

*Edited by*

Erik André Andersen and Birgit Lindsnaes

# **Towards New Global Strategies: Public Goods and Human Rights**

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## LIST OF FIGURES AND TABLES

The expanding public space	44
Global public goods: in human rights and international law, in the mandates of the UN and international organizations, in the Millennium Goals, and in policy documents.	76
The UN and international organizations with global mandates.	82
Regional international organizations arranged according to their mandates.	96
Armed Conflicts 1989-2002	126
Refugee Flows in the Horn of Africa	127
Global Military Expenditures (bill. US\$, constant 2000-prices and exchange rates)	131
International Organizations Involved in Peacemaking (examples)	133
Non-State Actors (examples)	135
Conflict Management Strategy	136
The Conflict Cycle	137
Public goods and the Bosnia and Herzegovina conflict as seen at a global, regional and national level in a temporal perspective.	208
Definitions of governance	220
Governance indicators according to the World Bank Research Institute	231
Selected countries - High Human Development cluster - 2002 Figures	383
Selected countries - Low Human Development cluster - 2002 Figures	384
Putting principles into practice	439
Overview over the distribution and procurement of global public goods	458

## Preface

The idea behind this book has been to offer a Danish contribution to the debate on global public goods, a debate already taking place in the UN and the World Bank, among the regional development banks and bilaterally among states and donors. There is a need for new visions and strategies and to examine global infrastructure on the basis of the idea that global public goods, including human rights, contribute to cohesion at local, regional and international levels.

The authors' varied professional backgrounds have provided significant concrete knowledge about how we can create the most effective framework for delivering and protecting the various types of public goods and human rights.

The book investigates, for the first time in Denmark, the possibilities and disadvantages of applying the idea of public goods in a global context. It explains the history of the concept and its significance for human rights.

At the initiative of Peter Wivel, chairman of the Council for International Development Cooperation and reporting to the Minister for Foreign Affairs, the concept of global public goods has been thoroughly researched and discussed. In 2002, three working groups on global public goods were established: human rights, health and international trade. The working groups submitted reports on their activities at a meeting of the Council, and the Council's recommendations were subsequently integrated into the chapters of this book.

All the participants have made a unique interdisciplinary and constructive contribution: the researchers at the Institute for Human Rights and the Institute for International Studies and representatives from public institutions, civil society organizations, independent consultants, media and private sector have together carried out research on a new and difficult topic. The series of public seminars on 'Global Public Goods and Development', held in January-February 2004, constitute an inspiring point of departure for the content of the book.

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We wish to thank all members of the working groups as well as the lecturers, discussants and participants in the seminars for their voluntary and engaged participation in this project. Please refer to the book's appendices. We thank the authors for refining their ideas in writing, and the editors for having brought all the threads together. We wish to especially thank the indefatigable chairpersons for the working groups: Director of International Department Birgit Lindsnæs of the Institute for Human Rights, Professor Ib Bygbjerg of the University of Copenhagen and International Director Christian Friis Bach of The Dan Church Aid.

Copenhagen February 2007

A handwritten signature in black ink, appearing to read 'Morten Kjærum', with a stylized flourish at the end.

Morten Kjærum

Director

Danish Institute for Human Rights

# Introduction

Erik André Andersen and Birgit Lindsnæs

This book is an experiment and an invitation to open discussion. It is about global public goods and human rights. In the book, we will try to investigate how we can make the world a better place to live in. And since most people in this world live in poor developing countries, the book is also about development policy. Among other things, we will provide suggestions as to how Danish development policy can be strengthened.

Public goods are a necessary supplement to the free market economy. Public goods consist of “common goods” – goods that the market economy is unable to procure or maintain, but which are still desirable from the majority’s point of view as well as for society’s economy viewed in its entirety. The 1954 article by American economist Paul A. Samuelson called “The Pure Theory of Public Expenditure” in the *Review of Economics and Statistics* was a theoretical breakthrough in this regard. The article demonstrated how public goods make the market economy more effective than it would otherwise be were it nothing but a pure market economy.<sup>1</sup>

The significance of public goods, however, extends beyond that of contributing to the “necessary framework” for the market economy. The public goods are an expression of what we all, as human beings, can agree upon as common goods in our lives; and which we want to uphold. More than being a mere technical and/or economic concept, public goods are also an expression of immaterial values carrying ethical and humane significance. An example of this is human rights. Briefly put, freedom, equality and protection epitomize the rights of human beings.<sup>2</sup>

We view public goods and human rights as two concepts mutually supporting each other. As we shall later see, the two concepts, while resembling one another, are not completely identical.<sup>3</sup> However, human rights are often the key to working with public goods. Respect for human rights affords the

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general population access to the extant public goods; furthermore, the public goods, together with the private goods produced by the private sector, provide a more effective economy and thus increase prosperity and affluence. Also, operational efforts concerning human rights can be enhanced through public goods, making these rights available and real to citizens in general. This means that strategies usually employed in the face of the many global problems – often defensive and reactive – can become offensive and proactive.

In a world that is becoming ever more globalized, public goods are assuming far-reaching significance. Globalization means a gradual demolition of nation-state borders; former lines of demarcation are erased or redrawn. Nowadays, occurrences in one part of the world have far greater consequences for other parts of the world than was previously the case. Thus we have garnered inspiration from the United Nations Development Programme (UNDP) which introduced the concept of global public goods not so many years ago. The main sources for this concept are the publications *Global Public Goods: International Cooperation in the 21<sup>st</sup> Century* (1999) and *Providing Global Public Goods: Managing Globalization* (2003).

In Denmark, in the autumn of 2002, the Danish Council for International Development Cooperation (Danida) formed three working groups with the mandate to analyze global public goods and their relationship to human rights, trade and health and report the results to the council meeting in May, 2003.<sup>4</sup> Subsequently, the Danish Institute for Human Rights decided to analyze the problems surrounding global public goods further. A group of authors was selected and their written contributions were discussed at a series of public seminars taking place during January and February of 2004; a panel of experts was also invited to discuss the papers presented.<sup>5</sup> The result of this process is the present book focusing on global public goods and human rights.

The book is divided into five main sections. The first section traces the origins of each concept in the European history of philosophy; as well as their significance in a contemporary context, especially the recent reinterpretation of *Public Goods* as a concept with global relevance. In a series of chapters, the book's authors, surveying different themes, examine the utility of global goods in various key areas. The main themes are *Peace and Security*, *State and Citizen*, *Access to Information* and *Operationalization and delimitation from private goods*. In the final chapter we have summarized the main lines of argument contained in the book and taken stock regarding global public goods and human rights as things stand in the year 2004. Here, you will also find suggestions for possible means of financing initiatives.

As has been mentioned, the book is meant to be an experiment and an invitation to open discussion. Consequently, the book's individual chapters do



not necessarily contain definitive answers to the questions raised and there has been no insistence that the authors hold common positions. Yet, for the sake of clarity, we have agreed on trying to answer the same fundamental questions. The following was submitted to the authors as a suggested guideline for writing each chapter:

- Introduction: why precisely this public good more than others?
- Definition and description of the basic problem: how does the chosen good fit the definition of a public good or evil? Is there equal access to this particular good or evil? What do the exclusive and rival elements consist of?
- The global element: how does this particular global good differ from a national public good; and how do we pinpoint the transgressive elements, not only across borders to other states, but regionally and globally as well?
- A survey of the relevant problems and challenges globally, regionally, nationally, and locally.
- Procurement: which initiatives and mechanisms are appropriate for ensuring procurement of this good? Which treaties, conventions and international agreements support such initiatives? Through which institutions will the good be procured – are they international, regional, national and local; are they bilateral, multilateral, public, private or traditional? What are the possibilities of new means of cooperation, new institutions, new paths?
- Possible sanctions and their relevance. Autonomy or sanctions through courts of law or appeals committees? Is legislation or mainstreaming the proper course of action?
- Obstructions to procurement? What political movements and countermeasures strengthen the existing evils and/or create new ones?
- How can additional funding be obtained? How is the good financed; is it overfinanced or underfinanced; is it abundant or scarce or is it a question of free-riding? How are the visible counterparts to the good, the public evils, financed? If possible, provide statistics illuminating arms production, for instance, or turnover, expenditure as percentage of GNP for courts, law enforcement, armed forces, schools etc. Is a cost-

benefit analysis possible? Could global public goods possibly become a commercial article? Expensive and cheap goods.

- How does Denmark contribute to the procurement of global public goods: bilaterally, regionally, and internationally? In which specific areas might it behove Denmark to change its political agenda, and what would be the consequences of a change in Danish development policy?

As a preliminary answer, without anticipating the book's conclusions, it might be mentioned that certain differences can be observed in the authors' approaches to the specific topics, and thus in the book's different chapters. One approach sees global public goods as an unmistakably functional concept that can be put to constructive use, with tangible examples. This, among other things, is seen from the chapters on the international system of trade, on health, curbing corruption, and on the Internet. Another line of thought expresses a greater amount of skepticism regarding the usefulness of a concept like global public goods, pointing to the existing professional and political discussion and asserting that thinking in terms of global public goods does not shed additional light on the debate nor promise new solutions. Examples of this view are found in the chapters on international bodies for preserving peace and security and the chapter on the access of socially and economically vulnerable groups to global public goods. A third stance is somewhere in between, in so far as global public goods are viewed as a concept that may be useful, but only under certain preconditions that are discussed in some detail. This, for instance, is the case in the chapters on good governance and on (fresh) water as a human right and a global public good.

This is partly due to the variegated composition and different backgrounds of the authors of this book.<sup>6</sup> Nor could we have known in advance precisely to which fields of expertise the concept of global public goods would be applicable. The present group of authors has helped us determine this. The authors have been asked to contribute to the book in their capacity of experts within their specific professional fields; for most of them (the economists being the exception) the area of global public goods has meant exploring new territory. Herein lays the book's nature of experiment.

We might add that the UNDP has found it expedient to differentiate between public goods and public evils. This differentiation does not lie in the economic concept of "public goods" *per se*, but has been defined by the UNDP for educational reasons and many of the book's authors have also chosen to employ this distinction. Thus the task of defining and procuring

public goods may in fact consist in combating public evils. Public goods and evils often mirror each other; fighting a public evil may consist of establishing a public good to replace it. Examples are a clean environment versus a polluted environment; corruption versus curbing corruption.

Quite often, a global public good illustrates a wish and an objective. Ideally, the public goods dealt with in each chapter can be viewed as goals that should be translated into action worldwide. In that case, we would have reached the ideal state of affairs. But, since this is rarely or never the case, we will normally be confronting situations where the specific public good has been *more or less* implemented in actual terms.

What follows is a short summary of the book's chapters:

## 1. GLOBAL PUBLIC GOODS - CONCEPTS AND DEFINITIONS

In the first chapter, *Peter Wivel* takes us all the way back to the Roman Empire; from here, we follow how the concepts of public goods and human rights have developed throughout history, elucidated by a series of European philosophers starting with Cicero and Augustine, and continuing with Machiavelli, Hobbes, Locke, Hume, and moving on to Rousseau and Kant. Wivel demonstrates how the publicly shared good known as citizens' security is created through a social pact between the state and the individual citizen, and how citizens' rights are eventually safeguarded through an elected parliament. From being a concept belonging to a moral (Christian) universe, the Right of Man is introduced into the political universe starting with the English revolution at the end of the 17<sup>th</sup> century and the American and French revolutions in the late 18<sup>th</sup> century. As early as the 17<sup>th</sup> century, Thomas Hobbes (1588 – 1679) made up a list of human rights, which we may find partially embedded in the Universal Declaration of Human Rights. Taken as a whole, these rights are meant to ensure freedom, security, the right of ownership, etc, for society and its citizens; and Hobbes calls them the common good or the public good. For Immanuel Kant (1724 – 1804), peace and freedom constitute the fundamental prerequisite for the Right of Man; and peace is not a foregone conclusion, it must be established. Farsightedly, Kant mentions the possibility of an international, peacekeeping league of democratic states united in an effort to safeguard the global public good that we know as human rights.

As an economic concept, public goods were rediscovered in a welfare state context in the 1950's by Paul A. Samuelson and this concept was reintroduced nearly 50 years later by the UNDP – this time in a global context.

*Erik André Andersen* and *Birgit Lindsnæs* point out how the connecting point between human rights and global public goods is the democratic decision-making process. They provide a survey of a number of fundamental concepts such as public goods and public evils, scarce goods and club goods, pure and “impure” goods; and deal with the particular aspects concerning free-riding and the dilemma which inmates face. They outline how the public space has expanded over time, making the borderline separating the private and public sphere less unequivocal. Thus, public goods need no longer necessarily be produced only by the public sector.

*Lone Lindholdt* and *Birgit Lindsnæs* describe human rights in regard to content and principles as well as in regard to the human rights legal system, which has been established based on international and regional human rights conventions. The chapter deals with the obligations of the nation states in relation to the rights of individuals; obligations in regard to sovereignty; provisos, suspension and inalienable rights. The authors raise the question of whether or not regional mechanisms are a precondition for an effective UN system. Furthermore, examples of differences and similarities between human rights and global public goods are provided.

By comparing the goals of a number of international and regional organizations, *Birgit Lindsnæs* demonstrates the international consensus that already exists concerning human rights, Millennium goals, and global public goods; in light of this, she shows that the main overall problem lies not in disagreements between countries and organizations, but in how to solve practical problems of implementation. In continuation of this, different possibilities for international and regional cooperation and organizations are discussed. The chapter also examines global leadership in relation to so-called “regimes” and the EU as a model of multilateral cooperation. The EU is accentuated as a form of regional cooperation based on a common set of values, a step-by-step strategy and integration of different levels that are part of the cooperation; and how this may prove – indeed has already proven - an inspiration for other regional forms of cooperation.

## **2. PEACE AND SECURITY**

*Bjørn Møller* analyzes the concept of global goods and evils in relation to peace and stability; reaching the conclusion that these concepts can be construed as being so relative that speaking about good and evil in absolute terms is difficult. Reviewing different theories on international politics he examines

war as a public evil, as evidenced by different types of wars: pre-modern wars, modern wars, nuclear wars and wars of the third kind. Furthermore, he discusses the indirect evils corollary to wars such as refugees, armament costs, and opportunity costs. He also surveys different variants of the theory of democratic peace, reaching the conclusion (perhaps very surprising for most people) that the theory of democratic peace lacks statistical foundation. In addition to which he looks at the requisite players, strategies, and instruments needed to provide the public good that consists of preventing war and war preparation.

*Erik André Andersen* focuses on international institutions for the preservation of peace and security, especially international law; and he outlines the UN Charter's rules on the right to engage in war and armed conflict; dealing also with the International Criminal Tribunal for the Former Yugoslavia, humanitarian intervention and the Iraq conflict seen in the light of international law. He provides examples of new challenges to the rule of international law and demonstrates that although international law can be seen as a global public good, you may argue that such an ascertainment in general terms has no relevance for solving the substantial questions being discussed professionally by experts and politicians; e.g. the dilemma regarding national sovereignty and humanitarian intervention. On the other hand, a long-term policy of reform aimed at building democratic welfare states using public goods may prevent conflict and thus contribute towards solving the aforementioned dilemma. The need for humanitarian intervention will hardly arise in democratic welfare states.

*Rikke Ishøj* maintains that the rule of humanitarian international law is a public good, which can also control and diminish the suffering inherent in modern-day conflict. She reviews the constituent parts of humanitarian international law, analyzing its significance in modern-day conflicts in regard to illegal combatants and terrorism. A recent verdict handed down by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia suggests an increased protection of civilians in non-international conflicts.

The example of Bosnia and Herzegovina has been chosen to illustrate a specific conflict; here, *Erik André Andersen* details the background for this conflict and adduces examples of what the international community could have done during the conflict, and what has subsequently been done. He points to the fact that the heightened focus on public goods – including the structuring of the reform processes brought about by the potential EU membership – works toward preventing conflict and could even have contributed towards solving the conflict before it broke out; like the potential conflicts regarding

the Hungarian minorities in Eastern Europe were contained. By thinking in terms of public goods, infrastructure and comprehensive solutions you might also have avoided the kind of fragmentation that, say the Dayton Agreement expressed.

### 3. STATE AND CITIZEN

*Hans-Otto Sano* raises the question of whether or not good governance constitutes a public good. The overall answer is affirmative; however, there are certain important qualifications. Good governance can be defined as a standard of democratic administration, the key concepts being criteria like openness, accountability, inclusion and efficiency. The concept of good governance originates in the international donor community (The World Bank et al.) The concept has been underpinned by institutional players whose comprehensive view and global interests have made them see the public good as necessary, rather than by popular demand. From a global point of view, bad governance is more prevalent than good governance. Typically, there exists a correlation between any given country's income level and governance, good governance being more predominant in high-income countries. In this context, you can speak about good governance being a global club good, but the club of countries hailing good governance as a political goal is relatively limited (e.g. the EU). This chapter stresses the importance of including and analyzing the political interested parties when establishing global public goods.

In the chapter on legal protection and the rule of law as a global public good, *Hans Henrik Brydesholt* and *Kristine Yigen* provide an overview of how these concepts are manifested in different human rights conventions; also, there is a survey of how the state governed by law developed from the French Revolution to the social state to the welfare state. They look at different ways of construing the rule-of-law concept, then examine the theory and practice of government administration, since the vast majority of public sector decisions regarding the individual citizen are administrative adjudications. Taking as point of departure German philosopher Jürgen Habermas' concepts of 'system world' and 'life world', the authors recommend a type of administration which – within the framework of the reflexive state – gives citizens the greatest right to self-determination in organizing their own lives (self-management). Based on experiences from Uganda, Brydesholt stresses the importance of the local layman's courts as regards central aspects of due process and the rule of law, since these tenets are rooted in a local practice and control rather than administered by faraway career jurists. This does not mean that

the formal judiciary system based on Western ideas should be abandoned, but the two judicial methods should be developed simultaneously. This way, you can satisfy the population's demands for the rule of law while at the same time establishing a formal judiciary, making the country part of a global development.

*Kristine Yigen* sees curbing corruption as a public good on its way to becoming a global public good, thanks to international cooperation, e.g. through the adoption of international conventions. Among others, she examines the UN and OECD conventions on corruption, emphasizing the results that have already been achieved. Among the conventions discussed, the UN convention is a strong instrument because it includes prevention, blackmail, and technical assistance, while the OECD convention's strength lies in monitoring. Yigen accentuates Singapore as a role model in that this country has introduced harsh measures against corruption, making Singapore one of the least corrupt nations in the world. She also draws attention to Transparency International, an international NGO founded in 1993 that publishes an annual corruption index and has introduced the so-called integrity pacts, i.e. anti-corruption agreements entered into by the state, companies and a neutral, monitoring third party, say, a local NGO. Yigen also looks at Danida's action plan for fighting corruption in connection with Danish development assistance programmes.

In their collaborative chapter on socially and economically vulnerable groups and their access to global public goods, *Rie Odgaard* and *Kristine Yigen* have chosen first to scrutinize the rights of the landless in Africa. On this continent, poverty remains the decisive limitation in the access to public goods; one important reason being that the poor lack the assets (knowledge, education) that would otherwise give them access to the public goods. Among the reasons for poverty, two main explanations are singled out: first, explanations given by physical ecologists stressing technical help to combat poverty; second, explanations rooted in political economy according to which poverty should be fought by a sharing of power. According to the authors, analyses and strategies aimed at eradicating poverty should be two-tiered, focusing on the needs of the poor as well as their rights. Traditionally in Africa, land was a common and shared public good; this has changed and land has increasingly become a private good, entailing a series of negative consequences for the general population. The authors point out various international instruments for the protection of exposed groups; mentioning, inter alia, provisions concerning non-discrimination, stipulating minimum levels of subsistence, aid, and protecting the family. The state has a duty to ensure economic and social rights, among these the right to work. But the state is under no obligation to create work or act as a provider. The authors also

discuss the rights of the unemployed in a welfare context (the EU), thereby demonstrating that the leap up to the Western economic structure is too high, making the use of the concept “global public goods” difficult.

#### 4. ACCESS TO INFORMATION

Giving a number of specific examples, *Anders Jerichow* illustrates how oppressed populations use knowledge and the access to information as a tool for action. Employing simple information tools such as cassette tapes, telephone, radio, email and knowledge of the law has led to significant social upheaval and evolution. As examples, Jerichow mentions Turkey, East Germany, and South Africa where either significant migrations or political upheavals took place. These events were neither planned nor subordinate to political objectives and they encountered many obstacles. Nevertheless they did take place. The reason was that the will to change and the will to procure better conditions for yourself and your family conquered the obstacles; the means was access to information. The chapter provides other examples of how access to knowledge has meant access to important market information. Access to and control over information is viewed as an important instrument in the overall power game. Formal democracy will not bring solutions any closer. Nor will a real democracy - if dictators have been toppled, but political fanatics assume power instead - bring solutions any closer. Nevertheless, the chapter concludes that the solution does not consist in limiting the access to information; in any case, access to knowledge will always lead to welfare and a better life for the general population.

*Rikke Frank Jørgensen* and *Henrik Lindholt* emphasize that the Internet affords new possibilities for communicating in the public sphere. Yet this presupposes Internet access on the one hand; on the other hand, it also entails the possibility of control. The chapter distinguishes between cyberspace, which is a communication platform, and the Internet, which is the physical infrastructure linking computers. The Internet is ‘public by design’; yet in a global sense, still only a small number have access to it, which has led to talk about ‘the digital gap’. The Internet and cyberspace are indeed global public goods, but come in the form of club goods. In 2003, a world summit on the information society promulgated a statement of principles and an action plan aimed at furthering the UN Millennium goals – known as the “Constitution of the Information Society” – containing principles and values that are to be guidelines for the info-society. Herein are also contained human rights standards like freedom of opinion and expression and the right to privacy.



Transferring these fundamental principles to the information society poses a challenge; one example: the priority given to investigations in fighting terrorism vs. protection against widespread computer registration and surveillance (and hence, control). Other problems are related to the question of copyright. Although the world summit has stressed that Internet access ought to be a global public good, there is still a long way to go; thus a robust long-term strategy is needed in order to make this happen.

*Peder Andersen* discusses the interplay between research, global public goods and prosperity. There is an increased focus on research and knowledge as a source of prosperity and affluence, and there is a constant discussion about how to enhance the utilization of research along with making research more effective. Here, you need to balance hands-on, goal-oriented and practical research on one hand and long-term, less focused research with less certainty of results on the other. In the first instance, the market often plays a pivotal role; frequently, research is privately financed and protected by patents. In the second, it is natural that the public sector steps in as a source of finance. In both cases, there may be difficulties securing sufficient production and dissemination of knowledge. The author points out that EU research policies are changing and that the general European trend points towards an increased public financing of basic research. Furthermore, he directs attention to the need for an international institution that can fit the notion of a Global University where the production of knowledge is made freely available to everybody. This would secure maximum dissemination, heighten knowledge productivity, and contribute towards reducing the costs of solving global problems.

*Diego Bang* draws attention to the fact that education consists of two components: socialization as well as qualification. When viewed from a human rights point of view, education comprises four fundamental aspects. Education must be available, accessible, acceptable, and adaptable. Thus the state needs to guarantee schools and teachers, eliminate discrimination, etc. He emphasizes that education remains firmly ensconced in the human rights documents. Furthermore, education is a prerequisite for the enjoyment of other rights. Yet, despite improvements, a vast need for more education remains: the right to education has not been fulfilled, which means that other rights are also weakened. An ambitious educational programme, adapted by the UN and embracing one sixth of the world's population, aims at providing elementary education for all children, among other things, but is lacking donor funds. Bang emphasizes that education as a public good is a necessary, but not a sufficient precondition for fulfilling the goal of education as a human right.