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Sigurd Skirbekk and the Universal Declaration of Human Rights: Wrong Target for Justified Concerns

By Asbjørn Eide

In *Forum for Development Studies* No.1, 1999, Sigurd N. Skirbekk brings his contribution to the celebration of the 50th anniversary of the Universal Declaration of Human Rights in a commentary entitled 'Future Predictions — Human Rights'. He notes that human rights have never had a broader support among nations than they have today. He would probably agree that at the level of governments, much of it is lip-service, but there can be no doubt that human rights have never before inspired wider sections of society throughout the world. His concern, however, is not to offer congratulations, but rather to assert that 'the status of the Universal Declaration of Human Rights will undergo a radical change in status' in the century we have now entered, probably during the first part.

His commentary boils down to what might appear to be intended as a strong criticism of the Declaration. I shall argue that while his concerns with the challenges to the life on this planet may be justified, he chooses the wrong target for his criticism and his futuristic predictions do not appear convincing in so far as the human rights system is concerned.

He points to three sets of challenges we will face in the coming years: the ecological challenges, the demographic challenge of overpopulation, and moral anomie. Two of them have already been under discussion for decades; the third is widely debated today.

The proper targets for his attack are libertarianism and opulence, indeed troublesome trends in the Western world, but they are not the products of the Universal Declaration of Human Rights. He reads into the Declaration a cult of the individual in terms both of egotistic freedom and material gratification, but it is very difficult to see where in the Declaration he finds the basis of that.

The Universal Declaration as a Standard of Achievement

Those that have only a cursory knowledge of the contemporary international system of human rights have a tendency to equate it only with the Universal Declaration, overlooking that it was only the first step in the elaboration of a comprehensive system of global and regional standards, institutions and procedures. The Universal Declaration was adopted in 1948 by the General Assembly of the United Nations 'as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to

secure their universal and effective recognition and observance' (from the Preamble of the Declaration).

The Declaration listed a succinct set of principles which have later been elaborated into a comprehensive set of rights, duties and mechanisms of implementation. Institutions have been established at the national, regional and international level. It is by now a comprehensive normative system that can only be understood in its totality. Within this system, rights of individuals are complemented by duties. Three sets of duties are built into the system. The first are the duties of state authorities to respect and ensure the enjoyment of all human rights; the second are the duties of individuals towards each other and to the community; and the third is the duty for every individual to use her or his rights responsibly.

Which are 'Our Natural Means of Recourse'?

Skirbekk asserts that philosophical research has made considerable progress in recent years, not least in regard to rationality, increasing the awareness that rationality has a communicative character (p. 156). This was also fully in the minds of the drafters of the Declaration already in 1948. Article 1 of the Universal Declaration states that all human beings are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Implicit in that statement was a basic conception of rationality and communication about conscientious social behaviour.

In his initial commentary Skirbekk overlooked Article 29 of the Declaration, which proclaims that everyone has duties to the community in which alone the free and full development of his personality is possible. Prodded by Wendy Bell, who gave the first response to his commentary, Sigurd Skirbekk accepts (p. 164) that he has overlooked that provision, but this does not make him retract from his original position.

Nor is he swayed by the fact that rights and freedoms are subject to limitations, as set out in the second sentence of Article 29. Limitations to human rights can, and in practice have to be set, but they must be determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Much of the legal system of states is exactly about this balance between rights and duties in society.

Most of the normative system of human rights includes the recognition of the need to set limitations. As an illustration can be mentioned the right to freedom of expression and information, found in the Universal Declaration Article 19 and elaborated in the International Covenant on Civil and Political Rights, one of the main legally binding conventions following up the Universal Declaration. In Article 19 para.3 of that convention it is stated that the exercise of the right to freedom of expression carries with it special duties and responsibilities. It may therefore be subject to certain restrictions as provided by law when necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

This does not convince him. 'Such a definition may suit a liberal philosophy, but it is not sufficient for sustaining our natural means of recourse' (Skirbekk p.164).

What these 'our natural means of recourse' consist of, he does not say. There are two problems here: Who are the 'we' who can make use of 'our' natural means of recourse, beyond what is provided for under the human rights system, and what are those natural means that 'we' can make use of? If he is going to elaborate on his thoughts, he has to address those two questions more fully.

The human rights system is based on the underlying conception of democratic processes of decision-making by which duties are established within the limits set by human rights and general morality. Ecological, demographic and moral concerns are taken into account to the extent that they are recognised and felt, and the more pressing they become the more they will affect the decisions. Many are disappointed by the slowness in taking into account these concerns by decision-makers, but it is rather difficult to see what is the alternative to this process. It would be useful if Sigurd Skirbekk could spell out what he considers to be a plausible and acceptable alternative.

Demographic Stress and Human Rights

One of Skirbekk's main concerns is the population growth (the demographic challenge). He provides figures on overall economic growth and in particular on the population growth in developing countries, but he fails to explain how the human rights system can be blamed for those figures. Generally, it can be shown that where human rights are taken seriously, the population growth is much lower than in regions where human rights are still not respected. What is more directly relevant, however, is the position of women in society. Where the woman enjoys a high degree of equality and can herself be master of reproductive choice, the growth is much less than in patriarchal societies.

Skirbekk brings in a comparison between Pakistan and China (p.165), but I fail to understand what he wants it to prove. Neither Pakistan nor China are great supporters of the Universal Declaration; Pakistan has most of the time had military regimes and has a deeply patriarchal society. China is also an authoritarian society, but it is significantly different from Pakistan in one respect: the position of women has vastly improved over the last 50 years compared to what it was before and compared in particular to the Islamic states, including Pakistan. The fertility rate in China is practically the same as in the Nordic countries, while that of Pakistan is vastly higher. While the low fertility rate of Nordic women undoubtedly is related to their freedom of reproductive choice, the 'one child' policy in China which has led to the same low fertility rate has undoubtedly been implemented by authoritarian decision-making. It does not necessarily have the general support of Chinese women, but neither has it met strong resistance. That, I assume, is partly due to the position of women and greater equality between the sexes. This in itself is a contribution to human rights. In patriarchal Pakistan a similar policy would probably have met so strong resistance from men that it would have been impossible.

If anything, recognition and implementation of human rights reduces the demographic threat rather than the opposite.

Civilisational Autonomy Rather than Human Rights?

On one point I simply fail to understand his message. Referring to Huntington's reflections on cultural identities, Mr. Skirbekk suggests that 'a respect for cultural differences on a civilisational level will also imply an acceptance of modernisation according to various projects. This kind of variations may be vital, not only for political peace in a near future, but also for the long-term survival for the human species' (p.157).

I shall leave aside here the point that Samuel Huntington's concept is fundamentally flawed, since the struggles between civilisational or cultural projects do not take place between regions of the world, but within regions and indeed within societies. Even the most superficial analysis cannot fail to overlook that these struggles now take place within countries such as Iran, India, Pakistan and China or in different parts of the Russian federation. It goes on in part between the urban and the rural, and in part along other dividing lines. In Cambodia, Pol Pot wanted to extirpate the Western and urban spirit from Cambodian soil. He failed, but the effort cost a couple of million dead.

But even if we for the sake of argument were to accept Huntington's alleged preference for separate modernisation projects within each of the self-contained civilisational entities, it is impossible to understand why and how this would help 'the long-term survival of the human species' (Skirbekk p. 157) in face of the demographic or the ecological challenges that he describes so vividly. Would it reduce the growth of populations? Would it lead to less drain on natural resources? Would morality be strengthened, and if so, what kind of morality? What he presents as an answer to the universality of human rights begs questions that appear much more difficult to answer.

Good intentions and unintended consequences Relations between UDHR, New Liberalism and unsolved challenges

By Sigurd N. Skirbekk

The Universal Declaration of Human Rights and New Liberalism

I am pleased to read that the former Director of the Norwegian Human Rights Institute at the University of Oslo regards the main concerns in my article in Forum for Development Studies 1/1999 as justified: In the years to come many people will have to face serious challenges

related to ecology, to demography and to moral cohesion or anomie. We can probably also agree that the liberal tradition in Western civilization does not give adequate frames for responding to these challenges. Asbjørn Eide talks about "libertarianism and opulence, indeed troublesome trends in the Western world". I have talked about "New Liberalism" .

However, we do not agree as to whether the contemporary status of the Universal Declaration of Human Rights (UDHR) should be blamed for the contemporary self-immunization of this tradition. I have not claimed that the UDHR are the direct cause of a dysfunctional culture, but I do believe that this Declaration functions as a mythical legitimation for New Liberalism, and thus makes necessary corrections of this ideology very difficult. The link between the UDHR and the premises of New Liberalism is a certain cult of the individual.

As I stated in my first article, there were several reasons for the UN politicians in 1948 to formulate some general rules for Governments treatment of citizens, and particularly of dissidents. The good intentions of the Declaration is not questioned. Another matter is whether these good intentions will always lead to good consequences, as the challenges of the world change character.

Inborn reason and conscience or cultural dependence

Article 1 in the UDHR reads: 'All people are born free and with the same human dignity and human rights. They are equipped with reason and conscience and should act toward one another in the spirit of brotherhood^a No one will doubt the good intentions of this statement, nor doubt that it has provided a moral basis for several types of reasonable critique directed against political conditions in many countries. But this does not prove that this Article, or other Articles in the Declaration, will retain their status in the years to come, as the world change and more people become educated and even motivated to doubt the superiority of Western moral standards.

As a sociologist I find it very hard to accept that human beings are "born free", even if I know that Rousseau said something like this more than two hundred years ago. In an empirical sense it is also difficult to see that all people are "equipped with", eventually bestowed with, reason and conscience, and that these inborn qualities could guarantee the required morality for civilized societies.

At best, human beings are born with a potentiality for developing these qualities. Whether this potentiality shall be realized or not, will depend upon the quality of the culture where people live, and upon the character of the social network that could lead the individual into such a culture. This means that a defense of culture and social institutions become a requisite for reason and conscience.

At this point we face a contradiction in the premises for the UDHR, as well as in classical liberal philosophy. The Declaration certainly speaks about duties of the individual, and thereby of limitations to absolute freedom. The full text of Article 29 reads: "1. Everyone has duties to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedom, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the just requirement of morality, public order and general welfare in a democratic society. 3. These rights and freedom may in

no case be exercised contrary to the purpose and principles of the United Nations". This means that a limitation of individual freedom is only justified when it serves the purpose of securing the freedom of other individuals, and the public order and general welfare required for such a policy. Laws for defending the conditions for a particular culture are contrary to what the Declaration defines as permissible. An argument for Article 29 is only possible within a philosophy where the individual is the only subject for rights, where culture has merely a derived character and where relations between individuals and society are regarded as external relations, that is within a liberal philosophy.

Hitherto certain "communitarians" have criticized the Declaration, partly for dubious premises and partly for destructive consequences, even if these might have been unintended . My prediction is that the contemporary supreme status of the UDHR will not last, as more and more people see that their daily problems are related to the limitations of the philosophy behind this Declaration. I foresee that this critique will not only come from spokesmen of non-Western Civilizations, where it seems more difficult to combine individualism and morality. Even in a European country such as Estonia, we can hear about conflicts between what the local democracy regards as reasonable solutions to civic problems and what spokesmen of an individualistic Human Right philosophy prescribe as conditions for international recognition .

The ecological and demographic challenge

The most serious challenge for an individualistic policy in the years to come will probably be the conflict between an egocentric humanism and certain ecological limits to human life. The UDHR, of course, does not prescribe unlimited consumption and irresponsible procreation patterns. There are a lot of other factors which are more decisive for human misconduct in this respect. I agree with Asbjørn Eide on this point. However, the UDHR even here restricts the exercise of balancing forces to these factors.

The combination of Article 3, stating that "everyone has the right to life, liberty and the security of person," and the claim in Article 25 that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control," denotes certain frames for what kind of political regulations are to be regarded as legitimate. Even if these frames appear reasonable when seen from a humanistic point of view, in a world of abundance, they might be regarded quite otherwise in a future society of scarcity .

The Declaration overlooks the conflict between what we will see as reasonable rights and the limits of natural means. I will be clear on this point: When I talk about "we" in this respect I mean the human species. Our "natural means" are nature as presented to us on this planet. — Whether we think "we", the human species, have a right to procreate as much as some societies require, or we think that "we" can consume according to what people of abundance feel as necessary for their well-being, "we" are overlooking ecological realities.

When it comes to the demographic conditions, I think Asbjørn Eide prescribes both too much and too little responsibility to the UDHR.

In Europe we have several studies on value-profiles, family structures and living conditions. These cultural frames are on the whole able to explain the extremely low reproductive rate among European women: In the former EU countries women are expected to give birth to approximately 1,5 children, on average. The relation to the UDHR is here only indirect, as this Declaration has been part of the legitimating structure for contemporary liberal "post-materialism" .

Regarding Chinese family policy, the importance of the UNHR can be demonstrated in a negative way, as to why China could prescribe a one-child-policy while other, just as overpopulated, countries could not. The demographer Virginia Abernethy has said that this can only be explained on the background of China's relative isolation from the UN system. The Chinese could, on their own premises, promote a certain population policy without losing international help and recognition, since these were already at a very low level. Other nations in Asia could not take this risk in confronting UDHR politicians, even if they had wanted to. To what extent the difference between the position of women in China and in Pakistan have played any decisive role on this issue, I do not know. But from UN demographic prescriptions I do know that it could be very risky to rely solely on women's liberation to find solutions to the population problems in overpopulated areas . It can take a long time before the women's position in these countries will change radically, and we do not have that much time.

The alternatives to the UDHR

Asbjørn Eide asks what I consider to be the alternative to the UNDHR. This question may leave the impression that the norms of the UDHR represent an alternative for future orientation, and that I have the burden of proof to find something better. My first answer will then be to repeat that I do not think the UDHR will keep its present status as a basis for global morality for a very long time. Second, I think there are several alternatives.

As I have all ready written, I am not opposed to a universal ethic, but such an ethic must be founded on something which can be universally defended, either because it represents norms and institutions to be found in all societies (rights to families) or because it is logically unassailable (rationality is communicative; other people can therefore never be treated merely as objects). It is possible to proclaim certain universal norms on this basis, but these norms cannot be so detailed as those formulated in the thirty Articles of the UDHR.

On a civilizational level, however, it is possible to claim authority for more detailed norms. Samuel P. Huntington - whom I consider to have been accurate in describing new conflict lines, in and between nations - has argued that Western Civilization has at least seven substantial characteristics: The classical heritage; Catholicism and Protestantism; The division between spiritual and political authority; The Euro-pean languages; Legal government; Representative entities and Individualism.

On a national level the norms can be still more detailed, even in written forms. Local norms will make the normative network tighter and more concrete. They will be most tight in small groups like families.

Instead of thinking of human beings as isolated individuals, who are supposedly born alike and entitled to be ruled by the same norms, we must think of ourselves as beings with loyalties to various social and cultural entities. The relations between family loyalty, local

loyalty, national loyalty, civilizational loyalty and global loyalty can be seen as concentric circles, each with its specific functions and preconditions.

International peace require some norms on a supranational level. But norms derived from one culture and one period should not be postulated as the universal norms. Since all cultures have limitations with regard to unforeseen challenges, we need a variety of cultures in order to secure the survival of our species. If various civilizational, national and local cultures are to survive, the universal norms must not be too tight or too specific. This will be in accordance with the kind of rational argumentations which can be properly given for universal norms. This is also in accordance with "human nature", or the common basis for moral motivation, as far as we can observe it .

On such a basis I think we could elaborate a system for ethical orientation, much more universally valid than that proclaimed by the UN in 1948. The UDHR is not only very Western in its one-sided focus upon the individual rights. The premises for this Declaration can also be traced back to a specific English-American philosophy within Western civilization .

Its own enemy

In a contemporary perspective the main enemies of the UDHR may seem to be certain remote authoritarian regimes. When looked upon from a future perspective, the most ardent defenders of the UDHR may be seen as its most decisive enemies

The UDHR has been presented as a basis for modern moral authority. However, the Preamble to the Declaration, the way it has been defended in public media and used in international politics, represents moralistic principles far from those regarded as modern principles for moral authority.

In the Preamble the UDHR is justified by a simple dichotomy. We can read about "contempt for human rights^a that have ´resulted in barbaric acts". This bad alternative is contrasted to ´a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want". Here, there is no analytical openness for the chances of a positive relation between the good intentions and the long term consequences. The Declaration is not presented in relative terms, as the best among alternatives. This makes it difficult to employ Modernity as a basis for its authority.

Since the political French revolution and the industrial English revolution, modernity has been understood as rationalisation and as differentiation. These principles have had consequences for what kind of morality can be defended in different institutions. It has also had consequences for what can be regarded as legitimate laws regulating relations between nations. The difference between pure force and legitimate power can depend upon whether applied laws have been recognised and accepted by the partners. Since different parts usually have different views and interest, a superior law will usually have to be valid only on specific areas and with explicit limits with regard to legitimate sanctions. Laws relying upon Modernity as a basis for authority must take this relativity into account.

The Universal Declaration on Human Rights does not have these qualities. It has more the character of a secular religion, supposed to be good in itself, and better the more it is applied on every field of conflicts. This can easily motivate politicians in superior positions to use the UDHR as a justification for unpredictable reactions when they feel morally motivated to do so. Even if such reactions can give some subjects a feeling of good conscience, it can be felt quite different by the victims of the reactions. They might see the UDHR as an illegitimate tool for people in power.

We should have learned that it is very dangerous to make religion of political principles, even if we have the power to do so. Power kills - at least when it is not corrected by an opposing body who can set limits to the power. This applies also to liberal power.

European politics in recent time illustrates several examples of unintended consequences of good intentions, related to the UDHR. Dominant EU-countries have on several occasions used the UDHR as a moral justification for international actions, not sanctioned by international law. This applies to the military actions against Serbia and to the later dictate with regard to how Kosovo should be ruled. On a much milder scale a similar anti-relativistic moralism has played a role in the political thinking among EU-countries regarding their reactions toward Austria, and even against Estonia. If this kind of anti-modern moralism continues, it is not difficult to foresee that uncritical supporters of the UDHR will gradually become their own enemies.

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