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UNESCO

UNIVERSAL DECLARATION ON BIOETHICS AND HUMAN RIGHTS

HANDBOOK ON THE DECLARATION

COMMENTARY ON ARTICLE 2 ("AIMS ")

Michael Kirby

Article 2 - Aims

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Drafting history

Whereas Article 1 underwent substantial change at several junctures in the drafting process of the Declaration, Article 2 remained ostensibly the same throughout.

There were six official drafts of the Declaration prepared by the IBC Drafting Group prior to the adoption of the final text by the Thirty-third Session of the General Conference of UNESCO in October 2005.¹ A brief chronology of these drafts as follows:²

30 April 2004	Draft outline of the structure of the Declaration finalised by the IBC Drafting Group
15 June 2004	First draft finalised by the IBC Drafting Group
27 July 2004	Second draft finalised by the IBC Drafting Group

¹ Resolution on the Universal Declaration on Bioethics and Human Rights (33 C/Resolution 36).

² All documents quoted in this section are sourced from: "Towards the Universal Declaration on Bioethics and Human Rights: The process of elaboration" (2006) *United Nations Education, Scientific and Cultural Organisation*.

27 August 2004	Third draft finalised by the IBC Drafting Group
15 December 2004	Fourth draft finalised by the IBC Drafting Group
9 February 2005	Preliminary Draft Declaration finalised

A note accompanying the text of the Preliminary Draft Declaration describes the process to that point in this way:

"This Preliminary Draft Declaration on Universal Norms on Bioethics was finalized by IBC at its extraordinary session on 28 January 2005 after six meetings of its Drafting Group held between April and December 2004, three sessions of IBC (April 2004, August 2004, January 2005), two written consultations (January-March 2004 and October-December 2004), numerous consultations at international, regional and national levels (including within the framework of the UN Inter-Agency Committee on Bioethics), a session of IGBC and a joint session of IBC and IGBC (January 2005)."

Following the finalisation of the Preliminary Draft Declaration, responsibility for the passage of the text was transferred from the IBC to the Intergovernmental Meeting of Experts. These experts represented UNESCO Member States and met officially in April and June of 2005. The first meeting established a Drafting Group and elected a Bureau responsible for steering negotiations and finalising the text prior to its official adoption by the General Conference of UNESCO.

Initial form of Article 2

At the first meeting of the IBC Drafting Group in April 2004, a draft outline of the structure of the Declaration was formed. This first outline grouped the aims and scope of the Declaration together as follows:³

Aims and Scope

- To ensure the application of science for the welfare of human beings and the development of humanity
- The declaration should underline the positive aspects of science and technology progress
- The scope should be oriented towards the human being

Following the release of this initial outline, the IBC Drafting Group agreed to separately define the Declaration's field of application (the "Scope"), as distinct from the goals targeted in the principles set forth in the Declaration (the "Aims").⁴ This structure was maintained in all subsequent drafts and the final text.

³ Draft outline of the structure of the Declaration on Universal Norms on Bioethics, 30 June 2004.

⁴ See: Report of the second meeting of the IBC Drafting Group for the elaboration of a declaration on universal norms on bioethics, 2-3 June 2004.

Evolution of the text of Article 2

The first official draft, which followed the initial draft outline of the structure of the Declaration, listed the Aims as follows:⁵

- to promote respect for life in all its diversity and in particular [including] respect for human life;
- to ensure the respect for human dignity and the protection of human rights and fundamental freedoms in [the sphere of] bioethical decision making, in accordance with international human rights law;
- to recognize an understanding of the great benefit derived from scientific and technological development, whilst ensuring that such development occurs within the framework of ethical principles that respect human dignity and protect human rights and fundamental freedoms;
- to provide a universal framework of fundamental values, [core principles] and basic procedures designed to guide States in the formulation of their legislation and their policies in the field of bioethics, and to form the basis for guidelines in

⁵ See: Elaboration of the Declaration on Universal Norms and Bioethics: First outline of a text, 15 June 2004.

bioethical matters for the institutions, groups and individuals concerned;

- to foster dialogue between scientists, health professionals, lawyers, philosophers, ethicists, theologians and all the other intellectual and professional groups concerned, policy makers and society as a whole;
- to prevent practices contrary to human dignity such as those that undermine the respect for individuals and for the diversity of humankind;
- to promote the sharing and the greatest possible flow of knowledge concerning the scientific and technological development as well as the sharing of benefits, in particular with developing countries;
- to safeguard the interests of present and future generations.

Following further meetings of the IBC Drafting Group, it was decided to re-order the aims. Although the aims were not necessarily hierarchical, there was common agreement that the primary aim of the Declaration was to provide a "universal framework of principles and procedures ...". It was also decided to remove the direct reference to "human life" given the general

reference to "human rights". The other aims were also condensed, with an additional aim added in relation to biodiversity.⁶ These changes were reflected in the second draft, dated 27 July 2004:⁷

Aims

The aims of this Declaration are:

- to provide a universal framework of fundamental principles and basic procedures designed to guide States in the formulation of their legislation and their policies in the field of bioethics, and to form the basis for guidelines in bioethical matters for the institutions, groups and individuals concerned;
- to ensure the respect for human dignity and the protection of human rights and fundamental freedoms in [the sphere of] bioethical decision making, in accordance with human rights law;
- to promote respect for biodiversity;

⁶ Report of the third meeting of the IBC Drafting Group for the elaboration of a declaration on universal norms on bioethics, 8-9 July 2004.

⁷ Elaboration of the Declaration on Universal Norms and Bioethics: Second outline of a text, 27 July 2004.

- to recognize the great benefit derived from scientific and technological developments, whilst ensuring that such development occurs within the framework of ethical principles that respect human dignity and protect human rights and fundamental freedoms, and to prevent practices contrary to human dignity;
- to foster dialogue between scientists, health professionals, lawyers, philosophers, ethicists, theologians and all the other intellectual and professional groups concerned, policy makers and society as a whole;
- to promote the sharing and the greatest possible flow of knowledge concerning scientific and technological developments as well as the sharing of benefits, in particular with developing countries;
- to safeguard the interests of present and future generations.

Aside from minor alterations to the structure and wording of the aims, the text of Article 2 remained virtually unchanged. Following the consultation with key stakeholders between October

and December 2004, an additional aim promoting "equality in scientific developments" was included.⁸ However, this was subsumed within the aim concerning the "sharing of scientific and technological developments" in the Preliminary Draft Declaration.⁹ In that draft, although the list of aims remained virtually identical to earlier drafts in terms of substance, the language used had been modified and extended:

The aims of this Declaration are:

- (i) to provide a universal framework of fundamental principles and procedures to guide States in the formulation of their legislation and policies in the field of bioethics, and to form the basis for guidelines concerning bioethical issues for the individuals, groups and institutions concerned;
- (ii) to promote respect for human dignity and the protection and promotion of human rights and fundamental freedoms in any decision or practice involving bioethical issues, in accordance with international human rights law;

⁸ Elaboration of the Declaration on Universal Norms and Bioethics: Fourth outline of a text, 15 December 2004.

⁹ Preliminary Draft Declaration on Bioethics, 9 February 2005.

- (iii) to recognize the importance of freedom of scientific research and the benefits derived from scientific and technological developments, whilst ensuring that such developments occur within the framework of ethical principles that respect human dignity and protect human rights and fundamental freedoms;
- (iv) to foster multidisciplinary and pluralistic dialogue about bioethical issues between scientists, health professionals, lawyers, philosophers, ethicists, theologians and all the other intellectual, religious and professional groups concerned, policy makers, non-governmental organizations, representatives of civil society, the persons concerned and society as a whole;
- (v) to promote equitable access to medical, scientific and technological developments as well as the greatest possible flow and the rapid sharing of knowledge concerning those developments and the sharing of benefits, with particular attention to the needs of developing countries;
- (vi) to recognize the importance of biodiversity and the responsibilities of human beings towards other forms of life in the biosphere; and
- (vii) to safeguard and promote the interests of the present and future generations.

Following the release of this draft, the content of the Aims provision was virtually settled. However, given the debate surrounding the scope and application of the Declaration, it was decided to include sub-paragraph (b) to encompass the impact of the Declaration on decision or actions that are not made by States directly.¹⁰ The wording of the Article was also considerably tightened. Thus, the final text of Article 2, as adopted in October 2005, was:

Article 2 - Aims

The aims of this Declaration are:

- (a) To provide a universal framework of Principles and procedures to guide States in the formulation of their legislation, policies or other instruments in the field of bioethics;
- (b) To guide the actions of individuals, groups, communities, institutions and corporations, public and private;

¹⁰ See particularly: Non-paper (thoughts and questions raised by the Chairperson -Second intergovernmental meeting of experts aimed at finalizing a draft declaration on universal norms on bioethics, 20-24 June 2005.

- (c) To promote respect for human dignity and protect human rights by ensuring respect for the life of human beings, and fundamental freedoms, consistent with international human rights law;
- (d) To recognise the importance of freedom of scientific research and benefits derived from scientific and technological developments, while stressing the need for such research and developments to occur within a framework of ethical principles set out in this Declaration and to respect human dignity, human rights and fundamental freedoms;
- (e) To foster multi-disciplinary and pluralistic dialogue about bioethical issues between all stakeholders and within society as a whole;
- (f) To promote equitable access to medical, scientific and technological developments as well as the greatest possible flow and rapid sharing of knowledge concerning those developments and the sharing of benefits, with particular attention to the needs of developing countries;
- (g) To safeguard and promote the interests of the present and future generations;

- (h) To underline the importance of biodiversity and its conservation as a common concern of human kind.

Interpretive principles

The statement of the aims of the Declaration, appearing in the General Provisions is relevant to the interpretive principles which, by analogy are available for the interpretation of a non-binding Declaration such as this. Because the Declaration is expressed in general language, is sometimes ambiguous representing the compromises reached in its drafting, a statement of the aims is useful as affording guidance of the purposes of the Declaration as accepted by the Nation States that accepted it in the General Conference of UNESCO.

The Declaration is not a treaty and, for this reason, the principles of international law governing the interpretation of treaties do not apply to it. However, those principles, including as stated in the Vienna Convention on the Law of Treaties, are available to decision-makers, by analogy, to the extent that they are relevant and applicable, to extract the meaning of the Declaration. The starting point is the text. However, the context and purpose of the Declaration, read as a whole, is an important source of the meaning of any contested language. Ultimately, the text of the Declaration governs the meaning that is to be derived from it. Nevertheless, the elucidation of meaning may be assisted by the reaffirmation of

important "aims" and by the ways in which those "aims" are expressed. A purposive and liberal interpretation of an instrument such as the Declaration is appropriate, not least because of the permissive and non-mandatory language in which its substantial terms are stated.

Comment on the history of Article 2

The statement of the Aims of the Declaration, as expressed in the Draft recommended by the IBC, was modified by the Inter-governmental Meeting of Experts. To some extent, the alteration of the Principles stated in the Declaration necessitated an alteration of the list of aims. Generally speaking, the aims, after specifying those which are of relevance for the guidance of States, the first addressees of the Declaration (see Art 1.2) and natural and legal persons, the second addressees (see Arts 2(b) and 1.2) generally follow the structure of the Principles. Thus, Aim the stated in Art 2(c) ("promotion of human dignity and protection of human rights") encompasses the more detailed Principles expressed, in substantive terms, in Arts 3, 4, 5, 6, 7, 8, 9, 10 and 11. The Aim in Art 2(d) (benefits of scientific research) is reflected in the substantive terms of Arts 14 and 15. The fostering of the provisions of Art 2(e) for fostering dialogue between "all stakeholders and within society" is reflected in Art 13 (solidarity and cooperation) and Art 15 (sharing of benefits). The terms of Art 2(f) is reflected in Arts 14 (social responsibility and health) and 15 (sharing of benefits). The

provisions of Art 2(g) (present and future generations) is exactly reflected in substantive terms in Art 16 (protecting future generations). Similarly the aim expressed in Art 2(h) (biodiversity) is reflected in Art 17 (protection of the environment, the biosphere and biodiversity).

A question arises as to what the statement of the aims adds to what would otherwise be the derivation of the Aims from the substantive terms of the Principles collected in the immediately following section of the Declaration. To the extent that an aim is more narrowly expressed, does it in any way detract from, or reduce the ambit of, the substantive Principle? Thus, for example, the aim stated in Art 2(h) ("to underline the importance of biodiversity and its conservation as a common concern of human kind") is narrower in focus and scope than the substantive Principle expressed in Art 17. The latter is targeted with the interconnection of human beings with other forms of life. It adds reference to the importance of access to, and utilisation of, biological and genetic resources. It supplements this reference with one to "respect for traditional knowledge". The focus of its provisions extends to the environment and the biosphere and not just to "biodiversity" and its conservation. What, then, is the added value of the statement of the aim in Art 2(h)?

The apparent answer to this question is to be found in the verb expressing the object of the aim in Art 2(h). This is "to *underline* the importance" of biodiversity. It thus appears amongst the objectives

expressed in the substantive Principle in Art 17. But, by reference to the aim in Art 2(h) that importance is "underlined". By underlining it, it may be inferred that the States that endorsed the Declaration wish to give priority of attention and importance to biodiversity and its conservation. This is an understandable objective of UNESCO given its programme including MAB - Man in the biosphere.

To the extent that the Principles expressed with more specificity the approaches and guidelines that should be adopted, as appropriate and relevant, in guiding decisions or practices in accordance with Art 1.2, these govern the substantive rules. The statement of aims cannot detract from the Principles so stated. On the other hand, such Statement of Aims can give particular emphasis, urgency and priority to the substantive provisions expressed in the Principle to which the aims closely relate. Sometimes, the elaborate and particularise the content of the general provision as to the scope of the Declaration (Art 1) or the more particular provisions containing the Principles and the promotion of the Declaration.

An illustration is the aim in Art 2(a). In Art 1.2, it is simply stated that the "Declaration is addressed to States". What States should do is then expressed in non-mandatory terms in Arts 22, 23 and 24. But the way in which States should act in accordance with those Articles is not spelt out except in the aim expressed in Art 2(a). This makes it clear that the purpose of the Declaration is to

provide a universal framework of Principles and Procedures to guide the States. Moreover, it is to do so in "the formulation of their legislation, policies or other instruments". This phrase signals the descending hierarchy of normative provisions that might be adopted by a State in furthering the Principles of the Declaration. That hierarchy could extend from legislation (binding law) through policies (official rules or guidelines, possibly adopted within binding law) and "other instruments" (including non-binding statements and delegated legislation). Given the variety and significance of norms in the field of bioethics, depending for their importance and urgency on many factors, this range of State responses is unsurprising.

Whereas the aim in Art 2(a) refers to the first sentence in Art 1.2, the aim in Art 2(b) reflects the same language as appears in the second sentence ("individuals, groups, communities, institutions and corporations").

The reference in Art 2(c) to promotion of respect for "human dignity" is sometimes regarded as controversial, although the phrase is repeated in Art 3.1 and reflected in the language of Art 11. Some commentators suggest that the ultimate foundation of human rights is respect for human dignity, inhering in each individual. Others express concern that the notion of "human dignity" is ambiguous; cannot be used to derogate from binding statements of international law founded in the decisions of the international community; and

sometimes suggests theist or religious foundations for human rights that are not universally accepted.

The reference in the Aim in Art 2(c) to "human dignity" and to the need to ensure "respect for the life of human beings" is itself ambiguous. It was added by the intergovernmental experts. Some readers will draw the inference that, by adopting the aim in par (c) of Art 2, UNESCO has endorsed notions of right to life that are strongly held by some countries and by certain religious groups. However, par (c) must be read against the background of earlier work of the IBC concerned with the controversies surrounding the beginning of human life. This research was performed in connection with consideration of the controversial issue of the use of embryonic stem cells. Different religions adopt quite different conclusions as to when "the life of human beings" begins, ie whether at conception, at some later stage *in utero* or at birth. The statement of the Aims in Art 2(c) does not alter the substantive Principles contained in the Declaration. Nor does it resolve the ambiguities and debates that revolve around this question.

The provisions of Art 2(d) reflect the way in which, elsewhere in the Declaration, an internal tension appears in a provision. Thus, this aim recognises the importance and benefits of scientific and technological developments. But it also stresses the need for these to occur in a framework of ethical principles that include respect for human dignity, human rights and fundamental freedoms. A similar

balance exists in Art 12 ("respect for cultural diversity and pluralism"). In its primary provision, Art 12 calls for "due regard" to be given to the "importance of cultural diversity and pluralism". But it affirms that such considerations are not to be invoked "to infringe upon human dignity, human rights and fundamental freedoms". Nor are they to limit the Principles contained in the Declaration or the scope of its application. The latter provisions reflect in a general way the terms of the UNESCO *Universal Declaration on Cultural Diversity* of 2 November 2001, mentioned in paragraph 6 of the Preamble to the Declaration.

Put generally, the Statement of Aims in the Declaration clarifies the purpose so far as States are concerned of providing a "universal framework of principles and procedures". It reinforces the objectives, inferred from the provision of Art 1.2 on Scope, that the Declaration should guide natural and legal persons. It affords specific aims relevant to the Principles that immediately ensue. It gives emphasis to some features of those Principles whilst not qualifying their general application as expressed in their own language. In the event of ambiguity in the terms of the Principles stated in the Declaration, the reader must consider the general provisions as to Scope and the statement of the aims, in the hope that these may combine to resolve the ambiguity or point the decision-maker in the right direction.

