

## **No end in sight to cloning debate**

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Britain's recent decision to take up cloning for research purposes<sup>1</sup> has also sparked a new round of debates in Germany about embryo protection and stem cell research. How does this change in the situation affect the talks on an international ban on cloning which have been rekindled at the United Nations these days? As it turns out, there is no universal consensus on banning all cloning. There is no end in sight to the cloning debate.

Since the birth of Dolly, the cloned sheep, in 1996, it has become clear that, in principle, it is also possible to clone human beings. The debate surrounding "baby cloning" has surged ever since: time and time again, Italian gynaecologist Severino Antinori, his US colleague Panayiotis Zavos, and members of the Raël sect, through their company Clonaid, have succeeded in grabbing the headlines by announcing their intention to clone babies or even by announcing that they have already managed to do so. Reputable scientists such as Ian Wilmut, the 'creator' of Dolly, the cloned sheep, have frequently condemned these endeavors as being 'inhumane' and 'criminal'. By contrast, Wilmut has been and still is in favour of allowing cloned embryos to be used to produce embryonic stem cell lines in order to develop cell replacement therapies. His canvassing of good and evil has obviously borne fruit: In the meantime, Great Britain has permitted cloning for research purposes, a practice which has prevailed now since August 2004.

Since 1990, lawmakers in Great Britain have allowed research to be carried out

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<sup>1</sup> We have opted to use the terms "cloning for research purposes" and "cloning for reproduction purposes" instead of the established terms "therapeutic cloning" and "reproductive cloning" so as not to create the impression that the debate today is already focusing on developed therapeutic options. Cf. Mieth, Dietmar (2001), *Die Diktatur der Gene. Biotechnik zwischen Machbarkeit und Menschenwürde*. Herder, Freiburg i.Br.

using human embryos until the 14th day of development for the purpose of improving methods of treatment in reproductive medicine. December 1998 saw the publication of a set of recommendations by the Human Fertilisation and Embryology Authority and the Human Genetics Advisory Commission, according to which the use of cloning should be permitted for research purposes but not for reproduction. In December 2000, the British parliament reached a decision to allow embryonic stem cell research and cloning for research purposes. Cloning for reproductive purposes was banned under the same law.

In contrast, Germany's Embryo Protection Act, which was passed in 1990, forbids any usage of embryos for research purposes as well as the cloning of embryos for any purposes, thus establishing a cloning ban.

However, the latest decision by the British government to allow cloning for research purposes has also sparked a resurgence in Germany of the debate on embryo protection and cloning.

Four years ago, German Chancellor Gerhard Schröder took a stand against a "policy of ideological blinkers and universal bans": "A self-imposed restriction of Germany to licensed productions and application solutions in the day and age of the Single Market and Internet would merely lead to our importing what is banned in our country but permitted in our neighbouring countries."<sup>2</sup> This free trade logic, whereby, in each case, the most liberal national regulation prevails as the international standard, is supported by the latest remarks made by Economics Minister Wolfgang Clement, who stated that he would like to tear down the "ethical borders" between countries which have been erected by virtue of different national regulations and, in doing so, would promote large-scale stem cell research even in Germany.<sup>3</sup>

Here, the issue at stake is the two-year old Stem Cell Act that permits both the import to Germany of stem cells and the performance of research work using such stem cell lines which already existed prior to the passing of the Act, while

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<sup>2</sup> The article appeared in "*Die Woche*" on 20 December 2000.

<sup>3</sup> *Aus Brüssel kommen zu viele schädliche Gesetze*. Interview with Wolfgang Clement and the Dutch Economics Minister, Laurens Jan Brinkhorst, in the *Süddeutsche Zeitung* on 25/26.09.2004.

the Act at the same time forbids the creation of embryos for research purposes. As a consequence, cloning for research purposes as a possible means of creating stem cells has once again become a matter of debate in Germany. At present, those who are against cloning for research purposes still outnumber those in favour of it. After long and taxing deliberations, the National Council of Ethics, for example, recently reached an agreement that “cloning for research purposes should not be permitted in Germany at the present time.”<sup>4</sup> This decision backs up the legal situation in Germany for the time being – yet it does not evoke the concept of human dignity as something that needs to be placed above research and application interests at every stage of human life. Time will tell how long the fundamental “No” pronounced by the Federal Minister for Research and the President of the German Research Association in February of this year on the subject of cloning for research purposes will endure in the light of the experiments that have been conducted by a South Korean research group.

### **Two objectives, one approach**

Normally, an embryo is created when an egg cell and a sperm cell merge. The nucleus of the fertilised egg cell contains all of the genes – in equal proportion from both the mother and the father – which the human being needs in order to develop. The different somatic cells that derive from the fertilised egg cell vary in that only those genes are “active” and are read which are needed at a given time. However, the nuclei of the somatic cells, in fact, contain the entire genetic material at any time, and this fact is put to use by researchers in the cloning process. With cloning, the nucleus is removed from a somatic cell and planted into an unfertilised egg cell from which the nucleus has previously been removed. The egg cells containing the new genetic material is capable of splitting in the laboratory and of developing into embryos. It appears that messengers in the cytoplasm of the egg cell cause those genes to be “activated” that control the development and those genes to be “deactivated” which determine the metabolic processes in specialised tissue. Very little is known about what actually happens

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<sup>4</sup> National Council of Ethics: Statement on “Cloning for Reproduction Purposes and Cloning for Biomedical Research”, Berlin 13.09.2004, p. 70.

during this type of “reprogramming”. Up to this stage, cloning for research purposes and cloning for reproductive purposes do not differ from one another.

#### *Cloning for reproductive purposes*

Once the cloned embryo is transferred to the uterus of a woman, it can develop into a child. This child would then be the genetic twin of the human being from whom the nucleus of the cloned egg cell originated. The cloned child would therefore have only one biological parent. Despite numerous press releases to the contrary, a cloned baby has yet to be born – that is, proof of such a birth is still wanting. However, the technology of cloning is available, even though we know from animal testing that only a small percentage of cloning experiments produce animals capable of surviving. The majority of cloned embryos perish at an early stage in their development. The few animals that are actually born are usually too big for their age and are seriously ill, suffering, among other things, from heart and lung defects, arthritis, obesity and cancer. Prior to the first cloned sheep being born, 276 similar experiments had failed.<sup>5</sup> This means that cloning experiments are “trial and error” experiments with an uncertain outcome; achieving success is the exception whilst failure is the rule. This also explains why renowned scientists throughout the world are in agreement that cloning for reproduction purposes is not justifiable, at least at today’s level of research.

#### *Cloning for research purposes*

In contrast, cloning for research purposes in order to develop new therapies or medically relevant applications is perceived by many in the international scientific community as a great opportunity. In terms of technology, this process is commensurate with producing embryonic stem cell lines, with the exception that cloned embryos are used and not the “normal” embryos that have been created in the laboratory: The cloned embryos are left to develop for a few days in the laboratory until the time the actual embryonic state forms inside a hollow ball of

cells (blastocysts). These embryonic stem cells are then removed and cultured separately. Under the appropriate culturing conditions, it could be possible to grow a variety of tissue such as muscle and nerve tissue from the cloned embryonic stem cells in the same way this is achieved using “normal” embryonic stem cells. The rationale for this is that pathologically damaged tissue may be regenerated using the body’s own matter. For example, myocardial muscle tissue could replace damaged coronary tissue, or nerve tissue could be used to help patients suffering from Parkinson’s disease.

In February, the journal “Science” published an account that a team of South Korean researchers had become the first to succeed in cloning a human embryo and in obtaining viable stem cells for development. The researchers removed a total of 242 egg cells from 16 women who had been recruited for the purposes of conducting the cloning experiments. From these egg cells, 30 five-day-old embryos (blastocysts) materialised from which 20 stem cells were removed, which ultimately resulted in one single stem cell line being obtained. In turn, this stem cell line developed further into precursor cells for various types of tissue.<sup>6</sup> This is regarded as the first step towards therapy development. According to stem cell researcher Rudolf Jaenisch, there are still “many years of research work ahead before there can be any talk of transferring stem cells to human beings”.<sup>7</sup>

At this juncture, some might question the benefits of such an approach as opposed to “normal” embryonic stem cell research. The answer is simple: If the initial cell comes from the patient, it can be assumed that the patient’s immune system will not perceive the therapeutic cells as “foreign” and reject them. Yet, there are alternatives to cloning: Another research approach exists that is less dubious in ethical terms: adult stem cell research, through which the stem cells in the patient’s own body are utilised for therapy development. Here, too, there is no indication that the patient’s body would reject the cells. It is fair to say that, to

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<sup>5</sup> Cf. also the article entitled “*Klonen von Tieren*” published by the Committee for Education, Research and Technology Impact Assessment of the German Bundestag, 14th legislative period, of 2 August 2000. Publication 14/3968.

<sup>6</sup> Science, 12 March 2004.

date, cloning for research purposes is no more than a scientific model and that nobody can currently predict accurately whether, when or for what diseases it may ever be possible to develop therapies. Even more speculative are the issues of what prospects for success exist and what risks are involved for patients with respect to these therapies. In experiments, animals that received preparations derived from cloned stem cells developed tumours. As a result, the initial applications of cloning technology can be expected to emerge rather in pharmacological testing, where tissue cultures grown from stem cells could be tested for individual reactions to active substances. The latest research findings indicate that it may well be possible to use cloning technology to grow egg and germ cells.

### **One approach – two different evaluations**

Regardless of whether the objective is medically assisted reproduction or research,

the basic technology, i.e. the one of human cloning, remains the same. However, the ethical discussions surrounding cloning for research purposes and cloning for reproduction purposes differ significantly. While researchers seeking to clone babies are virtually unanimously perceived as charlatans or criminals, cloning for research purposes is seen as a highly contentious but, at the same time, meaningful and understandable part of the quest to develop cures.

#### *Cloning for reproduction purposes*

Severino Antinori and Panayiotis Zavos maintain that cloning can help childless parents have their own offspring. Yet, for this purpose, two other and far less dubious approaches are available: in-vitro fertilisation and adoption. Main objections against cloning are the risks involved and the few chances for success. Cloned babies would in all probability be born with severely impaired health. It is also conceivable that they would inherit the “genetic age” of their twin and live a correspondingly shorter life. No matter how great the desire may be to have

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<sup>7</sup> Spiegel online, 12 February 2004.

one's own biological child, cloning for reproduction purposes – given the level of knowledge currently available in natural science and medicine – cannot be justified on scientific or ethical grounds. On this, there is a consensus (excluding Antinori and others). However, supposing that the success rates would improve significantly, that the development of cloned babies could be controlled more adequately and that the risks could be reduced appreciably, would the same objections then continue to exist? “Nothing does more for success than a healthy child,” remarked Robert Edwards, the creator of the first in-vitro “test-tube baby”, Louise, in 1978, marking the incorporation of modern reproduction medicine into society. (?)

The arguments against cloning for reproduction purposes must be of a fundamental nature or they will not withstand the combination of technological progress and freedom of consumption. Cloning a baby would mean creating a human being that is genetically identical with another human being and, at the very least, very similar to that human being. The main argument in favour of cloning for reproduction purposes is a very liberal understanding that people should have the freedom to reproduce. Some argue in the name of freedom to reproduce that it is only decent and proper to allow parents who have lost a child to recreate this child through cloning. Not even the desire of one parent wanting to reproduce an original copy of him- or herself or the desire of a woman to be independent of a man willing to reproduce are considered to be totally absurd by all ethicists. “What is wrong with that?” asks philosopher Johann Ach, for example.<sup>8</sup> On the other hand, outright advocates in cases such as these are also hard to find.

Certainly, a cloned child would face exceptionally high levels of expectation, which, whilst not completely preventing the child from developing its own personality, would have a serious impact on it. The child's right to mental integrity

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<sup>8</sup> Ach, Johann (1998), Hello Dolly? Biotechnology, biomorals and bioethics. In: Ach, Johann/Brudermüller, Gerd/Runtenberg, Christa (Editor), Hello Dolly? Über das Klonen. Suhrkamp, Frankfurt a.M., p. 123-155. Similar: Brock, Dan W. (2003), Reproduktives Klonen beim Menschen: Einige moralische Fragestellungen. In: Klonen in biomedizinischer Forschung und Reproduktion. Wissenschaftliche Aspekte – Ethische, rechtliche und gesellschaftliche Grenzen. Editor Ludger Honnefelder, Dirk Lanzerath, Bonn, p.197-207.

would be at fundamental risk as a consequence. In contrast to harmful forms of upbringing, to which a person can at least behave reflexively, determining the genetic constitution of a child would irreversibly deprive that child of all opportunities to act.

Another recurring argument is that the cloning of human beings would endanger the biological integrity of all humanity.<sup>9</sup> This position must be seen against the background of “consumer eugenics” in the USA, where advertising already claims that “designer babies” can be created by selecting their sex as well as other traits that are in demand. Cloning for reproductive purposes would propel this trend and could lead to a divide emerging between the “GenRich” and the “Naturals”.<sup>10</sup> On the other hand, given the experience that has been made with eugenics, it is problematic to speak of a presumed danger to the inherited genes rather than highlighting human dignity and its possible infringements.

Jürgen Habermas introduced another far-reaching argument against cloning into the debate when he maintained that the lack of availability of our biological origin, which - depending on our cultural or religious background - we define as chance, ability to create or natural adaptation – is part of our fundamental self-image: we would no longer perceive ourselves “as autonomous beings having equal rights and abiding by moral reasons”.<sup>11</sup> He goes on to argue that liberal eugenics geared to individual preferences will cause the morality of human rights subjects to slide - with unforeseeable consequences for our social interaction.

### *Cloning for research purposes*

The ethical debate on cloning for research purposes is far more concise. The issue here is whether there is any ethical justification for creating cloned human embryos and using them for research.

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<sup>9</sup> Hayes, Richard (2003), The new human genetic technologies: a threshold challenge for humanity. Lecture held at the University of California at Berkeley Energy and Resources Colloquium. 24 September 2003.

<sup>10</sup> Hayes, Richard (2002), The Science and Politics of Genetically Modified Humans, World Watch. Special Issue Beyond Cloning, July/August 2002, p. 11-12.

<sup>11</sup> Habermas, Jürgen (2001), Die Zukunft der menschlichen Natur. Auf dem Weg zu einer liberalen Eugenik? Suhrkamp, Frankfurt a.M., p. 115.

Those in favour of cloning for research purposes justify this, first and foremost, by the hope and expectation that new therapies can be developed for curing people who suffer from critical illnesses. In the ethical discussion, there is full consensus that great importance must be attached to medical progress. One bone of contention, however, is the matter of how achievable the hoped-for therapeutic goals (“Alzheimer therapy”) actually are and whether adult stem cell research is being neglected as a potentially equally effective or even better option. At the same time, criticism is being voiced as to whether this type of customised therapy, whereby separate stem cell lines would need to be developed for each individual patient, will not result in significant equality issues, given that these procedures could most likely not be funded by public health systems, even in rich countries.<sup>12</sup> On an international scale, these doubts are reinforced by the argument that a move towards customised cloning-based therapy will inevitably cause the focus of research and the range of therapies at the international level to shift away from people in the poorest countries in the world, where AIDS, malaria and famine prevent them from reaching old age, so that they would never be able to benefit from any form of treatment against Alzheimer’s.<sup>13</sup>

Furthermore, it has yet to be decided where the enormous number of eggs should come from that are needed in cloning for research purposes and which would certainly be required for any future therapeutic applications that may result. Even today, in countries where the practice is allowed, there is a shortage of eggs being “donated” for the treatment of couples who are childless, in spite of appeals having been made to the altruism of young women and despite various incentive schemes. The fact that “donating” eggs for the woman in question is associated with enormous stress and health risks due to the need to undergo hormone treatment and invasive surgery raises the issue of the ethical

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<sup>12</sup> Françoise Baylis, “Canada bans human cloning”, Hastings Center Report, May-June 2004, p. 5.

<sup>13</sup> Chan, Chee-Khoon (2003), Commodification and Market Driven Biomedical Research. Lecture held at the Berlin Conference entitled “Within and Beyond the Limits of Human Nature”, 13 – 15 October 2003. [www.biopolitics-berlin.org](http://www.biopolitics-berlin.org) 2003.org

justification of using her eggs.<sup>14</sup> Consequently, there would appear to be good reason to question the “solution” that England’s “Centre for Life” at the University of Newcastle claims to have found for acquiring eggs. This Centre, which also houses a reproduction clinic and a centre for stem cell research, was granted permission in August of this year by the relevant authority, the HFEA, to clone human embryos. The stem cell researchers intend to acquire the egg cells needed to do so from women who are receiving assistance at the reproduction clinic in conceiving a child. No information is available as to whether a price reduction will be granted for in-vitro fertilisation if additional egg cells are “donated”. By all accounts, the only egg cells that are to be used are those that cannot be fertilised and are therefore “superfluous”. Yet doubts need to be raised here: After all, why, of all egg cells, should those with limited functionality at all be suited to the extraordinarily exhausting cloning process? A therapeutic application of cloning would almost inextricably be linked to developing egg cell markets, in relation to which it would be virtually impossible to safeguard against the exploitation of underprivileged women.<sup>15</sup> This argument against cloning for research purposes could potentially be invalidated as soon as there is a way of producing egg cells without the need for donating egg cells, for example by making them from stem cells. This hope was raised when a research team headed by Karin Hübner and Hans Schöler and based at the University of Pennsylvania, USA, succeeded in developing egg-cell-like structures from mouse stem cells. However, it is still uncertain whether this experiment can be duplicated with human stem cells and whether artificially produced egg cells indeed offer the same potential as “real” egg cells.<sup>16</sup>

Still, the main issue of contention surrounding the ethical debate is the question of whether the cloning of embryos violates human dignity. As the Dolly

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<sup>14</sup> Cf. with these arguments: Schneider, Ingrid (2001), Embryonic stem cell research – ethical and socio-political criticism. In: Graumann, Sigrid (Editor), *Die Gen-Kontroverse. Grundpositionen*. Herder, Freiburg i.Br., p. 128-147. And: Kollek, Regine (2001), *Falsche Rechtfertigungen und vernachlässigte Alternativen*. Also in: Graumann (Editor), p. 148-156.

<sup>15</sup> Cf. here Schneider, Ingrid (2003), *Gesellschaftliche Umgangsweisen mit Keimzellen: Regulation zwischen Gabe, Verkauf und Unveräußerlichkeit*. In: Graumann, Sigrid/Schneider, Ingrid (Editor), *Verkörpernte Technik – entkörpernte Frau. Biopolitik und Geschlecht*. Campus, Frankfurt a.M., p. 66-80.

<sup>16</sup> Science 23 May 2003.

experiment has made apparent, also cloned human embryos have the potential, under the right conditions – i.e. in a woman's uterus – to develop into a child. From an ethical point of view, cloned embryos would consequently have to be treated in the same way as "normal" embryos. For advocates of the standpoint that a human life has a claim to human dignity, and an innate right to life itself from the very moment it comes into being, the creation of embryos with the specific aim of using them is fundamentally unacceptable on ethical grounds, no matter how the embryos come into being. Certainly, there are good reasons for sharing this standpoint: It assumes that human dignity and the universal application of all rights founded upon human dignity are inseparable, and it bestows the same moral status on pre-birth life that applies to post-birth life. According to the opposing standpoint, the moral status of human life depends on empirical qualities, such as the biological criteria of a loss of the ability to have twins, nidation, the formation of the nervous system, the full development of organs or a person's ability to live. Yet in this context, it should be considered that, whilst biology can provide information about the individual phases in the development of the human organism, it cannot do the same about its ethical valuation. Other views make the moral status of a human being dependent on ethically relevant criteria such as the ability to suffer, to have self-esteem, rationality or the ability to act. However, such criteria for attributing human dignity – to the extent that we can actually call this human dignity – are, more or less arbitrary and also result in morally questionable consequences. Not only embryos but also people that do not conform to the respective criteria, such as infants, the mentally handicapped, comatose or demented people, could then be attributed little or no human dignity.

It would appear that human dignity cannot be ranked without certain dubious moral consequences. Should a possible conditional or layered attribution of human dignity come to prevail in society and politics, it is to be feared that the way people see themselves will fundamentally change. Not only pre-birth life but also other people, who are not credited with the respective traits or abilities, would then no longer be protected under the banner of human dignity. For this

reason, we should subscribe to the proposition that human dignity is not something that is acquired and also not something that can be taken away.

At a conference on cloning organised by the Federal Ministry for Research in Berlin in May 2003, biologist Rudolf Jaenisch presented the view that cloned embryos should not be afforded the right to live since the majority of them were damaged and could not develop into “normal” human beings anyway.<sup>17</sup> Whilst it is true that cloning for reproduction purposes should be rejected on the grounds of the principle of non-impairment, it is not tenable to deny damaged embryos the right to live when it is granted to undamaged embryos. Doing so would infringe on the right to equality that is founded in human dignity. Certain members of the National Council of Ethics have attempted to counter this argument by propounding a kind of “clean-up of terminology”: Cloned embryos, they argue, are not natural human beings; in contrast to embryos that result from natural or artificial insemination, they are entities *sui generis* and have no claim to human dignity.<sup>18</sup>

As the debate on stem cell legislation has shown, the “standpoint supporting the protection of life” linked to ensuring human dignity which has been outlined here is still the position most widely supported by politicians in Germany. However, in political circles at the international level, it is a position that is not shared by many people across different cultural or religious backgrounds, as can be deduced from the draft for a European Constitution and the talks on a UN Cloning Convention.

## **EU Constitution and UN Cloning Convention**

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<sup>17</sup> Jaenisch, Rudolf (2003), Die Biologie des Kerntransfers und das Potential geklonter embryonaler Stammzellen: Implikationen für die Transplantationstherapie. In: Klonen in biomedizinischer Forschung und Reproduktion. Wissenschaftliche Aspekte – Ethische, rechtliche und gesellschaftliche Grenzen. Published by Ludger Honnefelder, Dirk Lanzerath, Bonn, p.221-249.

<sup>18</sup> National Council of Ethics: Statement on Cloning, p. 46; Jens Reich: „Empirische Totipotenz und metaphysische Gattungszugehörigkeit bei der moralischen Beurteilung des vorgeburtlichen Lebens“. Zeitschrift für medizinische Ethik (50) 2004, p.115-130, especially the conclusions on p. 130: “Therapeutic cloning does not use any human beings in the normative sense of the word and can thus not be categorically prohibited.“

Does the interpretation of the guaranteed right to human dignity, as stated in Sect. 1 of the German Basic Law, go too far? The German Minister of Justice posed this question in a speech which she gave in October 2003 entitled “From Procreation to Production? Bioethical Issues pertaining to Constitutional Law and Legal Policy”. In the final analysis, she spoke out in favour of carefully moving into embryo research, but against cloning for reproduction and research purposes. At the European level, this question needs to be tackled urgently. In this context, it is worth mentioning that the draft of the European Constitution is the first document of its kind to contain a fundamental rights charter which places “the human being” – and not only the homo oeconomicus – at the heart and thus, with the German Basic Law clearly echoing in the background, attaches the highest priority to respecting human dignity<sup>19</sup>. However, it is striking that, against the background of these values, the constitutional draft prohibits cloning for reproduction purposes but does not prohibit cloning for research purposes. Just like in 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 banning the cloning of human beings<sup>20</sup>, which the Council of Europe passed in 1997, the definition of from what point onwards life needs to be protected - and thus the decision on the admissibility of cloning for research purposes - has been transferred to the responsibility of national statutes. However, it is encouraging to note that the respect for and the protection of human dignity are included in the European Constitution. German politicians must now push to incorporate the German human rights concept into the next draft stages of the European Constitution and must strive to achieve a degree of harmonisation that tallies with the German perception of “high level”. The fact that cloning has two objectives, but only one approach, has also dominated the UN talks on a cloning convention over the past two years.

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<sup>19</sup> Draft for a Constitution for Europe, submitted to the European Council on 20 June 2003: Preamble Part I (“individual at the heart of its activities”), Sec. I-2 (“respect for human dignity”), Preamble Part II (“human dignity”), Sect. II-1 (“Human dignity is inviolable. It must be respected and protected.”)

<sup>20</sup> Sect. 1 of this additional protocol: “Any intervention seeking to create a human being genetically identical to another human being, whether living or dead, is prohibited.”

In February 2003, the German Parliament voted overwhelmingly that “every artificial production of human embryos by way of cloning” is irreconcilable with the universally accepted concept of human dignity.<sup>21</sup> The German government was called upon to work towards implementing a comprehensive, worldwide ban on all forms of cloning.

Prior to the talks, the German and French governments had elaborated a joint strategy paper. Based on the assumption that it would be almost impossible to convince all countries to implement a “total ban”, a compromise strategy was developed: This strategy was to implement a ban on cloning for reproductive purposes and to oblige the signatory states to pass national regulations on cloning for research purposes. The Franco-German partners hoped to reach a consensus as a result. It was expected that states which had yet to pass any regulations would implement comprehensive bans due to the ensuing debate in their own countries. Among other things, this strategy focused on those states that, whilst advocating a total ban at the UN, have no national regulations in place yet.<sup>22</sup> This also includes the United States that officially supports a total ban on the one hand, but tolerates extremely unregulated domestic research practices on the other. Both from within and from without, the United States has been accused of pursuing a dual strategy in certain instances: that of resolutely calling for a total ban as a response to the demands made by influential Christian-conservative circles on the one hand, while, at the same time, obliging their equally influential corporate free-market friends by blocking an agreement based on consensus and thus avoiding pressure to have to pass national regulations.<sup>23</sup> The example of the USA also illustrates just how deceiving the

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<sup>21</sup> Bundestags Drucksache (printed matter) 15/463 of 18.02.2003

<sup>22</sup> Compare the overview in the Policy Paper of the Center for Genetics and Society “National Policies Governing New Technologies of Human Genetic Modification: A preliminary survey” (<http://www.genetics-and-society.org/policies/survey.html>)

<sup>23</sup> In the USA, there are no statutory limitations for biomedical research activities – public research funding is the steering tool: The National Institutes of Health (NIH) are allowed to grant research funds for conducting research on already produced embryonic stem cell lines. Research projects with embryos specifically produced for research purposes, the planting of human cells into animal egg cells as well as “therapeutic cloning” and “reproductive” cloning may not be funded. No comparable restrictions for the private economy. In some US states, there are even legislative initiatives aimed at allowing cloning for research purposes.

impression given by nationally uniform positions can be. Consequently, it can be presumed that in the majority of countries - at least in those states where an open discourse on cloning is actually taking place – the debate is extremely heated.

During the talks on the UN Cloning Convention, two “blocs” formed, one led by Costa Rica and the other by Belgium. Costa Rica called for a ban on both cloning for research purposes and cloning for reproduction purposes. Ultimately, this motion would have been backed by no less than 56 states, among them Spain, Italy and the United States. The German Foreign Office opted not to join this bloc, but stuck to the consensus strategy agreed with France.

To everyone’s surprise, Belgium adopted the contents of the Franco-German paper in its formulation of a counter-motion. This motion sought to ban cloning for reproductive purposes but to cede cloning for research purposes to national regulations. The motion would have been backed by Great Britain, China and 30 other states. Although it clearly followed the Franco-German strategy paper, the German Foreign Office did not want to support this motion either. One reason for not doing so was that the obligation to regulate cloning for research purposes was formulated too weakly. However, another reason for the German Foreign Office assuming this posture might have been that, if it had come down to a crucial vote, the Franco-German objective of reaching a consensus with the community of states would have failed.

In the end, the call for a vote was vetoed by Germany. The talks in the General Assembly were initially suspended for a period of two years on the proposal of the group of Islamic countries led by Iran; and the task of drafting a convention was transferred to a working group. Meanwhile, the situation has changed again: Talks on drafting a convention are set to recommence in the General Assembly in October 2004.

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**And what lies ahead?**

Germany's conduct during the UN talks has triggered a nationwide debate as to whether or not the government line has undermined the Parliament's mission. Given the standpoint upheld by the majority of members of the German Parliament, it is not to be expected that the values will be reversed or that the legal position in Germany will be liberalised overnight. Therefore, it seems rather unlikely that, by pursuing such a strategy, the German government intended to keep the back door open for cloning for research purposes, not even for German researchers, simply because potential German researchers would hardly benefit from a liberal international regulation on cloning for research purposes.

In retrospect, the question remains as to whether the German strategy was the right one. In the end, the strategy averted a crucial vote but at the same time has led to a situation where no regulations on cloning could be passed at all. The signal that could have been sent would have favoured a total ban, including in the United States, even though it would not have been supported by all states. Critics of cloning for research purposes in these countries would have been greatly encouraged by this.

On the other hand, a ban on cloning not reached by consensus within the community of states could not prevent Antinoris, Zavos and their likes from continuing their efforts in countries that do not support the convention. The latter argument speaks for the Franco-German initiative to agree upon a ban on cloning embryos for reproduction. However, this would send a signal that cloning for research purposes could be assessed differently and in various ways, depending on cultural and religious values.

The negotiations of an international convention on cloning have highlighted yet another problem: Many delegations are obviously focusing more strongly on their national discussions and interests than on the need for international regulations. At the same time, biomedical research cannot be restricted by national territories and may make use of "insular solutions" at any time. In this scenario, a clear lack of international civil-society-driven discourse makes itself felt, which would be an important contribution for international regulation initiatives to refer to.

In concrete terms: No civil-society-driven discourse is taking place outside of or independently from the scientific community. Indeed, statements made by the international scientific community this year clearly point to its intention to exert influence where it can: At the end of August, the InterAcademy Panel, an umbrella organisation for the national Academies of Science, submitted a declaration signed by 67 of its 90 members calling for a UN convention to ban cloning for reproduction purposes and to permit cloning for research purposes.<sup>24</sup> However, there is still no sign of an international debate led by civil society and assessing the research side critically.

A first small step towards initiating such an international civil-society discourse was taken by the Heinrich Boell Foundation in cooperation with the Centre for Genetics and Society in California and the “Institut Mensch, Ethik und Wissenschaft” (Berlin) which jointly held a conference in Berlin in October 2003 entitled “Within and Beyond the Limits of Human Nature”.<sup>25</sup> Around 90 representatives from NGOs and the scientific community from 70 organisations based in 30 countries from different continents discussed strategic issues relating to an international network: How can civil-society groups set up effective networks which bring together the viewpoints of NGOs from North and South and which take into account existing differences of focus, such as the environment, human rights, women and women’s health, health, disabled people’s rights and secular and religious orientation, etc.? How can the issues of reproductive technology, its exploration and marketing, be combined with criticism of the global inequality found in health care systems? How can international civil society productively handle the apparent tension that arises from rejecting prenatal diagnosis techniques and embryonic research on the one hand, and defending the rights of women to have an abortion on the other hand? Is it possible to use the numerous civil society activities that oppose genetically modified plants and food to criticise “the making of human beings”? Are there any parallels between liberal-secular arguments against “consumer eugenics” and the religious-

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<sup>24</sup><http://www4.nationalacademies.org/iap/iaphome.nsf/weblinks/WWW-5RHFLT?OpenDocument>

<sup>25</sup> The conference is documented under: <http://www.biopolitics-berlin2003.org/>.

conservative commitment to protect life? It became clear that an approach needs to be avoided that perceives the social impact of new forms of human genetic engineering in an isolated manner. The consequences of new technology, and the need and basis for national and international regulations, only really become apparent when analysed with reference to (?) health care systems, global intellectual property regimes and questions of social justice. In spite of different standpoints on individual topics, there have been and still are opportunities to achieve future global cooperation – with regard to elaborating a position with respect to both cloning and other areas of biomedical research<sup>26</sup> But we have little time to waste.

In November 2004, the UN negotiations aiming at an internationally binding convention against human cloning eventually failed. Neither the supporters of a comprehensive ban nor those in favour of a ban on reproductive cloning only seemed to be able get the critical majority in the General Assembly of the United Nations. But what looks – for the time being – like the end of a **convention** against human cloning has not been the end of UN negotiations on that issue. The idea came up to reach at least a UN **declaration** against human cloning. Italy, supporting a comprehensive ban on human cloning and launching a pro-life campaign against abortion rights, took the lead and submitted the draft of a declaration whose wording clearly was “pro-life” and divisive. On February 28, 2005, the UN Legal Committee adopted by majority decision that declaration, entitled „United Nations Declaration on Human Cloning“, celebrated by its supporters as a monumental victory for the pro-life movement. By this declaration, the UN calls on member states to adopt urgent legislation outlawing

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<sup>26</sup> Since the Berlin Conference these issues were discussed by the Heinrich-Boell-Foundation and members of the network in a series of international workshops, meetings and conferences: At several conferences in Brasil (see „Biopolíticas: <http://www.boell-latinoamerica.org>), at the major biopolitical conference “Privatization of Nature and Knowledge. Under the BIOS Sign: Technology, Ethics, Diversity and Rights“ Oktober 2004 in Mexiko (see: [http://www.boell-latinoamerica.org/download\\_es/ProgramaBiopoliticaexternoactualizado2309.doc](http://www.boell-latinoamerica.org/download_es/ProgramaBiopoliticaexternoactualizado2309.doc)), at the 7<sup>th</sup> World Conference of Bioethics, Sidney/Australia, a biopolitical workshop in South Africa, whose aim is to organise a major biopolitical conference for Southern Africa, as well as at numerous activities in Europe (European Social Forum, October 2004), Intervention at the meeting of the International Bioethics Committee of UNESCO in May 2004 and biopolitical meetings on the contemporary understanding of human dignity in Germany.

all cloning practices "as they are incompatible with human dignity and the protection of human life." The declaration seems to mark the end of three years of UN deadlock over human cloning. But this might turn out to be an illusion very soon.

Countries were divided mainly over the question of whether to protect „human life“ or the „human being.“ Costa Rica, Uganda, the United States, Italy and others who sought to ban all forms of human cloning, supported the term „human life.“ Countries including Belgium, Singapore and the United Kingdom, who wanted to only ban the cloning that would result in born human beings, insisted on protecting the „human being,“ which according to some international legal documents would protect only those already born.

The declaration also calls on countries to "prevent the exploitation of women." Cloning requires harvesting eggs from women, and delegates from developing countries feared the women of their countries might be regarded as inexpensive "egg farms." The declaration calls on wealthier nations to direct attention and funding to pressing medical issues such as HIV/AIDS, tuberculosis and malaria. It also condemns all applications of any genetic engineering techniques that threaten human dignity.

Though the resolution aimed at being inclusive, its "pro-life" wording proved to be divisive. There are more countries that abstained from the resolution or rejected it than countries that voted in favour of it (71 in favour, 35 against, 43 abstentions). Thus the resolution left the international community split and far incapable of common action. Remarkably, even countries with a relatively strict and comprehensive regulation of human cloning like Canada voted against the submitted resolution because they simply did not want to join the "pro-life" camp. Germany, due to its national legislation and Parliament's resolutions, voted in favour of the resolution draft which on March 8, 2005 was adopted by the UN General Assembly as the legally nonbinding United Nations Declaration on Human Cloning: 84 states in favour, 34 states against and 37 abstentions. To repeat, Germany voted in favour of the Declaration.

