

Meeting of Legal Experts for GEO-Law Database

– Report of the first meeting –

Date: 5 December 2005

Venue: UNESCO HQs, Bonvin Building, Room XVI, Paris

Introduction

Mr. ten Have, director of the Division of Ethics of Science and Technology of UNESCO welcomed the participants and presented the plans for the experts working group. He gave an overview on the current work carried out by the Division of Ethics of Science and Technology of UNESCO aiming at the development of the worldwide network of databases on bioethics and other areas of applied ethics, which is called Global Ethics Observatory (GEObs). It comprises the following four databases that will include data and information from all UNESCO Member States and will be accessible for any persons from Member States:

1. Who's who in ethics: a database of individual experts in ethics;
2. a database of institutions, centres, commissions in the area of ethics;
3. a database of ethics teaching programs; and
4. a database of legislation, guidelines and regulations in connection to ethics.

Mr. ten Have stated that GEO-LAW has particular objectives, which are threefold:

1. Evaluate the implementation of UNESCO instruments by Member States;
2. compare the implementation of these instruments between Member States; and
3. offer guidance to Member States that intend to implement these instruments.

The first step is thus to bring together a group of experts in order to discuss the methodology that should be adopted and afterwards proceed with an evaluation of the work.

Participants

The participants introduced themselves:

- Professor Herman Nys (Belgium), from the Centre for Biomedical Ethics and Law, at the Katholieke Universiteit Leuven;
- Professor Ryuichi Ida (Japan), from the Kyoto University Graduate School of Law;
- Professor Judit Sandor (Hungary), from the Central European University in Budapest;
- Professor Mônica Serra (Brazil), from the São Paulo State University, São Paulo;
- Professor Bartha Knoppers (Canada), Faculty of Law, University of Montreal;
- Dr. Dirk Lanzerath (Germany) Deutsches Referenzzentrum für Ethik in den Biowissenschaften (DRZE), Bonn
- Dr. Thomas Faunce (Australia), Australian National University, Centre for Governance of Knowledge and Development, Canberra;
- Professor Cinzia Caporale (Italy), Vice-President of the National Bioethics Committee, Einaudi Foundation, Rome; and

- Mrs. Genevieve Pinet, World Health Organization, Chief Health Legislation, Dept. of Ethics, Trade, Human Rights and Health Law, Geneva, Switzerland.

UNESCO Staff: Mr. Henk ten Have, Ms. Simone Scholze, Ms. Sabina Colombo and Mr. Tee Wee Ang.

Mr. Tee Wee Ang made a demonstration on the operation of GEO databases and the participants expressed their opinion on what should be envisaged in terms of structure, scope and content for the GEO-Law.

Professor Herman Nys presented the Draft Proposal for a Framework for the Geo-Law Database , followed by a discussion of the proposal.

Discussions

Questions were raised regarding the scope of GEO. Are the databases limited to bioethics? Mr. ten Have explained that it would eventually cover all areas of applied ethics, except business ethics, which is not under UNESCO's mandate. However, as the majority of available data refers to bioethics, this field, together with bioethics instruments and declarations, will be taken as a starting point.

A participant inquired about the possibility of including literature and publications in the database. Mr. ten Have pointed out that it would be very difficult because the hyperlinks in Internet are frequently changing and broken links would be a problem. A major consideration is that there are already excellent databases of bioethics bibliographies so that there is no need to make a duplication. When GEObs is operational, efforts should be made to bring various global databases together in a cooperative network. Besides, selecting relevant literature and surveying its quality is beyond UNESCO capacity at the moment.

Another speaker also called attention to the issue of copyright if one wants to put available the whole text of existing codes of conduct and legal provisions.

A participant suggested that some international instruments, such as the UN guidelines and resolutions should also be included in the database. Another participant proposed that NGOs and organizations committed to international cooperation, for example TWAS and *Médecins sans Frontières*, should also receive the questionnaires and be included.

Attention was drawn to the scope and objectives of the database. A participant expressed the view that public policies should be included in addition to guidelines and normative instruments, because in some countries administrative measures can be as effective as legal tools. Another participant suggested that GEO-Law should be limited to UNESCO instruments and their implementation by Member States. However, considering that some national laws may be previous to UNESCO declarations on bioethics, many countries might not agree with the inclusion of the notion of "implementation" as an objective of GEO-Law.

One participant considered the three objectives presented in Mr. Nys' Draft Proposal too narrow. Discussion on the objectives of the databases gave rise to various options for wording.

Another speaker also expressed reluctance about using the term "implementation" of the UNESCO instruments by Member States, as presented in the Draft Proposal. He pointed out that governments could argue that some national laws are not designed to "implement" UNESCO declarations (which are not legally binding) and Member States should not be evaluated for this. "Follow-up" would be a better expression. Additionally, the participant also warned that some declarations do not include "implementation" or "follow-up" mechanism as result of a deliberate decision taken by Member States during the respective negotiations. He mentioned some categories of instruments related to bioethics but emphasised that governments do not cover all fields in bioethics; some fields and disposals are left to be regulated by professional associations instead. From the viewpoint of governments, he insisted, guidance would be more fruitful than evaluation. For this reason, the database should offer examples of documents that could be useful for decision-makers, providing information when necessary.

Similarly, one participant suggested that instead of "implementation" one should employ the notion of "coherence" of national laws with UNESCO declarations.

The view was expressed that GEO-Law should be wider, including binding and non-binding tools as well as case laws. There should also be some incentive to contributions by renowned experts and institutions. As a consequence others would follow. National Bioethics Commissions would be a source of reliable information. IGBC could also contribute to this initiative.

Regarding the experience of the WHO legal database, Mrs. Genevieve Pinet mentioned the difficulties to identify ethical aspects in some national laws. She suggested that WHO resolutions could also be included besides UN resolutions and guidelines. She emphasised that the WHO database also includes regulations while they can be equivalent to laws in terms of efficacy. In addition to WHO's own research, there is a notification system on new laws established as an obligation to Member States. WHO counterparts in countries are the ministries of Health and the respective National Commissions. Official journals, digests and "recueils" are also interesting sources of information. However literature, book reviews or case laws are not included. She also mentioned that analysis of a country's status regarding ethics and templates of good country's profile is an interesting way to proceed.

One participant observed that GEO-Law should not offer full documents. As countries have different legislative processes, including case laws would imply a tremendous work, which is not feasible without expert evaluation case-by-case. Referring to the diversity of national legislation and legal systems and therefore to the respective difficulty to identify disposals regarding bioethics, it was pointed out that some academic comment clarifying its application would be advisable.

Another point raised by one participant refers to how the database could be updated. A continuous follow-up system should be established, she said, due to the dynamics of the legal process.

One participant called attention to two different aspects of the legal database. The first one concerned the target-group: governmental experts and lawyers should be also envisaged. The second point refers to the long-term quality of the database management. Continuous updating, he said, is crucial for the effectiveness and credibility of the initiative.

One speaker, referring to who will fill in the questionnaires, raised the issue on the profile of the professionals who will be involved – who better knows biolaws? Reliable people or a board of people would be necessary. She argued that the declarations should be considered a benchmark and not a starting point. Experts, especially those from developing countries, need reliable information.

One participant mentioned that international human rights instruments and bioethics norms might be used to “calibrate” national legislation regarding public health and could be also included in the database.

One participant mentioned an essential point that should be addressed by the group regarding the scope of GEO-Law: should the database refer to UNESCO declarations in bioethics uniquely? If so, what about the legislation before 1997 and the issues that are not included in the declarations (such as animal rights)? Furthermore, concerning the discussion on offering or not model laws, the same participant expressed doubts about the relationship between bioethics and respect for the cultural diversity.

Bearing in mind the ultimate objective of GEO-Law, Mr. ten Have clarified the following points: (1) UNESCO can not do more than what Member States asked it to. However some countries expect more than the declarations; they ask for assistance to go further; and (2) at governing-bodies meetings, Member States often ask for reports on the implementation of the declarations. For these reasons, the first and second proposed objectives aim at showing the impact of the declaration on the national legislation – assessing the impact, even if it is not a direct consequence of the declaration, is an important measure. The third proposed objective is linked to the fact that some Member States have no idea on how to proceed after the approval of a declaration; they often request UNESCO guidance in this field.

A speaker suggested that specific sections inside selected national legislation could exemplify particular principles in the declarations. The database should offer just an extract and provide a hyperlink to the full text. It was not considered advisable to use abstracts. Thus the database could highlight illustrative samples of national legislations, which are in conformity with some ideals of UNESCO declaration.

Taking into account these clarifications, one speaker suggested that it would be convenient to change the wording of the objectives. For instance, it should be explicitly included among the objectives of the legal database that it aims at serving as an incentive and an example to Member States.

Professor Nys pointed out that establishing a pilot-experience with some countries would be a convenient approach.

Conclusions

After some debate on the different views, the group agreed upon the following objectives:

- a) Promote and disseminate the principles of the UNESCO declarations;
- b) Provide access to international, regional and national normative information;
- c)
- d) Offer a tool to Member States with the view to implement the declarations;

Summarizing the results of the brainstorming session, Mr. ten Have proposed, as a possibility to make a step forward, to engage 10 experts from five different regions (two of each) in order to assemble information about their national legislation (excerpts). In 2007, ten more experts from another ten countries would be selected and so on, in the subsequent years.

The group agreed that some important questions and topics should be highlighted from UNESCO declarations and the experts could identify the corresponding questions in the national legislations. In fact, taking into account the domain of the 3 declarations, many themes can be identified, as in the proposed schedule of Professor Nys. Starting with a group of 10 legal experts will therefore have two stages. The first stage will be aimed at testing the process: concentrating on 5 themes, and assessing the quality of the materials produced (in a first assessment meeting with the experts), the methodology can be refined and improved. In the second stage, the other themes will be taken into account and materials discussed in a second assessment meeting with all experts. Only after this meeting, the methodology can be approved and data entered into the database, as well as other experts from other countries invited to participate.

Referring to the themes for the first stage, it was decided that the work should focus on:

- a) Medical research with human beings;
- b) Access to health care and essential medicines;
- c) Genetic counseling;
- d) Protection of future generations, and
- e) Freedom of scientific research.

Concerning the sources of information, the group recommended that the database should include the following categories:

- a) Multilateral, regional and bilateral treaties;
- b) Constitutions;
- c) Domestic laws;
- d) Authoritative case laws;
- e)
- f) Regulations and guidelines.

Further discussions will be carried out by the Secretariat, with the assistance of the members of the group, in order to identify the experts, from the following countries:

- Africa: Senegal and South Africa

- Arab countries: Lebanon and Oman (or Qatar)
- Asia and Pacific: Australia and Japan
- Europe and North America: Canada, Italy and Hungary
- Latin America and Caribbean: Brazil and Mexico

It was also deemed advisable that the legal experts should be able to translate all information into English and that they should be paid accordingly. The group will supervise the pilot-phase and the activities of the legal experts.

The group was invited to meet again in the Summer (possibly June 2006) in order to evaluate the progress of the work.

Mr. ten Have brought the brainstorming session to a close, thanking the experts and requesting their inputs concerning names of the experts before the end of the year.