Recent Publications

F Francioni (ed) *Biotechnologies and international human rights*

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At a time when medical science is once again challenged by the emergence of invasive medical research and human experimentation and a renewed interest in biotechnology, genetics, therapeutic and non-therapeutic cloning, nanotechnology, bioethics and environmental health care, the publication of *Biotechnologies and international human rights* is certainly to be welcomed. Although medical research and related medical scientific activities are generally regulated by a number of international instruments (such as the Helsinki Declaration), the question remains to what extent activities in the field of biotechnology can be regulated by the existing human rights principles and standards. What, for instance, is the relevance of the Declaration of the Human Genome (1997) and the Universal Declaration on Bioethics and Human Rights (2005) with respect to traditional concepts of state liability and the functioning of domestic remedies, specifically in the context of the misuse of biotechnologies? Are new regulatory frameworks needed to redefine core principles of human rights and to protect human genetic material/data in context of the human genome and intellectual property rights or considerations? In this regard, it is clear that normative and ethical boundary conditions will be pivotal.

This book follows upon and complements the previous volume *Biotechnology and international law* (Hart 2006) and contains a collection of fascinating (and in many ways groundbreaking) essays, edited by the eminent Professor Francesco Francioni. In essence, all the essays focus primarily on the following issues: What are the core human rights principles that define the boundaries of the legitimate use of

biotechnology? What is the legal status of human genetic material and what are the implications of the definition of the human genome as 'common heritage of humanity' for the purposes of patenting genetic inventions? What is the meaning of, and how can we implement the emerging right to an equitable sharing of the benefits arising from the commercial use of biogenetic resources? What is the role of human rights and, in particular, of the principles of non-discrimination, in preventing a new 'genetic divide' that would increase the already striking disparities between the developed and the developing world?

The book is divided into six parts, which are made up as follows: Part I provides an overview and cross-cutting issues with reference to genetic resources, biotechnology and human rights in the context of the international legal framework and issues with regard to state responsibility; part II deals with bioethics and genetics with reference to ethical pluralism, the consolidation of bio-rights in Europe, UNESCO's standard setting activities on bioethics and an analysis of the 2005 Universal Declaration on Bioethics and Human Rights; part III deals with economic, social and cultural rights with specific reference to agricultural biotechnology and the right to food, the right to environment, health and economic freedom, as well as a discussion of biogenetic resources and the rights of indigenous people; part IV deals with intellectual property rights and trade issues; part V deals with participatory rights and remedies; and part VI deals with international humanitarian law in the context of offensive military applications of biotechnologies. In addition, there is a table of cases with reference to judgments of national courts; a table of European legislation; a table of national legislation and a table of international human rights instruments. At the back of the book a comprehensive word index is provided. The outlay, structure, presentation and editorial care of the book are all of a high standard.

In assessing the contents of the book, one has to observe that the obvious strength and merit of this publication lie in the mapping of an international legal framework for the protection of human rights in the context of the application of biotechnology in its full diversity. The interface between biotechnology and human rights becomes patently clear in the comprehensive and diverse analyses by the various contributors. As a collection of pertinent and revealing essays, the book certainly succeeds and undoubtedly makes a significant contribution to map this emerging field of inquiry. An additional strength of the book is to be found in the comparative approach (albeit mainly in the context of biotechnology in the developed countries with some reference to some developing countries). Too often books of this nature tend to have too narrow a focus on salient issues pertaining to biotechnology, discarding the universality and application thereof. This is not the case with the present publication.

Apart from the academic discussion and analyses, the book also serves as an important compilation and resource manual for international

human rights instruments, directly or indirectly connected to biotechnology. In this regard, it is specifically the International Declaration on Human Genetic Data, the UN Declaration on Human Cloning, the UNESCO Universal Declaration on the Human Genome and Human Rights and the Universal Declaration on Bioethics and Human Rights that are to be noted. These instruments, and the application thereof in the context of the progressive realisation of human rights, are comprehensively dealt with in the book on various levels. As stated in the preface of the book, ultimately the quest is one to legally regulate and map the human genome with all its concomitant implications for human identity as the 'common heritage of humanity'. The essays contained in the book vividly (and often on a perturbing level, if one has regard to the vast field of application) illustrate and portray this quest. Ultimately, human rights have to protect humanity against abuse and exploitation that may emanate from the unwise and opportunistic application of biotechnology. However, unfounded and unscientific *angst* should not be employed to curb the benefits that biotechnology will and can yield for mankind and medical science. It is to be remembered that every benefit brought about by medical science and biotechnology is accompanied by risks. One cannot take the benefits without the risks. Ultimately, in the context of human rights, it is a question of balance and boundary conditions. This publication sets out to explore these balances and boundary conditions, juxtaposed against the harsh realities of, for instance, the protection of intellectual property rights and the concept (or 'myth') of property.

It is difficult to select one specific essay in the book that stands out in comparison to the rest of the collection. This, in my view, would be unfair, as all the essays contained in the book are shining examples of fine academic scholarship in a particularly demanding discipline. However, in the context of the reviewing journal, the *African Human Rights Law Journal*, it is specifically the contribution of Federico Lenzerini entitled 'Biogenetic resources and indigenous peoples' rights' that needs to be mentioned. In a fascinating and groundbreaking essay, he discusses the influence of biotechnology on the human rights of indigenous societies, which are particularly vulnerable groups, specifically in the context of the harvesting of genetic samples and other forms of experimentation. This highly informative and rather controversial analysis is done with reference to the bio-prospecting of indigenous peoples' biogenetic resources, an explanation of the harvesting of genetic samples of indigenous people in the context of bio-imperialism (also with reference to the concept of 'bio-piracy'), and an analysis of the international legal framework for the application of the human rights of indigenous societies in the context of their rights to access their biogenetic material. The strength and value of the contribution lie in the solutions proposed by the author which will, if consensus can be reached (in the context of the TRIPS Agreement, and other instru-

ments/considerations for the protection of intellectual property rights), defuse the tension between different international regimes.

Ultimately, as Francioni correctly states, it has to be noted that the current asymmetry of knowledge and power between the scientific and technological actors, on the one hand, and the traditional institutions of government and of civil society, on the other, cannot be redressed by the concurrent race to the privatisation and propertisation of genes, the human body, plants and everything else. A more rational approach is that which is based on the universally shared value of international human rights. At a time when the entire planet is more at risk than ever before due to environmental threats, fuel and food shortages, ravaging conflicts and disease, it is specifically biotechnology in the context of economic, social and cultural rights that will play a decisive role. Consequently, international human rights as a normative ethically-inspired legal framework will be severely challenged and compromised, and in this regard this publication is an essential guide and resource manual. It is highly recommended.