis, since the concepts legally protected by the prohibition of both reproductive and therapeutic cloning are necessarily the same.

- **It is not possible to monitor the effectiveness of the prohibition on human cloning for reproductive purposes if therapeutic cloning is not also prohibited.** From a

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332. *Id.* (A/C.6/57/WG.1/CRP.9).

333. *Id.* (A/C.6/57/WG.1/CRP.2).

juridical standpoint, the prohibition of something must allow for the possibility for it to be monitored and, if applicable, punished. Because the process for reproductive and for therapeutic cloning is the same except for the ultimate purpose, it would be impossible to prevent the former from occurring if the latter was not prevented at the same time. Only a total prohibition will prevent embryos theoretically destined for research from being implanted for other purposes.

• **A partial prohibition of human cloning would create legal uncertainty.** The promotion of a strategy of partial prohibitions, deferred over time, is not effective and creates legal uncertainty in a field in which the law must move ahead of reality. In matters such as human cloning, involving fundamental values concerning the individual and society, there must be a clear definition of the boundaries of ethical and safe research. In addition, such a definition must be accepted by the greatest possible number of countries. A partial prohibition of cloning would paradoxically have two undesired effects in the domestic law of the countries which accepted it. On the one hand, partial prohibition of human cloning might be interpreted as a tacit acceptance of the form of cloning which is not prohibited and, on the other, would inevitably strengthen a movement in favour of the express authorization of therapeutic cloning.

• **A partial prohibition might give rise to clandestine human cloning for reproductive purposes, with the establishment of an illegal trade in ovules.** At present, the domestic laws of most countries and all international agreements in the field prevent trade in human organs and tissues.

• **Any form of human cloning infringes the principles of prudence and precaution which must govern any scientific research.** It is unacceptable for a given research option to present a hazard to human health, much more so when there are alternative research channels which are safer, as efficient or more so, and respectful of the embryo. All legislation must promote attitudes involving minimized risk. In any event, whenever there are doubts as to the propriety of an action, the legal principle of precaution must ensure the protection of the weaker party, in the present case, the human embryo. Therefore all States, including those that have not yet declared an open opposition to therapeutic cloning, must support a total

international ban on human cloning. This will prove necessary at least until all alternative research practices have been tried out and possible doubts have been cleared up as to its advisability and safety, in application of the precautionary principle.

• **In terms of practical experience, the results of animal cloning experiments reinforce the need to prohibit any form of human cloning.** The experience gained in animal cloning has made clear the very limited efficacy of the techniques used and the considerable risks of embryonic malformation and deformation. According to the most recent and prestigious research, there is an unknown risk that therapeutic cloning will generate cell lines hazardous to human health, giving rise to cancerous diseases and genetic anomalies. It is possible to generate cloned embryonic mother cells carrying unknown genetic anomalies which would be incorporated into the tissues and organs of patients undergoing regenerative therapies.

• **Opposition to human cloning does not amount to denying advances in science or genetic research.** Cloning is not the only research strategy for the development of regenerative medicine: research using adult mother cells not only presents itself as a safer alternative, respectful of the embryo, but is already yielding very relevant results.

• **Research using adult mother cells has had some clinical application and has opened up enormous opportunities.** Bone marrow cells have been used for years for blood cell regeneration and the possibility has recently been discovered of regenerating different tissue types from adult mother cells. There have also been important discoveries relating to the capacity of adult mother cells to multiply and separate into the most varied cell types. Support for this type of research would make it possible to advance knowledge on the processes of human cell reprogramming.

• **Research using adult mother cells is safer,** and free from the two main drawbacks of research using embryonic mother cells, that is their excessive multiplication capacity, with the risk of tumours, and the patient's greater likelihood of immune rejection. In purely scientific terms, the option of using adult mother cells in regenerative medicine is more desirable than that of using embryonic mother cells, with the concomitant reduced risk of tumours and immune rejection.

• **Generalized support for adult mother-cell research would help in taking the fullest advantage of it and would**

**demonstrate its efficacy.** A total prohibition of human cloning, even for a reasonable period of time, will allow scientific and human resources to be more concentrated on safer lines of biotechnological research, avoiding the ethical and juridical conflicts referred to above.

**ANNEX 3A: DRAFT RESOLUTION FROM FRANCE AND GERMANY<sup>334</sup>**

At the 16th meeting, on 17 October, the representative of Germany, on behalf of Belarus, Belgium, Brazil, Canada, China, Cuba, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Norway, Slovenia and Switzerland, introduced a draft resolution entitled “International convention against the reproductive cloning of human beings” (A/C.6/57/L.8 and Corr.1), which read:

*“The General Assembly,*

*“Recalling the Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997, and in particular article 11 thereof, which states that practices which are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted,*

*“Recalling also its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,*

*“Bearing in mind Commission on Human Rights resolution 2001/71 of 25 April 2001 entitled ‘Human rights and bioethics’, adopted by the Commission at its fifty-seventh session,*

*“Mindful of the importance of the development of the life sciences for the benefit of mankind, with full respect for the integrity and dignity of the human being,*

*“Aware that the rapid development of the life sciences opens up tremendous prospects for the improvement of the health and the restoration of human dignity of individuals and mankind as a whole, but also that certain practices pose potential dangers to the integrity and dignity of the individual,*

*“Concerned by the seriousness of problems posed by the*

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334. Gen. Assembly, Report of the Sixth Comm., *International Convention against the Reproductive Cloning of Human Beings*, U.N. Doc. A/57/569 (Nov. 11, 2002)) (A/C.6/57/L.8 and Corr.1 (Oct. 17, 2002)).

development of techniques of reproductive cloning of human beings applied to mankind, which may have consequences for respect for human dignity,

*“Particularly concerned*, in the context of practices that are contrary to human dignity, at recently disclosed information on research into and attempts at the reproductive cloning of human beings,

*“Determined* to prevent, as a matter of urgency, such an attack on the human dignity of the individual,

*“Recalling* its resolution 56/93 of 12 December 2001, by which it decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the elaboration of an international convention against the reproductive cloning of human beings,

*“Resolved* to address issues related to other forms of human cloning, including through the elaboration of an appropriate separate international instrument, as soon as negotiations on a convention against the reproductive cloning of human beings have been concluded,

*“Bearing in mind* that this purpose does not preclude the possibility of States parties adopting stricter national regulations,

*“Determined* to adopt provisional measures at the national level to prevent potential dangers to the human dignity of the individual pending the adoption and entry into force of an international convention against the reproductive cloning of human beings and any other instrument in the field of cloning of human beings,

*“1. Welcomes* the report of the Ad Hoc Committee on an International Convention against the Reproductive Cloning of Human Beings on its work from 25 February to 1 March 2002;

*“2. Decides* that the Ad Hoc Committee shall be reconvened from \_\_\_\_ to \_\_\_\_ February and from \_\_\_\_ to \_\_\_\_ September 2003 in order to prepare, as a matter of urgency and if possible by the end of 2003, a draft international convention against the reproductive cloning of human beings;

*“3. Requests* the Ad Hoc Committee, in developing the draft convention:

(a) To consider, *inter alia*, the following indicative elements: scope, definitions, prohibition of reproductive cloning of human beings, national implementation, including penalties and preventive measures, jurisdiction, promotion and strengthening

of international cooperation and technical assistance, collection, exchange and analysis of information and mechanisms for monitoring implementation;

(b) To specify that the prohibition of reproductive cloning of human beings does not imply the endorsement of any other form of cloning of human beings for any purpose;

(c) To ensure that States parties shall not be prevented from adopting or maintaining stricter regulations on the prohibition of cloning of human beings than those contained in the draft convention;

“4. *Requests* the Ad Hoc Committee to take into consideration the relevant existing international instruments;

“5. *Decides* that it will consider, as a priority, proposals to address issues related to other forms of cloning of human beings, including one or more appropriate separate international instruments, as soon as negotiations on a draft international convention prohibiting the reproductive cloning of human beings have been concluded;

“6. *Invites*, to that end, the World Health Organization and the United Nations Educational, Scientific and Cultural Organization to start elaborating, without delay, in close cooperation with the appropriate United Nations bodies, a joint preparatory document outlining from a scientific and ethical perspective the relevant issues to be considered, *inter alia*, the current state of the art of the human cloning technologies and the possible dual use of the existing nonhuman cloning techniques, and to submit this document no later than the end of 2003;

“7. *Calls upon* those States which have not yet done so, pending the entry into force of an international convention against the reproductive cloning of human beings and their becoming party thereto, to adopt at the national level a prohibition of reproductive cloning of human beings;

“8. *Also calls upon* those States which have not yet done so to adopt at the national level a moratorium on or a prohibition of, other forms of cloning of human beings that are contrary to human dignity;

“9. *Requests* the Secretary-General to provide the Ad Hoc Committee with the facilities necessary for the performance of its work;

“10. *Invites* the Ad Hoc Committee to take into consideration the contributions of United Nations bodies and to

closely involve the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and the United Nations Conference on Trade and Development in the process of negotiations;

“11. *Requests* the Ad Hoc Committee to report on its work to the General Assembly at its fifty-eighth session;

“12. *Decides* to include in the provisional agenda of its fifty-eighth session the item entitled ‘International convention against the reproductive cloning of human beings’.”

#### ANNEX 3B: DRAFT RESOLUTION FROM SPAIN<sup>335</sup>

At the 16th meeting, on 17 October, the representative of Spain, on behalf of the Philippines, Spain and the United States of America, introduced a draft resolution entitled “International convention against the reproductive cloning of human beings” (A/C.6/57/L.3) and orally revised the title to read “International convention against human cloning”. A revised draft resolution entitled “International convention against human cloning” (A/C.6/57/L.3/Rev.1 and Corr.1) was subsequently issued. The revised draft resolution was sponsored by Antigua and Barbuda, Argentina, Costa Rica, Dominica, the Dominican Republic, El Salvador, Eritrea, Ethiopia, Fiji, Georgia, Grenada, Honduras, Italy, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, the Marshall Islands, Micronesia (Federated States of), Nicaragua, Nigeria, Panama, Paraguay, the Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Spain, Suriname, Tajikistan, Timor-Leste, Tonga, Turkmenistan, Tuvalu, the United States of America, Uzbekistan and Vanuatu.

The changes introduced by draft resolution A/C.6/57/L.3/Rev.1 and Corr.1 related solely to operative paragraph 2, which in draft resolution A/C.6/57/L.3 had read:

“2. *Requests* the Ad Hoc Committee to prepare, as a matter of urgency, the draft text of an international convention against human cloning, bearing in mind that it does not prohibit the use of nuclear transfer or other cloning techniques to produce DNA molecules, organs, plants, tissues, cells other than human embryos or animals other than humans”.

10. Draft resolution A/C.6/57/L.3/Rev.1 and Corr.1 read as follows:

“*The General Assembly,*

“*Recalling* the Universal Declaration on the Human Genome

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335. *Id.* (A/C.6/57/L.3/Rev.1 and Corr.1 (Oct. 17, 2002)).

and Human Rights, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997, and in particular article 11 thereof, which states that practices which are contrary to human dignity, such as the reproductive cloning of human beings, shall not be permitted,

*"Recalling also its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,*

*"Bearing in mind Commission on Human Rights resolution 2001/71 of 25 April 2001, entitled 'Human rights and bioethics', adopted at the fifty seventh session of the Commission,*

*"Mindful of the importance of the development of the life sciences for the benefit of mankind with full respect for the integrity and dignity of the human being,*

*"Mindful also that certain practices pose potential dangers to the integrity and dignity of the individual,*

*"Concerned at recently disclosed information on research into and attempts at the creation of human beings through cloning processes,*

*"Determined to prevent as a matter of urgency such an attack on the human dignity of the individual,*

*"Conscious of widespread preoccupations that the human body and its parts should not, as such, give rise to financial gain,*

*"Recalling its resolution 56/93 of 12 December 2001, by which it decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the elaboration of an international convention against the reproductive cloning of human beings,*

*"Determined to adopt permanent and provisional measures, as appropriate, to prevent potential dangers to the human dignity of the individual,*

*"1. Welcomes the report of the Ad Hoc Committee on an International Convention against the Reproductive Cloning of Human Beings on its work from 25 February to 1 March 2002;*

*"2. Requests the Ad Hoc Committee to be reconvened from 24 March to 4 April 2003 and prepare, as a matter of urgency, the draft text of an international convention against human cloning, bearing in mind that it will not prohibit the use of nuclear transfer or other cloning techniques to produce DNA*

molecules, organs, plants, tissues, cells other than human embryos or animals other than humans, and recommends that the work continue during the fifty-eighth session of the General Assembly from 29 September to 3 October 2003 within the framework of a working group of the Sixth Committee;

“3. *Also requests* the Ad Hoc Committee, in developing the draft convention, to consider, *inter alia*, the following indicative elements:

- (a) Scope;
- (b) Definitions;
- (c) The objective;
- (d) Implementation;
- (e) Preventive measures;
- (f) Jurisdiction;
- (g) Promotion and strengthening of international cooperation;
- (h) Exchange of information;
- (i) Mechanisms for monitoring implementation;

“4. *Solemnly declares* that, pending the adoption of an international convention against human cloning, States shall not permit any research, experiment, development or application in their territories or areas under their jurisdiction or control of any technique aimed at human cloning;

“5. *Calls upon* States to adopt such measures as may be necessary to prohibit those techniques of genetic engineering that may have adverse consequences on the respect for human dignity;

“6. *Requests* the Secretary-General to provide the Ad Hoc Committee with the necessary facilities for the performance of its work;

“7. *Invites* the Ad Hoc Committee to take into consideration the contributions of United Nations agencies and competent international organizations, as well as other relevant bodies of international opinion in the process of negotiations;

“8. *Requests* the Ad Hoc Committee to report on its work to the General Assembly at its fifty-eighth session;

“9. *Decides* to include in the provisional agenda of its fifty-eighth session an item entitled ‘International convention against human cloning’.”

ANNEX 4A: DRAFT RESOLUTION FROM BELGIUM<sup>336</sup>

At the 10th meeting, on 20 October, the representative of Belgium, on behalf of Belarus, Belgium, Brazil, China, Cuba, the Czech Republic, Denmark, Estonia, Finland, Greece, Iceland, Japan, Latvia, Liechtenstein, Lithuania, the Republic of Korea, Singapore, Slovenia, South Africa, Sweden, Switzerland, Turkey and the United Kingdom of Great Britain and Northern Ireland, introduced a draft resolution entitled “International convention against the reproductive cloning of human beings”

(A/C.6/58/L.8), which read:

*“The General Assembly,*

*“Recalling the Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997, in particular article 11 thereof, which states that practices that are contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted,*

*“Recalling also its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,*

*“Bearing in mind Commission on Human Rights resolution 2003/69 of 25 April 2003, entitled ‘Human rights and bioethics’, adopted by the Commission at its fifty-ninth session,*

*“Mindful of the importance of the development of the life sciences for the benefit of mankind, with full respect for the integrity and dignity of the human being,*

*“Aware that the rapid development of the life sciences opens up prospects for the improvement of the health of individuals and mankind as a whole, but also that certain practices pose potential dangers to the integrity and dignity of the individual,*

*“Concerned by the seriousness of problems posed by the development of techniques of reproductive cloning of human beings applied to mankind, which may have consequences for respect for human dignity,*

*“Particularly concerned, in the context of practices that are contrary to human dignity, at recently disclosed information on*

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336. Gen. Assembly, Report of the Sixth Comm., International Convention against the Reproductive Cloning of Human Beings, U.N. Doc. A/58/520 (Nov. 11, 2003)) (A/C.6/58/L.8 (Oct. 20, 2003)).

research into and attempts at the reproductive cloning of human beings,

*"Determined* to prevent, as a matter of urgency, such an offence to human dignity,

*"Recalling* its resolution 56/93 of 12 December 2001, by which it decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the elaboration of an international convention against the reproductive cloning of human beings,

*"Determined* to adopt provisional measures at the national level to prevent potential dangers to the human dignity of the individual pending the adoption and entry into force of an international convention against the reproductive cloning of human beings,

*"1. Welcomes* the report of the Working Group of the Sixth Committee on its work from 29 September to 3 October 2003;

*"2. Decides* that the Ad Hoc Committee shall be reconvened from \_\_\_ to \_\_\_ February and from \_\_\_ to \_\_\_ September 2004 in order to prepare, as a matter of urgency and if possible by the end of 2004, a draft international convention against the reproductive cloning of human beings;

*"3. Requests* the Ad Hoc Committee, in developing the draft convention, to include the following elements:

*"(a) An obligation on all contracting parties to ban reproductive cloning of human beings with no possibility of making any reservations;*

*"(b) An obligation on all contracting parties to take action to control other forms of human cloning by adopting a ban or imposing a moratorium or regulating them by means of national legislation;*

*"4. Also requests* the Ad Hoc Committee to take into consideration the relevant existing international instruments;

*"5. Calls upon* those States that have not yet done so, pending the adoption and entry into force of an international convention against the reproductive cloning of human beings and their becoming party thereto, to adopt at the national level a prohibition against reproductive cloning of human beings;

*"6. Also calls upon* those States that have not yet done so, pending the adoption and entry into force of an international convention against the reproductive cloning of human beings and their becoming party thereto, to take action to control other forms of human cloning by adopting a ban or imposing a

moratorium or regulating them by means of national legislation;

“7. *Requests* the Secretary-General to provide the Ad Hoc Committee with the facilities necessary for the performance of its work;

“8. *Invites* the Ad Hoc Committee to take into consideration the contributions of United Nations bodies and to closely involve the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and the United Nations Conference on Trade and Development in the process of negotiations;

“9. *Requests* the Ad Hoc Committee to report on its work to the General Assembly at its fifty-ninth session;

“10. *Decides* to include in the provisional agenda of its fifty-ninth session the item entitled ‘International convention against the reproductive cloning of human beings’.”

#### ANNEX 4B: DRAFT RESOLUTION FROM COSTA RICA<sup>337</sup>

At the 10th meeting, on 20 October, the representative of Costa Rica, on behalf of Albania, Angola, Antigua and Barbuda, Benin, Burundi, Chile, Costa Rica, Côte d'Ivoire, the Democratic Republic of the Congo, Dominica, the Dominican Republic, Ecuador, Equatorial Guinea, El Salvador, Eritrea, Ethiopia, Fiji, the Gambia, Georgia, Grenada, Haiti, Honduras, Italy, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Madagascar, the Marshall Islands, Micronesia (Federated States of), Nauru, Nicaragua, Nigeria, Palau, Panama, Paraguay, the Philippines, Portugal, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sierra Leone, Spain, Suriname, Tajikistan, Timor-Leste, Turkmenistan, Tuvalu, Uganda, United Republic of Tanzania, the United States of America, Uzbekistan, Vanuatu and Zambia, subsequently joined by the Central African Republic, Chad, Guinea, Guyana, Ireland, Malawi, Nauru, Norway, Papua New Guinea, Sao Tome and Principe, and Solomon Islands, introduced a draft resolution entitled “International convention against human cloning” (A/C.6/58/L.2), which read:

“*The General Assembly,*

“*Recalling* the Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference of the

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337. *Id.* (A/C.6/58/L.2 (Oct. 20, 2003)).

United Nations Educational, Scientific and Cultural Organization on 11 November 1997, and in particular article 11 thereof, which states that practices which are contrary to human dignity, such as the reproductive cloning of human beings, shall not be permitted,

*"Recalling also its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights, "Bearing in mind Commission on Human Rights resolution 2003/69 of 25 April 2003, entitled 'Human rights and bioethics', adopted at the fifty-ninth session of the Commission,*

*"Bearing also in mind Economic and Social Council resolution 2001/39, entitled 'Genetic privacy and non-discrimination', of 26 July 2001,*

*"Aware of the rapid development of the life sciences and of ethical concerns raised by certain of their applications with regard to the dignity of the human race and the human rights and fundamental freedoms of the individual,*

*"Concerned at recently disclosed information on research into and attempts at the creation of human beings through cloning processes,*

*"Convinced that human cloning, for any purpose whatsoever, is unethical, morally repugnant and contrary to due respect for the human person, and that it cannot be justified or accepted,*

*"Recalling also that recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, as stated in the Universal Declaration of Human Rights,*

*"Seeking to promote scientific and technical progress in the fields of biology and genetics in a manner respectful of human rights and for the benefit of all,*

*"Concerned about the serious difficulties of a medical, physical, psychological and social nature that human cloning may imply for the individuals involved, and alarmed that it may cause the exploitation of women,*

*"Recalling its resolution 56/93 of 12 December 2001, by which it decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency,*

*"Determined to prevent as a matter of urgency such an attack on the human dignity of the individual,*

*"1. Requests the Ad Hoc Committee to be reconvened from \_\_\_\_\_ to \_\_\_\_\_ 2004 in order to prepare, as a matter of urgency,*

the draft text of an international convention against human cloning, bearing in mind that it will not prohibit the use of nuclear transfer or other cloning techniques to produce DNA molecules, organs, plants, tissues, cells other than human embryos or animals other than humans, and recommends that the work continue during the fifty-ninth session of the General Assembly from \_\_\_\_\_ to \_\_\_\_\_ 2004 within the framework of a working group of the Sixth Committee;

“2. *Also requests* the Ad Hoc Committee to consider, in developing the draft convention, the proposals put forward during the fifty-eighth session of the General Assembly;

“3. *Solemnly declares* that, pending the adoption of an international convention against human cloning, States shall prohibit any research, experiment, development or application in their territories or areas under their jurisdiction or control of any technique aimed at human cloning;

“4. *Calls upon* States to adopt such measures as may be necessary to prohibit those techniques of genetic engineering that may have adverse consequences on the respect for human dignity;

“5. *Strongly encourages* States and other entities to direct funds that might have been used for human cloning technologies to pressing global issues in developing countries such as famine, desertification, infant mortality and diseases, including the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS);

“6. *Requests* the Secretary-General to provide the Ad Hoc Committee with the necessary facilities for the performance of its work;

“7. *Invites* the Ad Hoc Committee to take into consideration the contributions of United Nations agencies and competent international organizations in the process of negotiations;

“8. *Requests* the Ad Hoc Committee to report on its work to the General Assembly at its fifty-ninth session;

“9. *Decides* to include in the provisional agenda of its fifty-ninth session an item entitled ‘International convention against human cloning.’”

ANNEX 5: MOTION TO ADJOURN THE DEBATE<sup>338</sup>

8. At the 23rd meeting, on 6 November, the representative of the Islamic Republic of Iran, on behalf of the States members of the Organization of the Islamic Conference, moved, in accordance with rule 116 of the rules of procedure of the General Assembly, to adjourn the debate on the item under discussion until the sixtieth session of the General Assembly (see A/C.6/58/SR.23).

9. The representatives of Belgium and India spoke in favour of the motion, and the representatives of Uganda and Spain spoke against (see A/C.6/58/SR.23).

10. At the same meeting, the motion to adjourn the debate on item 158 until the sixtieth session was carried by a recorded vote of 80 votes to 79, with 15 abstentions. The voting was as follows:

*In favour:*

Algeria, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Belarus, Belgium, Botswana, Brazil, Brunei Darussalam, Bulgaria, Cambodia, China, Comoros, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Egypt, Estonia, Finland, France, Gabon, Germany, Greece, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Japan, Jordan, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Monaco, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Niger, Oman, Pakistan, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovenia, South Africa, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tonga, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, Vietnam, Yemen, Zimbabwe.

*Against:*

Albania, Andorra, Angola, Antigua and Barbuda, Australia, Austria, Barbados, Belize, Bolivia, Bosnia and Herzegovina, Burundi, Central African Republic, Chile, Costa Rica, Democratic Republic of the Congo, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gambia, Georgia, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, Ireland, Israel, Italy, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Madagascar, Malawi, Malta,

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338. *Id.* (A/C.6/58/SR.23 (Nov. 6, 2003)).

Marshall Islands, Micronesia (Federated States of), Nauru, Nepal, Nicaragua, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Philippines, Poland, Portugal, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Somalia, Spain, Suriname, Tajikistan, Timor-Leste, Trinidad and Tobago, Tuvalu, Uganda, United Republic of Tanzania, United States of America, Uzbekistan, Vanuatu, Venezuela, Zambia.

*Abstaining:*

Bangladesh, Bhutan, Burkina Faso, Cameroon, Canada, Cape Verde, Colombia, Jamaica, Peru, Republic of Moldova, Romania, Serbia and Montenegro, the former Yugoslav Republic of Macedonia, Ukraine, Uruguay.

11. The representatives of Germany (also on behalf of France), Canada, Mexico, Romania and Nigeria made statements in explanation of position after the vote (see A/C.6/58/SR.23).

12. The Chairman of the Committee indicated that it was his understanding that it necessarily followed that the Sixth Committee, in effect, recommended that the General Assembly include the item in the agenda of its sixtieth session (see para. 14 below).<sup>339</sup>

13. The Chairman also indicated that, accordingly, no action would be taken on draft resolutions A/C.6/58/L.2 and A/C.6/58/L.8.

ANNEX 6: COSTA RICAN REVISED DRAFT RESOLUTION<sup>340</sup>

*The General Assembly,*

*Recalling* the Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997, and in particular article 11 thereof, which states that practices which are contrary to human

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339. Paragraph 14, Recommendation of the Sixth Committee, states: "In connection with paragraph 12, the Sixth Committee recommends to the General Assembly that the item entitled 'International convention against the reproductive cloning of human beings' be included in the provisional agenda of the sixtieth session of the General Assembly." *Id.*

340. General Assembly, International Convention against the Reproductive Cloning of Human Beings, U.N. Doc. A/58/L.37 (Dec. 5, 2003).

dignity, such as the reproductive cloning of human beings, shall not be permitted,

*Recalling also* its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,

*Bearing in mind* Commission on Human Rights resolution 2003/69 of 25 April 2003, entitled "Human rights and bioethics", adopted at the fifty-ninth session of the Commission,

*Bearing also in mind* Economic and Social Council resolution 2001/39, entitled "Genetic privacy and non-discrimination", of 26 July 2001,

*Aware* of the rapid development of the life sciences and of ethical concerns raised by certain of their applications with regard to the dignity of the human race and the human rights and fundamental freedoms of the individual,

*Concerned* at recently disclosed information on research into and attempts at the creation of human beings through cloning processes,

*Convinced* that human cloning, for any purpose whatsoever, is unethical, morally repugnant and contrary to due respect for the human person, and that it cannot be justified or accepted,

*Recalling* that recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, as stated in the Universal Declaration of Human Rights,

*Seeking* to promote scientific and technical progress in the fields of biology and genetics in a manner respectful of human rights and for the benefit of all,

*Concerned* about the serious difficulties of a medical, physical, psychological and social nature that human cloning may imply for the individuals involved, and alarmed that it may cause the exploitation of women,

*Recalling* its resolution 56/93 of 12 December 2001, by which it decided to establish an Ad Hoc Committee, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency,

*Determined* to prevent as a matter of urgency such an attack on the human dignity of the individual,

1. *Requests* the Ad Hoc Committee to be reconvened for one week during the fifty-ninth session of the General Assembly in order to prepare, as a matter of urgency, the draft text of an international convention against human cloning, bearing in mind that it will not prohibit the use of nuclear transfer or other

cloning techniques to produce deoxyribonucleic acid molecules, organs, plants, tissues, cells other than human embryos or animals other than humans, and recommends that the Sixth Committee designate specific dates for the meetings of the Ad Hoc Committee during the consideration of this item at that session;

2. *Also requests* the Ad Hoc Committee to consider, in developing the draft convention, the proposals put forward during the fifty-eighth session of the General Assembly;

3. *Solemnly declares* that, pending the adoption of an international convention against human cloning, States shall prohibit any research, experiment, development or application in their territories or areas under their jurisdiction or control of any technique aimed at human cloning;

4. *Calls upon* States to adopt such measures as may be necessary to prohibit those techniques of genetic engineering that may have adverse consequences on the respect for human dignity;

5. *Strongly encourages* States and other entities to direct funds that might have been used for human cloning technologies to pressing global issues in developing countries such as famine, desertification, infant mortality and diseases, including the human immunodeficiency virus/acquired immunodeficiency syndrome;

6. *Requests* the Secretary-General to provide the Ad Hoc Committee with the necessary facilities for the performance of its work;

7. *Invites* the Ad Hoc Committee to take into consideration the contributions of United Nations agencies and competent international organizations in the process of negotiations;

8. *Requests* the Ad Hoc Committee to report on its work to the General Assembly at its fifty-ninth session;

9. *Decides* to include in the provisional agenda of its fifty-ninth session an item entitled "International convention against human cloning".

ANNEX 7: ITALY DRAFT RESOLUTION—UNITED NATIONS DECLARATION ON HUMAN CLONING<sup>341</sup>

*The General Assembly,*

*Recalling* its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,

*Approves* the Declaration on Human Cloning, annexed to the present resolution.

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations,

*Recalling* the Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997, and in particular article 11 thereof, which states that practices which are contrary to human dignity, such as the reproductive cloning of human beings, shall not be permitted,

*Recalling also* its resolution 53/152 of December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,

*Aware* of the ethical concerns that certain applications of rapidly developing life science may raise with regard to human dignity, human rights and the fundamental freedoms of individuals,

*Reaffirming* that the applications of life science should seek to offer relief from suffering and improve the health of individuals and humankind as a whole,

*Emphasizing* that the promotion of scientific and technical progress in life science should be sought in a manner that safeguards respect for human rights and the benefit of all,

*Mindful* of the serious medical, physical, psychological and social dangers that human cloning may imply for the individuals involved, and also conscious of the need to ensure that human cloning does not give rise to the exploitation of women,

*Convinced* of the urgency of preventing the potential dangers of human cloning to human dignity,

*Solemnly declares* the following:

(a) Member States are called upon to prohibit any attempts

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341. Gen. Assembly, Sixth Comm., *Report of the Working Group, International Convention against the Reproductive Cloning of Human Beings*, U.N. Doc. A/C.6/59/L.27/Rev.1 (Feb. 23, 2005) (A/C.6/59/L.26) (citation omitted).

to create human life through cloning processes and any research intended to achieve that aim;

(b) Member States are called upon to ensure that, in the application of life science, human dignity is respected in all circumstances and, in particular, that women are not exploited;

(c) Member States are also called upon to adopt and implement national legislation to bring into effect paragraphs (a) and (b) above;

(d) Member States are further called upon to adopt the measures necessary to prohibit applications of genetic engineering techniques that may be contrary to human dignity.

**ANNEX 8: CHAIRMAN'S (HONDURAN) DRAFT RESOLUTION—UNITED NATIONS DECLARATION ON HUMAN CLONING<sup>342</sup>**

*The General Assembly,*

*Recalling* its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,

*Approves* the United Nations Declaration on Human Cloning, annexed to the present resolution.

**Annex**

United Nations Declaration on Human Cloning

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations,

*Recalling* the Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997,

*Recalling also* its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,

*Aware* of the ethical concerns that certain applications of rapidly developing life sciences may raise with regard to human dignity, human rights and the fundamental freedoms of individuals,

*Reaffirming* that the application of life sciences should seek to offer relief from suffering and improve the health of individuals and humankind as a whole,

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342. *Id.* (A/C.6/59/L.27/Add.1 and Corr.1) (citation omitted).

*Emphasizing* that the promotion of scientific and technical progress in life sciences should be sought in a manner that safeguards respect for human rights and the benefit of all,

*Mindful* of the serious medical, physical, psychological and social dangers that human cloning may imply for the individuals involved, and also conscious of the need to prevent the exploitation of women,

*Convinced* of the urgency of preventing the potential dangers of human cloning to human dignity,

*Solemnly declares* the following:

(a) Member States are called upon to adopt all measures necessary to protect adequately human life in the application of life sciences;

(b) Member States are called upon to prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life;

(c) Member States are further called upon to adopt the measures necessary to prohibit the application of genetic engineering techniques that may be contrary to human dignity;

(d) Member States are called upon to take measures to prevent the exploitation of women in the application of life sciences;

(e) Member States are also called upon to adopt and implement without delay national legislation to bring into effect paragraphs (a) to (d);

(f) Member States are further called upon, in their financing of medical research, including of life sciences, to take into account the pressing global issues such as HIV/AIDS, tuberculosis and malaria, which affect in particular the developing countries.

#### ANNEX 9: VOTES ON BELGIUM'S PROPOSED AMENDMENTS TO UNITED NATIONS DECLARATION ON HUMAN CLONING<sup>343</sup>

##### **a. Vote on Amendment to Preambular Paragraph 2**

The amendment to preambular paragraph 2 of the Declaration, which would add the words "and in particular article 11 thereof, which states that practices which are contrary to human dignity, such as the reproductive cloning of human beings, shall not be permitted" (document A/C.6/59/L.27/Add.1) was adopted by a recorded vote of 59 in favour to 47 against, with 41 abstentions, as follows:

343. General Assembly Press Release, Feb. 18, 2005, *supra* note 195.

In favour: Argentina, Armenia, Bahamas, Belarus, Belgium, Botswana, Brazil, Bulgaria, Cambodia, Canada, Chile, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Ecuador, Estonia, Finland, France, Germany, Ghana, Greece, Grenada, Hungary, Iceland, India, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Mali, Mauritius, Mexico, Monaco, Mongolia, Morocco, Namibia, Netherlands, New Zealand, Poland, Republic of Korea, Russian Federation, Singapore, South Africa, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, United Kingdom, Uruguay, Venezuela, Vietnam, Zimbabwe.

Against: Albania, Antigua and Barbuda, Australia, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Burundi, Costa Rica, El Salvador, Eritrea, Ethiopia, Gambia, Georgia, Guatemala, Haiti, Honduras, Ireland, Italy, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Madagascar, Malta, Marshall Islands, Federated States of Micronesia, Nicaragua, Nigeria, Panama, Papua New Guinea, Philippines, Portugal, Rwanda, Saint Kitts and Nevis, Saint Lucia, San Marino, Saudi Arabia, Slovakia, Sudan, Suriname, Timor-Leste, Trinidad and Tobago, Uganda, United Arab Emirates, United States, Uzbekistan.

Abstain: Algeria, Austria, Azerbaijan, Bahrain, Barbados, Brunei Darussalam, Burkina Faso, Comoros, Congo, Democratic Republic of the Congo, Djibouti, Egypt, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Liechtenstein, Malaysia, Maldives, Nepal, Norway, Oman, Pakistan, Paraguay, Peru, Qatar, Republic of Moldova, Romania, Senegal, Serbia and Montenegro, Sierra Leone, Slovenia, Spain, Syria, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, Yemen.

Absent: Afghanistan, Andorra, Angola, Benin, Bhutan, Cameroon, Cape Verde, Central African Republic, Chad, Côte d'Ivoire, Dominica, Dominican Republic, Equatorial Guinea, Fiji, Gabon, Guinea, Guinea-Bissau, Guyana, Israel, Kiribati, Lao People's Democratic Republic, Liberia, Libya, Malawi, Mauritania, Mozambique, Myanmar, Nauru, Niger, Palau, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Seychelles, Solomon Islands, Somalia, Swaziland, Tajikistan, Togo, Turkmenistan, Tuvalu, United Republic of Tanzania, Vanuatu, Zambia.

**b. Vote on Amendment to Operative Paragraph (a)**

The amendment to the Declaration that would delete operative paragraph (a) (document A/C.6/59/L.27/Add.1) was

rejected by a recorded vote of 48 in favour to 57 against, with 42 abstentions, as follows:

In favour: Argentina, Armenia, Bahamas, Belarus, Belgium, Botswana, Brazil, Bulgaria, Cambodia, Canada, China, Colombia, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Estonia, Finland, France, Ghana, Greece, Grenada, Hungary, Iceland, India, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Mali, Mongolia, Namibia, Netherlands, New Zealand, Poland, Republic of Korea, Russian Federation, Singapore, South Africa, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, United Kingdom, Venezuela, Zimbabwe.

Against: Albania, Antigua and Barbuda, Australia, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Brunei Darussalam, Burundi, Chile, Costa Rica, Croatia, Democratic Republic of the Congo, Ecuador, El Salvador, Eritrea, Ethiopia, Gambia, Georgia, Guatemala, Guyana, Haiti, Honduras, Ireland, Italy, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Madagascar, Malta, Marshall Islands, Mauritius, Mexico, Federated States of Micronesia, Morocco, Nicaragua, Nigeria, Panama, Papua New Guinea, Philippines, Portugal, Rwanda, Saint Kitts and Nevis, Saint Lucia, San Marino, Saudi Arabia, Slovakia, Sudan, Suriname, Timor-Leste, Trinidad and Tobago, Uganda, United Arab Emirates, United Republic of Tanzania, United States, Uzbekistan.

Abstain: Algeria, Austria, Azerbaijan, Bahrain, Barbados, Burkina Faso, Congo, Cyprus, Djibouti, Egypt, Germany, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Liechtenstein, Malaysia, Maldives, Nepal, Niger, Norway, Oman, Pakistan, Paraguay, Peru, Qatar, Republic of Moldova, Romania, Senegal, Serbia and Montenegro, Sierra Leone, Slovenia, Spain, Syria, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, Uruguay, Yemen.

Absent: Afghanistan, Andorra, Angola, Benin, Bhutan, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Côte d'Ivoire, Dominica, Dominican Republic, Equatorial Guinea, Fiji, Gabon, Guinea, Guinea-Bissau, Israel, Kiribati, Lao People's Democratic Republic, Liberia, Libya, Malawi, Mauritania, Monaco, Mozambique, Myanmar, Nauru, Palau, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Seychelles, Solomon Islands, Somalia, Swaziland, Tajikistan, Togo, Turkmenistan, Tuvalu, Vanuatu, Vietnam, Zambia.

**c. Vote on Amendment to Operative Paragraph (b)**

The amendment to operative paragraph (b), which would replace it by the following: "Member States are called upon to prohibit the reproductive cloning of human beings; they are also called upon to prohibit other forms of human cloning inasmuch as they are incompatible with human dignity" (document A/C.6/59/L.27/Add.1) was rejected by a recorded vote of 52 in favour to 55 against, with 42 abstentions, as follows:

In favour: Argentina, Armenia, Bahamas, Belarus, Belgium, Botswana, Brazil, Bulgaria, Cambodia, Canada, China, Colombia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Estonia, Finland, France, Ghana, Greece, Grenada, Hungary, Iceland, India, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Mali, Mauritius, Mongolia, Namibia, Netherlands, New Zealand, Poland, Republic of Korea, Russian Federation, Singapore, South Africa, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, United Kingdom, Uruguay, Venezuela, Vietnam, Zimbabwe.

Against: Albania, Antigua and Barbuda, Australia, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Burundi, Comoros, Costa Rica, Croatia, Democratic Republic of the Congo, El Salvador, Eritrea, Ethiopia, Gambia, Georgia, Guatemala, Guyana, Haiti, Honduras, Iraq, Ireland, Italy, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Madagascar, Malta, Marshall Islands, Federated States of Micronesia, Morocco, Nicaragua, Nigeria, Panama, Papua New Guinea, Paraguay, Philippines, Portugal, Rwanda, Saint Kitts and Nevis, Saint Lucia, San Marino, Saudi Arabia, Slovakia, Sudan, Suriname, Timor-Leste, Trinidad and Tobago, Uganda, United Arab Emirates, United Republic of Tanzania, United States, Uzbekistan.

Abstain: Algeria, Austria, Azerbaijan, Bahrain, Barbados, Brunei Darussalam, Burkina Faso, Chile, Congo, Djibouti, Ecuador, Egypt, Germany, Indonesia, Iran, Jordan, Kuwait, Lebanon, Liechtenstein, Malaysia, Maldives, Mexico, Nepal, Niger, Norway, Oman, Pakistan, Peru, Qatar, Republic of Moldova, Romania, Senegal, Serbia and Montenegro, Sierra Leone, Slovenia, Spain, Syria, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, Yemen.

Absent: Afghanistan, Andorra, Angola, Benin, Bhutan, Cameroon, Cape Verde, Central African Republic, Chad, Côte d'Ivoire, Dominica, Dominican Republic, Equatorial Guinea, Fiji, Gabon, Guinea, Guinea-Bissau, Israel, Kiribati, Lao People's Democratic Republic, Liberia, Libya, Malawi, Mauritania,

Monaco, Mozambique, Myanmar, Nauru, Palau, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Seychelles, Solomon Islands, Somalia, Swaziland, Tajikistan, Togo, Turkmenistan, Tuvalu, Vanuatu, Zambia.

ANNEX 10: UNITED NATIONS DECLARATION ON HUMAN CLONING<sup>344</sup>

*The General Assembly,*

*Guided by the purposes and principles of the Charter of the United Nations, Recalling the Universal Declaration on the Human Genome and Human Rights, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 11 November 1997,<sup>1</sup> and in particular article 11 thereof, which states that practices which are contrary to human dignity, such as the reproductive cloning of human beings, shall not be permitted,*<sup>345</sup>

*Recalling also its resolution 53/152 of 9 December 1998, by which it endorsed the Universal Declaration on the Human Genome and Human Rights,*

*Aware of the ethical concerns that certain applications of rapidly developing life sciences may raise with regard to human dignity, human rights and the fundamental freedoms of individuals,*

*Reaffirming that the application of life sciences should seek to offer relief from suffering and improve the health of individuals and humankind as a whole,*

*Emphasizing that the promotion of scientific and technical progress in life sciences should be sought in a manner that safeguards respect for human rights and the benefit of all,*

*Mindful of the serious medical, physical, psychological and social dangers that human cloning may imply for the individuals involved, and also conscious of the need to prevent the exploitation of women,*

*Convinced of the urgency of preventing the potential dangers of human cloning to human dignity,*

*Solemnly declares the following:*

(a) Member States are called upon to adopt all measures

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344. United Nations Declaration on Human Cloning, G.A. Res. 59/280, U.N. Doc. A/RES/59/280 (Mar. 23, 2005).

345. Language added by Belgium amendment. General Assembly Press Release, Feb. 18, 2005, *supra* note 211.

necessary to protect adequately human life in the application of life sciences;

(b) Member States are called upon to prohibit all forms of human cloning inasmuch as they are incompatible with human dignity and the protection of human life;

(c) Member States are further called upon to adopt the measures necessary to prohibit the application of genetic engineering techniques that may be contrary to human dignity;

(d) Member States are called upon to take measures to prevent the exploitation of women in the application of life sciences;

(e) Member States are also called upon to adopt and implement without delay national legislation to bring into effect paragraphs (a) to (d);

(f) Member States are further called upon, in their financing of medical research, including of life sciences, to take into account the pressing global issues such as HIV/AIDS, tuberculosis and malaria, which affect in particular the developing countries.