

NON PAPER

THOUGHTS AND QUESTIONS RAISED BY THE CHAIRMAN

1. Use of terms and Scope (articles 1 and 2)

The fundamental underlying conceptual divergence seems to be the extent of the notion of bioethics as applied to this declaration. There are two schools of thought: a broader one that locates bioethics in its social and environmental context and another one that restricts the concept to the ethical issues arising from medicine and life sciences.

This basic divergence permeates the entire text of the draft declaration but it shouldn't be irresolvable. The Chair hopes that it could be dealt with in the Use of terms and Scope articles, therefore facilitating the negotiation of the remaining articles.

In that spirit:

- a. Would it be acceptable not to have a definition of bioethics as presently contained in article one?
- b. Would the merger of article 1 and 2 be acceptable?
- c. Would the concept of description rather than definition be acceptable?
- d. If the answer to the three previous questions is yes: Can we focus in the new article onto what and whom the declaration applies?
- e. If so, and in reference to whom it applies, the Chair believes that some formulations based on the States as primary objectives of the Declaration and other actors as secondary recipients in a more residual capacity as appropriate, could be a possible compromise.
- f. As to the "what": As bioethics does not evolve in a vacuum, can we include a contextual reference to social issues and the biosphere there?
- g. Would it be possible to drop definitions of "decisions and practices" at this stage and come back to using these terms on a case by case basis, when they are applicable in other parts of the draft declaration?

2. Aims

If the question of the scope is satisfactorily dealt with, the aims should not pose an insurmountable problem.

- a. This applies particularly to (i): some drafting could be found to bridge the problem of how the Declaration reaches individuals or institutions without by-passing the sphere of the States

- b. As to (ii) there are different formulations not necessarily contradictory. The chair feels that a compromise is feasible
- c. The same applies to (iii) recognition of the freedom of research in the framework of ethical principles, human dignity, human rights and fundamental freedoms.
- d. As to (iv), it seems not to be an opposition to the fostering of a dialogue on bioethics: A collective refining of the concept should help clearing the differences
- e. Some compromise could be found for (v). There are different formulations in the compilation that could complement each other, even if by now they may seem at odds.
- f. Numerals (vi) and (vii) have received different comments and been the object of different proposals but not real contradiction. Reasonable chances for finding compromise.

3. Principles

- a. There is a proposed re-ordering of the section.
- b. Article 4. The bulk of it seems to be acceptable to Delegations, with a few drafting options. Problems subsist when it comes to the interest of society. There is at least one formulation that tries to bridge that gap: it would be advisable to explore this alternative further.
- c. Article 5. Could the question of the double standards be addressed in a positive formulation? There is at least one alternative that has been proposed.
- d. Article 6. Not real contradiction perceived. There are a couple of additions seemingly uncontroversial, including a new article 6.b that we might be able to consider with relative ease.
- e. Article 7. First half of the article does not present substantive problems with the exception of the ``shall or should`` issue. However, the second part shows some divergence. Still, there is at least one formulation that could be used to attempt to reach consensus.
- f. Article 8. No fundamental differences in drafting proposals compiled. ``Shall and should `` as well as ``decision and practices`` issues present.
- g. Article 9. The same comment applies.
- h. Article 10. Many proposals put forward. We might consider the desirability of keeping this fundamental article as simple as possible, keeping the text equidistant to national legislations. Original text could remain as a basis.
- i. We might wish to give early consideration to article 13 and 14. They include a number of ideas and principles that are particularly relevant to delegations and, at the same time, offer some reservations to others. In any case, they seem to be part of a broader possible arrangement with regard the scope of this declaration.

4. Transversal and other issues

- a. Shall and should. Would it be acceptable to establish a general criteria stating that, for example, "shall" applies to questions arising from Human Rights instruments and "should" would apply to issues of any other nature
- b. Any decision or practice. Would it be acceptable not to include the expression in any definition and then proceed on a case by case basis?
- c. Human beings. From April's discussion it seems that the expression "human beings" is generally acceptable. Would we be in a position to conform that?
- d. Human life. Important for some delegations, causes fundamental problems to others. Is it conceivable to make some lateral mention to the concept, for instance in the preamble without stating anything of consequence?
- e. Bio-piracy and traditional knowledge. Would the following approach work: recognize the problem, state principle and refer implementation to appropriate fora.
- f. The value of preamble to paper out some controversial issues like human life, emerging or pre-existent issues, some aspects of the social concerns, relations with other instruments and organizations.
- g. Title of the Declaration. Although it should be an issue to be addressed at the end of our deliberations, it might be important to start thinking on some consensual alternatives. Some Delegations have expressed their preference to include Human Rights in the title. Others have stated problems with that approach. Would it be possible to reach a consensus on a mixed approach, for instance a sub-title including the mention of Human Rights and perhaps human dignity?