

Commentary on the document *Elaboration of the Declaration on Universal Norms in Bioethics: First Outline of a Text*¹ relating to the proposal for a Declaration on Universal Norms on Bioethics by the International Bioethics Committee of UNESCO

The Nuffield Council on Bioethics is grateful to the International Bioethics Committee (IBC) of UNESCO for the opportunity to contribute further to the deliberations towards a *Declaration on Universal Norms on Bioethics* (henceforth: *Declaration*).²

We offer the following observations in relation to the document *Elaboration of the Declaration on Universal Norms in Bioethics: First outline of a Text* (henceforth: *Outline Declaration*) and hope that these will be of use to IBC's drafting group.

1. General comments

In relation to structure, content and clarity of language the Declaration is at a very early stage of development. This poses substantial difficulties for those wishing to comment, since, in many areas, the intentions of IBC's drafting group are opaque.

The sections 'Scope', 'Aims' and 'General Principles' of the Outline Declaration include duplications of provisions. It is not clear why several items which are more appropriately mentioned under 'General Principles' are provided under 'Scope'. With regard to the General Principles provided, the Outline Declaration fails to resolve tensions between competing concepts of 'human dignity'. The role of 'cultural diversity' as a General Principle should be clarified (more detail, referring to specific paragraphs, is provided below).

The relation of what appear to be substantive and non-negotiable principles and their application to specific contexts (outlined under 'Application of the General Principles' on page 4) is not clear. Furthermore, the relation of the General Principles and their application to the provisions listed under 'Procedures' on page 5 should be clarified: the comments on procedural issues appear to acknowledge the possibility that norms can be justified through fair and democratic deliberative processes in pluralistic societies. Are the norms

¹http://portal.unesco.org/shs/admin/file_download.php/Outline_en.pdf?URL_ID=5343&filename=10884079807Outline_en.pdf&filetype=application%2Fpdf&filesize=107040&name=Outline_en.pdf&location=user-S/

² The Council has already submitted comments to contribute to the Extraordinary Session of the International Bioethics Committee (IBC) "Towards a Declaration on Universal Norms on Bioethics", UNESCO House, Paris, 27 to 29 April 2004, all submissions are available at <http://portal.unesco.org/shs/>

intended to be negotiable or not? And in what ways are these provisions thought to relate to the application of the General Principles which the Declaration seeks to set out?

Since these matters are of substantial importance in relation to the form, function and operation of the Declaration, and since the Outline Declaration itself acknowledges the value of public consultation, we emphasise that it will be crucial to allow for sufficient time for comments by the public and relevant stakeholders on a more developed draft of the Declaration. This revised draft should clarify the scope and aims of the Declaration, how the substantive principles are thought to be applied, and the role that procedural matters in this respect should have.

2. Comments relating to specific sections of the Outline Declaration

Page 2, paragraph 1, line 2 and 3 and throughout the Outline Declaration:

There might be merit in stating explicitly that the term 'men' in UNESCO's principle to promote 'the democratic principles of the dignity, equality and mutual respect of men' is understood to include women and children too.

Page 2, paragraph 1, line 3 and 4:

'...and that all nations have a sacred duty to fulfil in a spirit of mutual assistance,' It needs to be clarified what is to be fulfilled. Presumably it is the 'sacred duty'; but it remains unclear just what this duty is supposed to be.

Page 2, paragraph 4, and page 3 paragraph 1:

The meaning of this paragraph is not entirely clear and it seems to make problematic assumptions. The paragraph appears to state that humans have 'responsibilities and duties towards all other forms of life', because they are integral part of the biosphere. There are two problems with this statement.

First, being part of the biosphere does not entail moral duties towards other parts. Non-human animals are also an integral part of the biosphere, but they have no responsibilities and duties towards other beings.

Secondly, the substantive principle according to which humans have responsibilities and duties towards 'all other forms of life' is questionable. Even if it can be argued that humans should consider carefully the consequences of their actions on other forms of life, it should be reconsidered whether it is appropriate to use the language of 'duties to other forms of life' to address the matter. A more adequate phrasing might be to acknowledge that there are diverse and important ethical issues concerning the effect of human behaviour on other forms of life.

Page 2, paragraph 5:

It is not clear how 'scientific and technological development' should 'seek the welfare of individuals'. However, there may be merit in stating that scientific practice should respect the welfare of individuals.

The phrase: '...and humankind as a whole in the respect for human dignity, rights and freedoms,' is unclear. However, it might be useful to address the importance of respecting the welfare of individuals belonging to future generations in this paragraph.

Page 2, paragraph 5:

This paragraph could be improved to read: 'bearing in mind that cultural diversity, including disagreement about fundamental questions of value, is an inescapable feature of human life and indeed one which makes an essential contribution to human creativity'.

Page 3, paragraph 1, ('Scope') line one:

The sentence could be improved if 'states the' was replaced with 'proposes'.

Page 3, paragraph 2 ('Scope'):

It is not clear in what sense this paragraph addresses the scope of the Declaration. It concerns issues covered under 'General Principles', and indeed appears to overlap with the provisions there (paragraph 1 *ibid*). If the paragraph is to be kept, the suggestions for alternative phrasing in square brackets should be deleted.

Page 3, paragraph 3 ('Scope'):

It is not clear in what sense this paragraph addresses the scope of the Declaration. As in the case immediately above, it seems to concern issues covered under 'General Principles', and overlaps with paragraph 2 *ibid*. If the paragraph is to be kept, this subsection should simply be titled: 'Diversity and Pluralism'. Clause (a) should be deleted, in the remaining subsection (b) 'diverse' should be added before 'cultural'; and 'bedrock' should be replaced with 'traditions'; 'in some cases' should be deleted.

Page 3, paragraph 5 ('Aims'), 3rd bullet point:

'...an understanding of...' should be deleted.

Page 3, paragraph 5 ('Aims'), 4th bullet point:

We welcome this provision which relates to issues raised in the Council's first submission of April 2004 (*ibid*, p 2-3). However, the paragraph remains ambiguous as to whether the overall aim of the Declaration is to provide principles which are primarily aspirational and general or whether they are intended to provide very precise guidance in specific areas (see also our comments above, under 'General Comments', concerning the underdeveloped section 'Application of General Principles' on page 4).

Furthermore, there seems to be some inconsistency in this paragraph in relation to terminology used elsewhere in the Outline Declaration - are 'fundamental values', 'core principles', and 'General Principles' supposed to be synonymous terms?

Page 3, paragraph 5 ('Aims'), 6th bullet point:

As is well known, there is a view that practices such as non-reproductive, or 'therapeutic' cloning violate human dignity: How and where will this tension be addressed? This question seems of particular relevance with regard to the proposed Section 'Application of the General Principles' (page 4).

Page 4, paragraph 1 ('General Principles'):

The reference to 'ecological' responsibility appears to extend the scope of the Declaration beyond what is set out in paragraph 1 under 'Scope'. The provisions should state more clearly what is meant by 'all other forms of life', ie, whether this relates to humans, animals and plants only, or whether it includes ecosystems and, for example, microorganisms.

Page 4, paragraph 2 ('General Principles'):

As noted above, this 'principle' repeats paragraph 2 of 'Scope'. It is not clear why it appears in both sections. In general, there may be merit in reviewing such overlap and duplication. It appears that several concepts that could qualify as 'General Principles' are provided in other sections (see 'Aims', page 3, and 'Application of the General Principles' page 4).

Page 4, paragraph 3 ('General Principles'):

See comment above, this 'principle' repeats paragraphs 2 (a) and (b) under 'Scope', and this duplication should be eliminated.

Furthermore, the provisions of this paragraph appear to introduce a certain circularity. 'Diversity and Tolerance' are listed as General Principles. At the same time the paragraph states that '...cultural diversity shall not be invoked to infringe upon the principles set out in this Declaration, nor to limit their scope.' It is thus not clear whether cultural diversity is to be respected as a general principle or not.

It is also not clear whether the principles are supposed to stand in an hierarchical order. This should be clarified.

Page 4, paragraph 4 ('General Principles'):

It is not clear what is meant by 'the solidarity of humanity'. Does it mean the equal value of all humans?

Page 4, bullet points under 'Application of the General Principles':

Due to the poor development of this Section it is not possible, at this stage, to offer useful comment. However, as we have noted above, it will be crucial to ensure that the public and interested stakeholders will have sufficient time to do so at a later stage.

Page 5, 'Procedures':

We draw attention to our comments above under 'General comments', and would recommend clarification of the relation of this section to the General Principles and their application.

Furthermore, the introductory sentence is unclear and should be clarified.
Regarding the 5th and 7th bullet points: is there a difference between 'dialogue between specialists, policy-makers and society' and 'public consultations'? If so, what is it?

The meaning of the last bullet point ('the regulation of transnational practices') needs to be clarified: does this mean that the scientific community should self-regulate in areas where their practices or activities have an international dimension? If so, which kind of practices should be regulated in this way?