Edited by
Erik André Andersen and Birgit Lindsnaes

Towards New Global Strategies: Public Goods and Human Rights

Martinus Nijhoff Publishers

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MARTINUS
NIJHOFF
PUBLISHERS

LEIDEN • BOSTON
2007

This book is printed on acid-free paper.

Library of Congress Cataloging-in-Publication data

A C.I.P. record for this book is available from the Library of Congress.

ISBN 978 90 04 15507 7

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Koninklijke Brill NV incorporates the imprints Brill, Hotei Publishing,
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PRINTED IN THE NETHERLANDS

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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.

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. xi-xii
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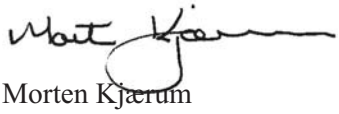
We wish to thank all members of the working groups as well as the lecturers, discussants and participants in the seminars for their voluntary and engaged participation in this project. Please refer to the book's appendices. We thank the authors for refining their ideas in writing, and the editors for 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



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.[1]

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.[2]

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.[3] However, human rights are often the key to working with public goods. Respect for human rights affords the

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. xiii-xxviii
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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 21st 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.[4] 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.[5] 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.[6] 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 17th century and the American and French revolutions in the late 18th century. As early as the 17th 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 Brydensholt* 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, Brydensholt 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.

5. EXAMPLES OF IMPLEMENTATION

Poul Birch Eriksen et al. underline that thinking in public goods leads to positive results in the area of public health; and Denmark's participation in health programmes is also emphasized. In a situation where health is a global and changeable issue and where illness spreads quickly in a globalized world, three different global health problems are singled out: demographics (migrations, i.e. from countryside to cities); lifestyle-related changes in risk patterns; and the transition from offering basic services to an increased emphasis on health economy and management. Health is defined not only as the absence of illness, but construed as encompassing well-being and enjoying good health in the widest sense. The chapter points to a double health burden comprising both poverty and lifestyle. No miracle cure exists to fight these twin scourges; you have to bolster prevention and learn from the experience garnered by other countries; for instance, experience gathered from the fight against leprosy can help alleviate complications arising from diabetes. Moreover, the chapter underlines the importance of empowering women – this has proven crucial within health policy, e.g. through educating women. Attention is drawn to the barriers surrounding public goods in developing countries: the focus remains on the affluent countries and their problems. Thus there has to be support for health-related research (Denmark has good qualifications in some areas). Knowledge already exists in the field – this knowledge should be used and supported by public incentives. Also, primary health care must be bolstered, again emphasizing the use of existing knowledge. History shows how Denmark has often contributed towards establishing global public goods in the field of health care. The chapter concludes by posing certain questions concerning the selection of target areas. Among other things, it is recommended that the Danida private sector programme be given more support.

In the chapter on health you will also find one of the most lucid and graphic examples of the significance of public goods – it is shown how the increase in life expectancy in England in the 19th century was not just due to economic growth, but really to improvements in housing and sanitary conditions.

Jannik Boesen and *Poul Erik Lauridsen* deal with (fresh) water as a human right and a global public good. They point to the fact that, in 2002, the UN announced water as an official human right – something that had hitherto been a question of interpreting human rights conventions – and they discuss the many problems associated with the duty of nations to ensure the right to water - equal access, availability, adequacy, monitoring, sanitation, etc. They distinguish between water and water supply (water resource management);

pointing out that, because of the physical nature of water and other geographic factors, water supply is normally a national or regional good rather than a global one. Problems arising from transnational water resource management are illustrated using the management of the Mekong River's water resources as an example. What is lacking on an international level is a single organization for water to coordinate these efforts, collate data, etc. Instead, we have a large number of commissions, councils and forums with public, private as well as NGO members which may have contributed to a greater public openness in decision-making processes than is the case, say, in the area of food and agriculture (FAO). Globally speaking, there is certainly no dearth of freshwater, but there is a great need for proper distribution, management and maintenance of existing water resources. Moreover, there is a great need for investments, especially regarding governance of water resources. Meeting these challenges will have the added advantage of underpinning other public goods such as water supply, regional peace and global biodiversity. The concept of global public goods can contribute to the operationalization and implementation of social and economic human rights, including the right to water, to which member states have committed themselves. Connecting global public goods to human rights can point the way to new ways of financing, e.g. a global water foundation financed by global water charges.

In the chapter on international trade, *Christian Friis Bach* underscores that there is a great need for global public goods and he notes that things are moving in the right direction, especially in the realm of trade. However, there are still many problems in establishing, consolidating and developing the international system of trade as a global public good, two main reasons being the uneven distribution of advantages and disadvantages, and the sheer vulnerability of the poor countries. It remains necessary to ensure that everybody can benefit from the international system of trade and mitigate the negative consequences. He points out the need for effective negotiations with democratic ground rules and openness, effective regulations in the form of international standards, and effective integration with a view to making developing countries bona fide players, if necessary with a transitional set of rules. Furthermore, he points to the importance of coordinating international trade regulations to mesh with other international agreements concerning the environment, labour, health and human rights. Friis Bach warns against the danger that establishing global public goods may siphon funds away from the battle against poverty, recommending a special framework for financing global public goods. In order to secure more coherence and a higher professional standard in the procurement of global public goods he recommends that the individual Ministries become more involved, while the Foreign Ministry

retains its role as coordinator.

In the chapter on the global responsibility of private companies, *Henrik Brade Johansen, Helle Bank Jørgensen* and *Jens Kvorning* emphasize that, in crucial areas, private companies do contribute to the procurement of global public goods, especially in the poor parts of the world. As examples, the authors mention increased prosperity due to work wages, on top of which there are improvements in environment, education, health, housing and the living conditions for women and girls. The efforts made by private companies should not be viewed as an (incomplete) substitute for state responsibility and action, but as a positive supplement. The chapter discusses the question why private companies assume a global responsibility, and asks what companies actually do to honour their global responsibility. Moreover, the chapter looks at the limits to the public goods that companies can produce, and the authors provide suggestions as to how Danida can contribute to lessening or removing these limitations. It is recommended that strategies be devised concerning conditionality (e.g. demands regarding effect on employment, development of outskirt areas, and environmental sustainability), inspiration (trend-generating changes) and support to companies that have demonstrated practical and new ways to procure global public goods.

6. PROBLEMS AND OPPORTUNITIES IN UTILIZING GLOBAL PUBLIC GOODS

The book's final chapter, written by Erik André Andersen, Peder Andersen and Birgit Lindsnæs, deals with problems and opportunities inherent in the use of global public goods. The authors discriminate between three different kinds of public goods. In the first instance, you may speak of a *wish* or a goal directed at establishing a global public good. In the second, you may ascertain whether or not the global public good has in fact been *delivered.* In the third instance, you may investigate what *systems of production* are responsible for bringing about the global public good. Based on this distinction, there is a short concluding summary of each chapter. Also, the final chapter discusses the new regional forms of collaboration inspired by the EU, and this is put into perspective in a vision of a platform for development of regional political leadership, consisting of a number of regional, multilateral cooperative organizations that could be integrated into the UN system.

As has been mentioned, the book has come about as a result of an extensive – and for us exciting – collaboration in the attempt to pinpoint the interplay

between human rights and global public goods. We hope that the book – in its entirety or in relevant sections – can contribute to further discussion.

We will especially express our gratitude to Stig Rée, formerly Associate Professor at Copenhagen Business School, for valuable contribution in the process of preparation of this book.

NOTES

1. Paul A. Samuelson's article is contained in this book as Appendix 3.
2. Appendix 1 contains a summing up of the human rights conventions mentioned in this book.
3. For a brief introduction to the concepts, see Appendix 2 (FAQ – a miniature dictionary).
4. The members of these work groups are named in Appendix 5
5. For details on the seminars, participants, and panel of experts, see Appendix 6.
6. For a short biography of each author, see Appendix 4.

1

GLOBAL PUBLIC GOODS CONCEPTS AND DEFINITIONS

The state and the citizen

Natural law as a public good

Peter Wivel

CICERO AND AUGUSTINE

In his treatise *De re publica* (which was written in the years 54 – 51 B.C. and has unfortunately only been partially preserved), Cicero has handed down his own conclusive definition of the Roman Republic. The book was a partisan contribution to a power struggle which about ten years later ended up causing the death of the Republic as well as Cicero himself. Cicero bases the republic on two concepts: first, consensus regarding the law, *iuris consensus*; second, and this is a wider definition, a common utility, *utilitatis communio*. This is the same word we later find almost literally translated into the English *commonwealth* where public utility and the state become two congruent concepts.

The Latin phrase *res publica* literally means "public affair or thing," as opposed to *res privata*. The word has a triple meaning: 1) The Roman Republic seen as an executive power; 2) The Republic's constitution; and 3) The objective behind its actions, what we today call *the public* or *common good.*

Thus, *Res publica* signifies both an executive power acting according to the constitution, and also its purpose, the object towards which this power's actions are directed.

In his definition, Cicero mainly underlines that the people are the supporting force in understanding the concept. "The Republic, then, is the people's matter. The people should not be understood as a random crowd of individuals, but rather a population united in agreement about the law and a common utility."

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 3-28
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

As one can see, Cicero envisions that what we today call the State is the result of conscious choices. What lies behind it is a common interest that can be put into words and into effect. Through the constitution it is possible for the people to choose the type of State they want and determine their interests freely.

At the same time, Cicero contrasts the Roman Republic to the Greek city state, *polis* or *politeia*, which was made up of the free citizens who congregated in the city square. Rome's power is built on the people in its entirety.

He stresses the fact that the State can only become a permanent entity if led by a council. There must be just one people and one State (*Civitas*) with only one constitution emanating from the people. Such a State must be built on justice for all – this is the crux of his treatise which is why he is led to the following conclusion: "Wherever a tyrant rules, society does not live up to its own ideals. Rationality must lead to the conclusion that there is no State."[1]

The dreaded tyranny then took over in the shape of the Roman Empire where, instead of the people, a single man or family decided what constituted *res publica.* This form of government quickly got its proper Latin name, *imperium*, signifying both a command as well as the entire and far-flung Roman realm.

As the powers that be degenerated and changed faces according to the principle that random exertion of power constitutes the law, the more neutral concept of *status* appeared – signifying the current *state* of affairs within a given power sphere; e.g. *status ecclesiae,* meaning "the state of the church;" or *status regni,* "the state of the realm," a term still used when heads of state are to deliver a ceremonious report. In the 16th century, this concept evolved into the modern concept of "the State."

The Ciceronian definition of *res publica* constitutes one of the cornerstones for St. Augustine, the Father of the Church who in his magnum opus *The City of God* (written in the years from 413 to 426) discusses the relationship between Christianity and Roman paganism.

Augustine concurs with Cicero that any society should be "the people's concern," and he quotes and endorses the passages just mentioned from *De re publica,* especially Cicero's categorical verdict that tyranny can never be called a state governed by the people, and thus cannot be called a state at all.

Cicero and other contemporary Roman historians were writing against a time where the Roman nation, according to their Republican point of view, had putrefied. Therefore, Augustine claims, there really was no Roman society in the ideal sense of the word. His conclusion, like that of Cicero, is that where there is no justice there is no society.

Augustine's critique marks a decisive turning point in the political

history of Europe in that he introduces a moral universe that is parallel to state power yet independent, namely that of Christianity. The basic Christian stance and the Christian commandment of love has to form the basic precondition for defining what can be properly called a just society.

Thus the concept of "The City of God" constitutes an inner, religious frame of mind that has to characterize the citizen living in any worldly state at any given time. Partially in congruence with the views of Plato and Socrates – but stretched to the ultimate consequences – Augustine places God within the human soul, not outside. Thus he bestows upon each individual an inherent dignity hitherto unseen throughout history.

He rejects the pagan understanding of *res publica* in the following manner:

> "If such a human being [i.e. whose soul is not subjected to God] is not just, then there is certainly no justice in an assembly consisting of such people. Therefore, in such cases, there cannot be the shared sense of justice that transforms a crowd into a people, and there can be no "people's affairs," as their definition of a society would have it."

Instead, Augustine offers the following definition of "a people:" "A people is a congregation of many rational beings united in a harmonious community concerning things they hold dear."

Augustine expands or rewrites Cicero's mainly utilitarian definition, speaking instead of "rational beings," and this is where we find the first kernel to later concepts related to natural law. For example, to the Romans, utility could be the subjugation of other peoples, but Augustine does not find that such conduct can be called rational. Moreover, he finds it decisively important what the people hold dear.

Augustine himself makes the point that, according to this definition, the Romans can indeed be called a people – but he adds the following solemn note: "But the things that this people held dear in its earliest and subsequent times, and its morals, led to the most violent insurgencies and later to wars between allies and citizens, breaking and breaking down the very unanimity which is the cornerstone of the people's welfare, which is attested to by history."

Thus Augustine identifies the fundamental flaw of Republican Rome as being civil wars and violent breaches of treaties, contrasting this discord with what you could call "the people's affair," or a *public* and *global public good,* i.e. the concordance that guarantees the citizens' welfare.

There can be no doubt that he considers this "people's affair" to be global. He speaks out unequivocally against war and for an international rule of law founded on the Roman concept of civic rights: "If you had immediately

taken the forthcoming and humane step later taken, namely that everybody belonging to the Roman Realm acquired civic rights, becoming Roman citizens, that which was hitherto a privilege for the few would immediately have become communal property."

He even goes on to add that the landless part of the Roman populace living on public benefits would have appreciated the handouts of grain more had these crops not been robbed from vanquished peoples.[2]

In order to fully understand the radical nature of Augustine's breach with the prevailing political tradition you should appreciate that the ancient societies did not know the concept of individual independence of state power. Each individual possessed what is known today as positive freedom; under favourable conditions, the individual might exert an influence on state policy and participate in decisions regarding war and peace. But an individual did not have the negative freedom to safeguard his or her own interests or follow his or her own conscience.[3]

This is the view of society that Augustine and universal Christianity, separating Church and State, shattered. The barriers between inside and outside are broken down, since the City of God is to be found both inside the individual state and outside. It is "everywhere," or, in the Greek term, *kat'holos*.

MACHIAVELLI AND HOBBES

The next millennium in European history is really about this power struggle and tells the story of how the Church Christianized the Europeans. You would not be able to speak here about establishing human rights versus the authority of the state, precisely because it was about firmly establishing the right of God. But this right rested with the individual human being. This was the modern perception of the human legal status and dignity in embryo.

Whatever you might think about the temporal authority wielded by the Holy See and the Catholic Church as it evolved throughout the Middle Ages, the Florentine Machiavelli saw its influence as a religious "sect" as a disaster. The influence exerted by Machiavelli on the gradual development of the concept of human rights lies in the fact that unlike the church he did not describe human beings and their society as they ought to be. He described both the way he thought they actually were.

Thus to Machiavelli the state, *lo stato*, is once again, as in classical Antiquity, a power which one party possesses in order to be able to exploit and harm his counterpart more effectively. The state is personified by whoever

owns it, whether it be a republic like Florence or a principality like Milan in the time of Machiavelli. The state remains the instrument of the powers that be; it is not a power in itself. You might say this way of thinking represents an absolute ground zero in eliminating the idea of public goods narrowly defined as well as global public goods in a wider sense. And, since then, an unresolved tension has existed between the rights claimed by the power of the state and its representatives and the demands made by common society upon the power of the state on behalf of everybody.

In his writings, Machiavelli illustrates the importance of the state being completely severed from the universal (Catholic) moral conceptions of the church.

Nowhere is his criticism of the numbing influence of the church more scathing than in his *Discorsi sopra la Prima Deca di Tito Livio* ("*Discussions of Tito Livio's First Ten Books"*; written in 1519 and published in 1532.) In this book, Machiavelli draws from the great Latin historian's observations on the foundation of Rome and her first steps towards world dominion.

In his preface to this discussion, Machiavelli expresses his astonishment that no contemporary statesman has yet used the political tool box that classical antiquity affords everyone. His conclusion: This cannot only be due to the "iniquities in our present education" – meaning the teachings of Christianity – but also a sheer ignorance of classical history. It is as if people believe that "the sky, the sun, the elements and human beings should have changed their character, patterns of movement, and power; suddenly becoming different than they previously were."

Machiavelli was certain that history repeated itself in circular sequences. Therefore, he had no doubt that you could propel history by hastening back to the virtues of classical Antiquity and demolishing the Christian ideas of political value hierarchies as they were propounded by Augustine.

> "Our religion regards humility, renunciation and disdain for all things human as the highest good; while the greatest boon for classical Antiquity lies in the grandeur of the soul, bodily strength and all the qualities that make people fearsome. If our faith demands spiritual strength it is to accustom us to suffering rather than to acting forcefully."[4]

The Renaissance juxtaposition of Classical Antiquity as opposed to the Modern Age finds it's most acute expression in Machiavelli's authorship and was to influence this discussion right up to the present day.

But as the classical republican virtues gradually became buzzwords for enlightened social groups in their fight against a society based on privilege, nobility and absolute, inherited kingdoms in alliance with the church,

Machiavelli's ideas regarding the personal state was also abandoned in favor of the modern idea of the state as an impersonal power in itself.

Towards the end of the 16th century the term *ragione di stato,* i.e. state reasoning, enters into the political vocabulary and the state itself becomes the active subject. The French absolutist idea that "I am the state," *l'état c'est moi*, was unraveling. The guillotine was waiting in the horizon for the first victims of this state.

It is ironic that the thinker who superficial readers have since proclaimed as the court philosopher of the absolute monarchy, the Englishman Thomas Hobbes, can in every respect be regarded as its destroyer. Hobbes created the modern concept of "the state" as something which was independent of the form of government. Thus Hobbes is diametrically opposed to Machiavelli regarding the idea of the state as an instrument for personal enrichment and power. Yet he follows the Florentine closely in the principle that we should base society on ideas about how people actually are, not how they ought to be.

Hobbes began with the people where Machiavelli began with the Prince – thus they reached directly opposite results.

He developed his political theories in a number of books, among which the most well known are *De Cive* (1642) and *Leviathan* (1651). Immediately after Hobbes' death at 91 in 1679, both these tomes were thrown on the pyre as being heretic by the theological faculties at Oxford.

But a mere 10 years later, England threw out its last Catholic king and established the "Glorious Revolution" making an elected parliament the legislative power of the land. Hobbes' contract between society and those in power had been established as the first permanent political system in history.

Parallel with his friend Descartes in Paris, where Hobbes lived in exile in the 1640s, he developed a mechanical philosophy which was to influence his philosophy of the state. He was the first thinker to propose that, based on knowledge of human nature, it would be possible to create a political science and thus craft a state which, regardless of the form of government would be best suited to further human development.

This type of state he called *Leviathan*, the artificially wrought giant, which was to be a *body politic* as opposed to the *body natural*, or *body spiritual*, as he called the church.

As a thinker, Hobbes is uncompromising in his adherence to natural law and thus indirectly the first to express what was later to become human rights. In the construction of his *Leviathan* he focused exclusively on the rights of humans as natural beings, not their obligations. Thus the new state power is created on the basis of what humans collectively fear, not on the basis of the

speculative goals they will never really be able to agree on.

His view was that it would be possible for subjects and the ruling authority to enter into a contract based on what he called the *Laws of Nature.* The most rudimentary of these laws can be found in the UN Universal Declaration of Human Rights.

In its preamble, the Universal Declaration calls the inherent dignity and equality of all human beings the basis of freedom, justice and peace in the world. In the second section is mentioned, among other things, freedom from fear. In the third, that Human Rights must be protected by the rule of law. These are also the fundamental conclusions reached by Hobbes. There are other sections of the preamble where Hobbes cannot be directly applied, at least not without major interpretative effort.

Hobbes' fundamental view is that all human beings (including all men and women) are created equal, and that the laws of society should by natural necessity reflect this fact. In a hypothetical natural state of affairs, which Hobbes describes in the most forceful and vivid language, this equality creates fear because it is not kept in check by a ruling power in society. The natural state of affairs is in fact a free-for-all.

> "The natural state hath the same proportion to the civil, which passion hath to reason, or a beast to a man".

Hobbes, who wrote while the Thirty Years War raged on the European Continent and England was bleeding to death in a civil war, now replaces this state of anarchy with a social contract. The individual citizens are to surrender their power and strength to a man or an assembly that expresses one unified will. This, then, is *Leviathan,* or Commonwealth. The purpose of this strong state is to create peace and security for its citizens.

His list of natural rights, and thus, indirectly, of human rights is quite comprehensive; it covers two chapters of *Leviathan.* Here we will limit ourselves to mentioning the first right, namely the right of a human being to his or her own life, i.e. to self-defense. This right leads Hobbes to far-reaching conclusions, among others, the right to a defense in case you are accused by the state, and the right to knowledge of the law of the land. This has later been interpreted as an argument against the death penalty.

Together, these rights guarantee society and its citizens' freedom, security, the right to private ownership, etc. Alternately, Hobbes calls them *the common good* and *the public good*, adding that before social contracts and laws were formulated neither justice nor injustice, neither public goods nor public evils were more natural among human beings than they were among animals.

The point is that Hobbes' concept of *commonwealth* is built on a contract between a ruler and a people (the ruler can be a people, a parliament or a king, but the power of the ruler always emanates from the people.). And the contract is binding for the ruler. Hobbes insists on this being the case, stating that it is the ruler's *duty* in any case and to the highest possible extent to adhere to common sense, this being the natural, moral, and divine law. All governance was established for the sake of peace, Hobbes maintains, and peace was coveted for the sake of security; in the event that anyone in authority should use his power for other aims than the security of the people he would be acting against the dictate of reason that lies in peace and thus against the Laws of Nature.

Hobbes has been reproached for the fact that the citizens of his *Leviathan* can perhaps best be described as mere subjects with no political influence; that he does not reinforce his construction with checks and balances controlling the government; that he does not distinguish clearly between the legislative and the executive branch; and that he speaks strongly against citizens defending themselves in case of a breach of the societal contract. But there can be no doubt that the way Hobbes laid down the fundamentals of a state is rested solidly, actually solely, on natural and human rights.

Hobbes, in the dedication preceding *De Cive*, writes that there is much truth both in the fact that

> "man to man is a kind of God; and that man to man is an arrant wolf. The first is true, if we compare citizens amongst themselves; and the second, if we compare cities".

This expresses his optimistic view of humans as social beings and his equally pessimistic view of the possibility of procuring *global public goods*. If this were to be the case, it would have to be a kind of international rule of law, *a right of nations*. But Hobbes regarded what in his day and age was called *jus gentium*, the law of nations, as a de facto state of war which only the fear of God residing in kings and parliaments could possibly prevent from blazing into blatant violence.

The permanent state of affairs prevalent between *commonwealths* is the natural state of affairs, Hobbes remarks, i.e. a state of hostility. Not even if the states refrain from hostilities, this cannot be called peace, but a breather where each enemy is watching the movements and behaviour of the other, assessing his own security, not according to pacts agreed upon, but according to the opponents' strength and insight.[5]

LOCKE AND HUME

Hobbes' long list cataloguing the *Laws of Nature,* his prototype of what was later to become human rights, and especially his many discoveries concerning individual freedom based on his assertion of every human being's right to defend his life makes his materialism less heartless than perhaps it is.

Augustine's words on a community based on the things you hold dear/cherish have been deliberately passed over by Hobbes in his attempt to base a society on reason, not faith. (But, just to keep the record straight, Hobbes uses two thirds of *Leviathan* to demonstrate how his points of view are corroborated by a multitude of Biblical passages.)

His materialism was to profoundly influence British political philosophy right up to the present day. Thus, Great Britain still has no constitution. The fundamental laws of society have, as it were, grown "naturally" from a historical tradition – in reality, what Hobbes calls the Laws of Nature.

Exiled in Holland, one of his philosophical successors, John Locke, often regarded as England's greatest thinker, wrote the manifesto for the revolutionary parliamentary system that overthrew the Catholic monarchy. Locke's *Second Treatise on Government* (published anonymously in 1690) is immensely indebted to Hobbes. Yet it stresses even more clearly than its admired precursor how reason is rooted in natural law, which Locke sees as headed for unbounded dominion.

Just as his friend Newton had discovered nature's law of gravity, Locke felt he had found the law of gravity behind democracy in human reason. You no longer need to be a theologian to determine the source and direction of power; nor do you need to be a natural, or rather social scientist. And he was of the firm opinion that constitutional monarchy, where the "King" and his appointed government are the formal executive power, but parliament makes the laws, is the only proper shape for any society to assume.

Locke shares Hobbes' views on human equality, and his social contract is almost identical to his model Hobbes, word by word. But he upbraids Hobbes on three important counts:

1. He finds that the natural origins of society lie not in fear, but in a desire to transcend the natural state in order to safeguard the right to private ownership which Locke surprisingly considers to be "natural." The natural state is not a state of war, Locke points out – while he does admit that the natural state is a somewhat ephemeral and theoretical assumption since humans are naturally endowed with reason and thus always inclined to seek each others' company. On the subject of private

ownership and property rights he says the following: ”The reason why men enter into society, is the preservation of their property; and the end why they choose and authorize a legislative, is, that there may be laws made, and rules set, as guards and fences to the properties of all the members of the society, to limit the power, and moderate the dominion, of every part and member of the society” (section 222).

2. Hobbes had the opinion that all forms of government were equally good as long as the Laws of Nature were respected. Locke, on the other hand, says that the Laws of Nature can only be upheld in a society with a representative democracy.

3. Being an ideologue of revolt, Locke necessarily had to repudiate Hobbes' prohibition against civil disobedience. He allows the people to rebel against an unjust ruler. Locke cautiously, but affirmatively quotes another theoretician for the following words. ”Wherefore if the king shall shew an hatred, not only to some particular persons, but sets himself against the body of the common-wealth, whereof he is the head, and shall, with intolerable ill usage, cruelly tyrannize over the whole, or a considerable part of the people, in this case the people have a right to resist and defend themselves from injury” (section 232).

It was statements like these that justified the two great revolutions in the next century, the American Revolution in 1776 and the French Revolution in 1789. Both, of course, were epoch-making due to the incorporation of human rights in national legislation.

But precisely the area of human rights is neglected by John Locke. His mechanical world view prevents him from a humanist or religious commitment. He does not use concepts like “social justice,” “compassion,” or “charity” even though Locke was a strict puritan.

This leads him to the most appalling and callous conclusions regarding an acute contemporary problem, to wit, slavery. In 1669, Locke himself penned the constitution of the English colony Carolina in America. He reduced the slaves to serfs; i.e. people who had lost the right to their own lives.

However, in the century to come, this very Achilles' heel would turn into the scandal that gave human rights their name.[6]

The Scottish philosopher David Hume was only 28 when, in his *Treatise of Human Nature* (1739), he attempted a rebuttal of his great predecessors Hobbes and Locke in what he now called, simply, *the science of politics*.

Hume specifies what is to be understood by the terms *public interest*

or *public good* – he uses both terms. His main tenet is this: Behind common interests we must assume that there are conscious moral choices; they cannot merely be the result of deliberations concerning what is common sense and useful. The development towards a humane society can be "natural," but it is not coincidental.

With Hume there is a conceptual movement away from the conflicts surrounding the system of government in the 17th Century, the main concern for Hobbes and Locke, to society itself, since the parliamentary form of government was now universally accepted.

Hume delves into *civil polity,* i.e. politics affecting citizens; and he uses an expression that became widespread in the 18th century: *a civilized society*: a society ruled by its citizens; or *a civilized monarchy* where the law, not people, rules

As Hume beautifully puts it in an essay from 1748:

> "Some innovations must necessarily have place in every human institution; and it is happy where the enlightened genius of the age give these a direction to the side of reason, liberty and justice".

We are in the middle of the Enlightenment. A few years later, the battle cry *civilization* surfaces for the first time; this epitomizes the project of the Enlightenment: creating the bourgeoisified society. There is a shift from the nobility's *generosity* to the *humanity* of the middle class.

In his little *Treatise on the Passion of the Soul (Traité des passions de l'âme)* (1649), Descartes called generosity "the key to all other virtues and a panacea against all passionate excesses." The word is derived from the Latin *genus*, which Descartes translates as *la bonne naissance, i.e. noble birth.* Now, what is important is humanity, which for Hume springs from the new key word *sympathy.* For Hume, sympathy is the main source of all moral distinctions.

Like Hobbes and Locke, Hume takes as his point of departure humans as they are, not as they ought to be. Like Hobbes, he finds that all the attempts in ancient Antiquity and the Middle Ages aimed at Utopian forms of government presupposing major reforms in human morals are castles in the air.

Like his predecessors, the society and the public good described by Hume are "natural," meaning that they can neither be described as "good" or "bad;" they are an expression of a purely rational utilitarianism. It is not the good society; rather, it is the right society. And this, from a human point of view, is unsatisfactory, since being human also involves making moral choices.

Therefore, Hume goes one step further than his precursors, although his philosophical position, almost copied directly from Hobbes, i.e. that human

beings have no free will, gives him nearly insurmountable difficulties in his line of argument.

He insists that the natural self-interest on which the social organization is built has to be redoubled by another type of interest which does not focus on selfishness. This interest he calls sympathy with mankind. This constitutes the soul's moral consciousness. When the soul turns inwards towards itself, in a pure, useless (in the sense of purposeless and free) reflection, it realizes that it is created good.

A human being, then, is not just an automaton. The society created by humans is not just an artificial *body politic.* We do know the difference between good and evil. Human beings have reason not only to do the right thing, but also in order to recognize good and make moral choices (Hume himself does not say this; the phrase comes from his contemporary friend, later to become an enemy, Rousseau.)

This is a precondition if the citizens are to be mature not only to experience political freedom, but also in order to make it a crime for anyone to presume to be their custodian or warden. This is why Hume does not hesitate to make it clear that it is no crime to revolt against a criminal regime.

In other words, Hume admits rational society breathing space. His reasoning goes like this:

Reason cannot make moral choices, only the passions can. Reason distinguishes between true and false, not between good and evil. Hume admits to society being built on *Laws of Nature*. Humans are ingenious and are able to see what is necessary and useful. Any country's laws are, to be sure, crafted by human hands, necessitated by the exigency of a given situation; but because of human reason they are not randomly made. They are the result of choosing one thing over another.

Society's laws are created in order to further *the public good* – a result of a mutual self-interest. The most important public goods are maintaining peace, justice, the stability of private ownership, and reliability in agreements.

Contrary to Hobbes, Hume envisions how an international community could be built around these rules, founded on *the laws of nations*. There are already certain *global public goods*, such as the immunity of ambassadors; the demand that wars must be declared; and a ban on poisoned weapons (i.e. chemical and bacteriological weapons). But for such a community to be established it would also have to respect the *Laws of Nature*; for instance, when pacts and treatises are entered into, Hume states.

Hume's message is essentially this: We become committed to these utilitarian rules, but the following is important:

> "Sympathy is the chief source of moral distinctions; … Justice is certainly approv'd of for no other reason, than because it has a tendency to the public good: And the public good is indifferent to us, except so far as sympathy interests us in it. … Tho' justice be artificial, the sense of its morality is natural … we naturally approve of it".

This is how it becomes our society and our community.[7]

ROUSSEAU AND KANT

The preceding, let us call it conservative, *jus naturalis* way of viewing society's laws is shattered once and for all by the Swiss-French social philosopher Jean-Jacques Rousseau; in his works, he lays the foundations for a continental legal philosophy, drawing the definitive line between natural law and human rights, giving the latter the epithet *les droits de l'humanité*. In the course of just a few decades, this name developed into the shorter *les droits de l'homme*. Rousseau himself saw his writings as a rebuttal directed at Hobbes. In his famed *Encyclopédie,* his friend Diderot calls Rousseau the antithesis of Hobbes. Rousseau remains firmly shoulder to shoulder with his English predecessors, and with Hume, in stating that "the natural state" and "the natural human being" are fictitious figments. These states have never existed, and they never will. But he is just as categorical in his refusal that the state of war should be the opposite of the state of peace, as Hobbes would have it.

Rousseau's fundamental example can illustrate this. He was a sworn enemy of slavery; frequently reiterating how degrading and unjust this is. In his famous work *The Social Contract* (1762) he states categorically in the section on slavery: "To renounce your freedom is to renounce your humanity, your human rights, even your duties (. . .) Such a renunciation is incompatible with human nature, and it means that all your actions are bereft of all morals, and your will is bereft of all freedom." The expression used is *les droits de l'humanité;* literally: "the rights of humanity."

In another context, he chooses to pit Machiavelli against the philosophers that dare stand up for *les droits de l'humanité*.

Without freedom there can be no true peace, he affirms elsewhere. Human beings have to be free if the concept of peace is to have true meaning. This entails that no constitution, no laws can have validity if they are not handed down by the citizens themselves. In *The Social Contract*, he puts it this way: "Collectively, each one of us places our person and our entire power under the supreme governance of the common will; and together, we receive each member as an indivisible part of the totality."

This is Rousseau's famed *social contract, contrat social.* In his *Leviathan*, Hobbes offers the following, quite similar wording: "I authorize and relinquish my right to self-governance to this man, or to this congregation of men, on the condition that you relinquish your right to him and authorize all his actions in a similar manner." (17, 13)

The difference is this: In Rousseau, the citizens individually relinquish their will to the common will; i.e. to themselves as individual political members of society. Through elections, each citizen can constantly give the common will (parliament) directions. For Hobbes, the citizen enters into a contract with a sovereign ruler who assumes power under the condition that he will not violate natural law in his dealings with the citizen.

In the writings of Hobbes, each member of society checks the other through this very contract. In those of Rousseau, the social contract sets citizens free, making them an "indivisible" part of the totality; i.e. each citizen becomes an *in-dividual*, Latin for indivisible. Through the social contract, differences are made equal.

For Hobbes, the system is built on mutual utility. For Roussau, it rests upon the opportunity to express your will morally. Rousseau does not think it is possible to make moral choices unless you are free. Thus, Rousseau's social contract is what provides human beings with their "moral freedom."

But this dichotomy extends much further. In his political manifesto entitled: *On the Origin and Basis of Inequality among Men* (1755) he dismisses natural law as a bogus claim and linguistically illogical as well; since you cannot have laws that are not in some way or another expressed by human beings.

Thus he describes how "the Moderns," who are the antithesis of "the Ancients," are of the opinion that a law is a rule given to a moral being, i.e. to an entity that is both intelligent, free, and endowed with reason – in other words, to each human being.

Elsewhere, he rejects his friend Diderot's suggestion that among human beings, there should be a universal law solely emanating from reason and the rights of each human being, called by Rousseau *le simple droit de l'humanité.* The rules governing the natural law of reason, *le droit naturel raisonné*, have much too feeble foundations in our souls for them to replace laws made by human beings.

The rights of human beings are founded in the humane feelings common to all; above all compassion, but in order to make these rights pervasive throughout society you need political will and power. They need to be committed to writing officially, in a manner of speaking, before they can really be said to exist.

"We have stated that a law is a public and solemn act, springing from the common will (…) and all laws gather their strength from this pact only."

In other words, the common will is thoroughly the work of human beings. It has as its goal to safeguard the security and welfare of all citizens. "The common will is always directed at the common good," he writes. The exact expression is *le bien commun*, i.e. *the common good* in French. Rousseau also uses the expressions *l'intérêt public* (*public interest*), or *l'intérêt commun* (*common interest*), and even just *le bien public* (*public good*).

He is much more thorough than his predecessors in describing what this *public good* signifies. It covers everything from general legislation, public finances and currency, taxation and thus the creation of greater equality in society, to the educational system – in short, most of what we demand of a modern state. On top of this, of course, the state must protect citizens against foreign attacks – and abstain from attacking others.

In this connection he also has deliberations concerning global public goods. He states that "where the body politic is the great city of the world, the common will always become natural law." In other words, there will usually not be a social contract between individual nations.

Nevertheless, he considers the possibility of creating a European confederation, that is, a league of sovereign states which he occasionally calls *République Européenne*, based on a *droit de la confédération* which must be balanced against the sovereignty of each participating nation. The notion is founded on the fact that there already are certain social ties between the states in Europe hailing back to Roman law and maintained by the Christian culture of Europe – in other words, a common religion and a common law of nations. To this, he adds multilateral trade and the exchange of ideas.

At an elementary level, this might translate into rules on the conduct of war and rules of engagement; and Rousseau goes on to lay down principles that have since been incorporated into the Geneva Convention.

It took Europe some 200 years to reach this far.[8]

One of Rousseau's most avid and attentive readers was the contemporary, though slightly younger Prussian philosopher Immanuel Kant. His epoch-making contribution to the history of global public goods was his 1795 essay called *To Eternal Peace* (*Zum ewigen Frieden*).

This small pamphlet is a further development built on various political deliberations made elsewhere in Kant's extensive authorship, but may well be one of his most widely studied and quoted texts. The reason: It is about how to bring about an international legal order able to prevent wars and thus capable of creating peace for the citizens of the world; a peace that would enable their culture and civilization to flourish. A goal which – in its global ambition – was

more ambitious than anything his philosophical predecessors had dared to propose.

What has perhaps gone more unnoticed is the fact that the cornerstone of this manifesto, the notion of "eternal peace," relates to a specific theme in Kant's writings concerning civilized exchange and thus the exchange of ideas in a free society. For Kant, the concept of "eternal peace" quite specifically signifies a constant and progressive unfolding and realization of the plan providence has for human beings: the way they achieve mastery of themselves as well as nature and neutralize the evil forces in their own souls.

In the preamble to his essay, Kant already warns his readers that, by the words "to eternal peace" he is not referring to the tranquility of the graveyard. Rather, the preposition "to" in the title signifies a movement towards a world-encompassing civilization which humankind's own reason invites it to pursue.

This peaceful state is also the state of Enlightenment in which humankind transcends its self-inflicted thraldom. This presupposes a state of freedom enabling human beings to make public use of their reason, since all human beings feel a calling to think for themselves. This is an abbreviated version of Kant's famous answer to the question: what is Enlightenment?

Kant defines this struggle as humankind's necessary escape from the mythical "natural state" which Hobbes had already described. In these metaphors, Kant does not deviate from his predecessors. Kant remarks that: "A state of peace among human beings living side by side is not a natural state; on the contrary, it is a state of war and if this state has not always resulted in open hostility they constantly threaten to break out. Therefore this state must be established."

Here, Kant is not only speaking of political affairs. Peace does not come automatically; it has to be established through a conscious and concerted human effort encompassing all areas of perception. We need laws for human intercourse if humankind is to have a chance of thinking independently and not being subject to relationships where power equals justice and where guardians dictate what is just and true.

This is the fundamental precondition for instituting what Kant calls *Das Recht der Menschen*, human right(s).

Achieving this right – which belongs to the individual human being, not the State – is an ongoing process both historically and in the individual human being's mind. Eternal peace is not an end goal, an eternal rest. Quite the opposite; it means peace among human beings enabling them to make free use of their reason while passions are silent.

He ends his essay by saying: "When realizing a state of public justice

is a duty, even a well-founded aspiration, if only in an eternally progressive approximation then the eternal peace superseding the hitherto falsely named peace settlements (or, rather, armistices) will no longer be a vacuous idea, but a task which is solved little by little (but, hopefully, with an ever shorter distance between each progress made) and is ever nearing its goal."

The important phrase is "an eternally progressive approximation".

Elsewhere, Kant writes: "Thus the idea of the right to world citizenship is not a phantasmagorical and overwrought legal concept, but a necessary consummation of the unwritten demands inherent in constitutional law as well as the law of nations for widespread human rights, for eternal peace which it is only commendable to approximate under the given circumstances."

The image of eternal approximation derives from calculus. You never actually touch the curve. The process is never-ending.

In this endeavour Kant sees a sort of automatic process. Kant fully believed that human reason would eventually move things forward. Thus he states at one point that the "most important intention" behind creating eternal peace is that human beings transform their reason into duty.

Nature or providence will automatically lead those thus inclined in this direction while recalcitrants will have to be dragged there by their feet. In the specific context mentioned in the essay this can only happen by adopting public law in the individual state, in the law of nations and in the right to world citizenship.

We can see how Kant's endeavours lead him beyond nations right to the individual human being whose freedom cannot be ensured by an individual state, but by the league of peoples he proposes. A union citizenship, you might say.

According to Kant, the state of war directly gives rise to the statutory state of peace. Since, according to him, evil is destructive as well as self-destructive in nature, the principle of good will gradually gain greater momentum "through slow steps forward." This way of thinking is pure St. Augustine.

This is also where Kant clearly differs from Hobbes. "The guiding principle stating that people should unite in a state according to the universal legal concepts of freedom and equality is not founded in wisdom, but in duty." According to Hobbes, people defer to *Leviathan* out of wisdom, i.e. utility. According to Kant, justice is created out of duty; a duty that providence has instilled in them.

He does, however, emphasize that his judicial system does not demand a state made up of conscientious angels. Less will do the trick, as Hobbes already pointed out, stating that "the problem of building a state may, as harsh

as this may sound, be solved even by a people consisting of devils, if they are endowed with reason."

Yet Kant's proposal for an international legal order differs from the state power envisaged by Hobbes in every other respect. Here we come to the specific suggestions, and his biggest political originality probably lies in his emphasis that the republican state is a necessary precondition for the observance of human rights.

In the first place, Kant is of the opinion that an international league for the preservation of peace can only be founded by republican states with a non-feudal, commoners' constitution, common representation and the separation of legislative end executive powers. When the people themselves rule, they will be far more apprehensive when it comes to war than when despots treat the state as if it were their own private property.

In the second place he emphasizes that it has to be a federation of states. It has to be a "league of peace," the purpose of which is to end all wars. This federation must have laws that make it act as a "state consisting of peoples," (you may compare this to Charles de Gaulle's famed phrase "a Europe of Nations"), a *civitas gentium*. This is not a world republic holding sway over everyone and wielding forcible powers with which to impose its policies. "We have seen," he writes, "how a federal state having the abolishment of war as its sole purpose will be the only legal order compatible with freedom."

There is absolutely no international *Leviathan*. Thus Kant's "eternally progressive approximation" is built solely on a common realization of what everybody does not want, not on a knowledge of what they want. It is the very purpose of eternal peace that this subject should be open for free discussion.

The third point in his programme is called "*Hospitalität*," which he himself explains as "acting as host," not a "right of admission," but we might perhaps say "hospitality." This should be viewed in the context of Kant's desire that there should be a maximum exchange of thoughts as well as miscellaneous cargo.

Thus he also recommends that a "spirit-of-trade" rule between the league's nations (the 18th century was a period of anti-globalization, causing two of history's most sweeping democratic upheavals just prior to the writing of Kant's essay, to wit, the American and French revolutions.)

He also adds that there should be "*Publizität*" everywhere, i.e. public access and knowledge regarding the actions taken by the league. "All actions affecting the rights of other people, actions with underlying principles making them unsuited for public knowledge, are unjust," he categorically states.

It has been said that Kant was terribly wrong on all three counts. Democratic constitutions and worldwide trade did not prevent imperialism

from flourishing in the 19th century; and in the 20th century, the freedom of information praised by Kant was betrayed by its supposed guardians, the intellectuals, who widely embraced totalitarian ideologies.

This criticism, however, misses its mark. Kant could not predict the rampant nationalism that exploded in the 19th century and the resistance against the Enlightenment ideas that rose after the Napoleonic Wars.

And as far as freedom of information and public access to knowledge goes, they have always been the best bulwark against totalitarianism; in fact, the proliferation of ever more globalized media is threatening the last remaining totalitarian dictatorships today. Only free access to information could reveal the betrayal perpetrated by the intellectuals.

But the most important point is this: Democracies today must invoke universal principles if they are to intercede in international conflicts; whereas, in the 19th and 20th centuries, it was legitimate to merely further your own special interests. Following World War II, this fact has finally led to the creation of a number of international communities acting in the spirit of Kant.[9]

BURKE AND THE TWIN REVOLUTIONS

The rest is political history. The two great democratic revolutions of the 18th century, the American Revolution in 1776 and the French Revolution in 1789 both invoked Natural Law as well as the Right of Man whereby these concepts became naturalized in the real world.

The American Declaration of Independence states: "When in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them (…) We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness —That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed (…)"

As is evident, the wording is straight out of Hobbes and John Locke; concepts like Laws of Nature, equality among men; the right to life, liberty, and happiness; and the idea that governments exist to secure these natural rights.

The French declaration regarding human rights and citizens' rights from 1789 states, among other things, that "ignorance and neglect of, as well

as contempt for human rights is the sole reason for the misfortune of countries and the ruin of governments" – with its internationalist angle this is right up Kant's alley! Consequently, the French chose to "solemnly declare the natural, inalienable, and sacrosanct rights of man." In short, demands arising from the very natural law, that Hobbes was the first to study and propose.

One of England's foremost conservative thinkers, Edmund Burke, was quick to spot the universality of the French declaration as a threat to the sovereignty of nations. On the other side of the channel, he lambasted the revolution in writings and speeches. "France and its foreign allies are now patently striving to destroy every trace of old institutions and create a new community in each and every country based on these French *Rights of Men*," he warns.

> "In the mean time a system of French conspiracy is gaining ground in every country", he continues. "This system, happening to be founded on principles the most delusive indeed, but the most flattering to the natural propensities of the unthinking multitude, and to the speculations of all those who think, without thinking very profoundly, must daily extend its influence".

He also writes:

> "Boldness formerly was not the character of atheists as such. They were even of a character nearly the reverse; they were formerly like the old Epicureans, rather an unenterprising race. But on the late they are grown active, designing, turbulent, and seditious".

Burke was one of the men who fiercely battled against the Enlightenment and universalism. Later on, more formidable enemies of human rights were to follow: first nationalist romanticism and nationalism; then Karl Marx and dialectic materialism; then Darwinism. Towards the end of the 19th century, Nietzsche launched his vehement attack on democracy, declaring that the will to power was the true motivator of mankind. After him came European totalitarianism - only when Nazism was finally defeated in 1945 did the nations of the world rediscover the significance of human rights.

But Burke was a child of the very Enlightenment he subsequently chose to fight against when it revealed its true face. Concurrently with the French revolution, in the years from 1788 until the mid 1790s, the British parliament impeached Warren Hastings, the first governor general of British India for the East India Company. Hastings had acted like an oriental despot and cruelly mistreated the Indians.

One of the main prosecutors in that trial was Edmund Burke (who died in 1797), elected to Parliament on the liberal ticket.

Burke upbraided the governor general for his notion that he – on

Indian soil – could merely assume absolute and discretionary power over the natives. Burke quoted Hastings for the following remark:

> ”I had an arbitrary power to exercise: I exercised it. Slaves I found the people: slaves they are – they are so by their constitution”.

Burke saw this as an expression of an intolerable master race mentality and contempt for what was then seen as the nucleus behind the word civilization, namely respect for the law. Burke put it this way:

> ”We (the parliament) have no arbitrary power to give, because arbitrary power is a thing which neither any man can hold nor any man can give. No man can lawfully govern himself according to his own will … We are all born in subjection – all born equally, high and low, governors and governed, in subjection to one great, immutable, preexistent law”.

But why couldn’t Hastings treat these people that he considered both savage and unruly, according to other moral standards than the ones applicable in his native country? Why must we – everywhere – act according to what Burke called ”the established rules of political morality, humanity, and equity?”

Burke answered his own question:

> ”And having stated at large what he means by saying that the same actions have not the same qualities in Asia and in Europe, we are to let your Lordships know that these gentlemen have formed a plan for *geographical morality*, by which the duties of men, in public and in private situations, are not to be governed by their relation to the great Govenor of the Universe, or by their relation to mankind, but by climates, degrees of longitude, parallels, not of life, but of latitudes: as if, when you have crossed the equinoctial, all the virtues die … ”

Later Kipling, poet laureate of Imperialism, would state the East is East and West is West, *and never the twain shall meet*. Burke saw things differently:

> ”Law and arbitrary power are in eternal enmity … The title of conquest makes no difference at all. No conquest can give such a right; for conquest, that is, force, cannot convert its own injustice into a just title”.

Which leads to Burke’s conclusion. About what he calls *the primeval law* he has the following to say:

> ”But if (despotism) has no written law, it neither does nor can cancel the primeval, indefeasible, unalterable law of Nature and of nations … The moment a sovereign removes the idea of security and protection from his subjects, and declares that he is everything and they nothing, when he declares that no contract he makes with them can or ought to bind him, he then declares war

> upon them".
>
> "There is but one law for all, namely, that law which governs all law, the law of our Creator, the law of humanity, justice, equity – the Law of Nature and of Nations".

Even Burke – speaking here in unison with Hobbes and Locke – knew the language of Rousseau and Kant as well. Even he knows the Right of Man and knows fully well that it is without bounds.[10]

NOTES

1. Cicero: *De re publica*, I,39: Est igitur … res publica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus. Ibid I,41: Omnis ergo populus, qui est talis coetus multitudinis … omnis civitas, quae est constitutio populi, omnis res publica, quae … populi res est, consilio quodam regenda est, ut diuturna sit. Ibid III,43: Ergo ubi tyrannus est, ibi non vitiosam … sed, ut nunc ratio cogit, dicendum est plane nullam esse rem publicam.
2. A. Augustin: *The City of God*, books 19, 21 and 24 and 5, 17, Århus Universitetsforlag, Århus, 2002.
3. In his classic book, *La cité antique*, originally published in Paris in 1864, Vol. 3, Chapter 18. introduction, N.D. Foustel de Coulanges writes: "The city-state was founded on religion and constituted as a church. Hence its strength, and hence its omnipotence and the absolute authority it held over its members. In a society built on such principles, individual freedom could not exist. Without exception, each citizen was completely subjected to the city-state, he or she belonged completely to it. Religion, which had in fact created the state, and the state, which cultivated the religion, mutually supported each other, making up a single entity; these two united and intertwined powers made up a nearly superhuman power that body and soul were equally subservient to. Nothing in the individual was independent."
4. These quotes follow the Preface and Vol. 2, Chapter 2. The rendering is largely based on H.C. Mansfield: *Machiavelli's Virtue*, University of Chicago Press, Chicago and London, 1996.
5. Equality: see *Leviathan*: Chapter 13., 1st paragraph and Chapter 15, 21st paragraph*; De Cive*, Chapter 1, 3rd paragraph and Chapter 3, 13th paragraph. The Strong State, see e.g. *Leviathan*, Chapter 17, 13th paragraph, *De Cive*, Chapter 5, paragraphs 7 to 12. The Natural State: *De Cive* , Chapter 7, 18th paragraph, cf. Chapter 10, 1st paragraph and *Leviathan,* Chapter 13, 9th paragraph; the most famous passage of them all. Public Goods*: De homine* Chapter 10, final passage (plus innumerable other passages in *De Cive* and *Leviathan*). The duties of those in power: *De Cive* Chapter 13, 2nd paragraph. International law: *De Cive* Chapter 13, 7th paragraph, cf. Chapter 10, 17th paragraph and *Leviathan* Chapter 30, 30th paragraph. This account follows in part L. Strauss: *Natural Right and History*, University of Chicago Press, Chicago and London, 1971 on Hobbes. The lawyer Samuel Pufendorf was fervently inspired by Hobbes. His most popular dissertation, written in Latin, on Natural Law was published by the University of Lund, Sweden, in 1673; it is available in Swedish translation: S. Pufendorf*: Om mänskliga och medborgerliga pligterna enligt naturrätten (1673),* City University Press, Lund, 2001. It is pertinent reading in this connection.
6. John Locke: *The Second Treatise of Civil Government*, London, 1690.
7. On Poltical Science, etc, and the Enlightenment from D. Hume: *Selected Essays*, World Classics, Oxford University Press, Oxford, 1998 p. 284 and 288; civil monarchy: p. 54. On the word « Civilization », see J. Starobinski: *Le remède dans le mal : critique et légitimation de l'artifice à l'âge des lumières*, Gallimard, Paris, 1989, pp. 11ff.; R. Descartes: *Les passions de l'âme*, GF-Flammarion, Paris 1996, p.. 201. Sympathy: D. Hume: *A Treatise of Human Nature*, published by L.A. Selby-Bigge, Oxford 1978 (facsimile of the 1888 edition) p. 618-19. Free phantasy: in *Selected Essays* p. 302 and Hobbes: *Leviathan* 46,11. The Slaying of Tyrants: *Treatise of Human Nature* pp. 552-

53. *Laws of Nature*: Ibid pp.. 484, 541, 567-69.

8. *Freedom*; in J. Rousseau: *Oeuvres complètes*, Gallimard, (Bibliothèque de la Pléiade), Paris 1964, vol. 3 (hereafter P3) pp.. 356; 247 and 523. *Contrat social*; in P3, 361. Natural law; in P3, pp. 124 and 326. *Common good (Bien commun)*: e.g. in P3; pp. 246; 259; 808 and 694. This is further developed in his *Encyclopédie* article on political economy, to be found in P3, pp. 241. *International law;* in P3, p. 245 and in *Projet de paix perpétuelle*; P3, pp. 563. Also, see my book *Rousseau – Fantasien til magten*, Gyldendal, Copenhagen, 1998. Regarding how the concept of *les droits de l'humanité* was developed into *les droits de l'homme* in relation to slavery, a primary source is J.A.N.C. Condorcet: *Réflexions sur l'esclavage des Nègres* (1781), Editions Mille et une nuit, Paris, 2001.

9. Immanuel Kant: *Zum evigen Frieden* in Werkausgabe bd. XI, Suhrkamp, Frankfurt 1977, p. 191 ff.. The State of Peace, p. 203. Approximation: pp. 251 and 216-17. Most important intention: p. 223. Evil: p.242. Wisdom-duty: p.. 241. Angels-devils: p. 224. Republicanism: pp. 204. Federation: pp. 208, p. 249. *Hospitalität*: pp. 213. Spirit of trade: pp. 226. *Publizität*: p. 244 . This rendering is based in part on N. Bobbio's: preface to I. Kant.: *Per la pace perpetua*, Editori Riuniti, Rom 2001 and Lutz-Bachmann and James Bohman (ed.): *Frieden durch Recht*, Suhrkamp, Frankfurt, 1996, a shorter selection of articles on Kant's essay.

10. Edmund Burke: "Thoughts on French Affairs" (1791), in *The Portable Edmund Burke*, Harmondsworth 1999, p. 502 and p. 507. "Speeches on the Impeachment of Warren Hastings," *ibid*; pp. 394.

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Public goods

Concept, definition, and method

Erik André Andersen and Birgit Lindsnæs

INTRODUCTION

The previous chapter on how European philosophers have influenced the creation of the concept *public goods* and its survey of European history shows how public goods rest on the presupposition that the nation states institute *representative democracy* and ensure respect for fundamental *human rights.* Thus you could argue that these three concepts support each other as a trinity; they are mutually interdependent, they all have universal significance, and they rest on principles of indivisibility and reciprocity. This way of thinking springs from the fear of war and the wish to establish peace and security; furthermore, it aims at safeguarding respect for each individual plus the economic and social development of society as a whole.

The three concepts are all crucial to any discussion about how we can create a new framework for an international society where public goods need to be procured locally as well as globally.

REDISCOVERING THE GLOBAL PUBLIC GOODS CONCEPT

From being a concept with a comprehensive and general significance for establishing peace and security, the term *public goods* reappeared in the theory of economics in the mid 1950s. Hereby, the concept was lifted out of its philosophical and historical context. Without delving into the very expansive and difficult discussions that ensued, we shall briefly summarize the main points of view in this debate.

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 29-52
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

In economic theory, public goods are an example of "market failure," i.e. that the market is not performing efficiently from an economic point of view;[1] similar examples are overproduction and underproduction measured against an ideal balance in the market.[2] As far as public goods are concerned, there is no market *per se* since the definition of public goods implies that no one is excluded from using them. The consumers of public goods are the general public, i.e. everybody. Seen from a production point of view there are several possibilities. It is usually assumed that the public sector (the state) procures the public goods, but as we shall later see this need not always be the case. Public goods can be created naturally as well as by society; in the latter instance, private producers may also contribute to their procurement.

Paul A. Samuelson is often mentioned as the first economist to propose a theory of public goods in a welfare-state context. He launched his theory in the article "The Pure Theory of Public Expenditure."[3] His point is that the state has responsibility for bringing about national public goods since it is incumbent upon the state to create welfare for its citizens. Hence it is also the duty of the state to steer the economy. In his theory, Samuelson presupposes that the state has an extensive and well-tuned government machinery at its disposal and that public goods are tax-financed. He also presupposes that the state is able to predict which goods its citizens wish to consume; that public and private producers can produce these goods in the amounts planned by the state; that the state's resources are optimally apportioned; and that these goods can be distributed so they benefit all citizens. The theory also presupposes that borders between ownership of private goods and access to and use of public goods are clearly delineated.

Samuelson's line of thinking builds on ideas stemming from the 19th century where it was considered the duty of the ruling monarchies to take care of the welfare of their subjects. At that time, this led to a discussion about how you could devise a way to determine which goods citizens actually preferred in a democratic manner. Samuelson did not enter into this discussion since he assumed that the state's role had to be more far-reaching, i.e. that it would be able to foresee the citizens' preferences. Perhaps for the same reason, he did not enter into how citizens' choices could be expressed through a democratic process involving the election of politicians who could then represent the citizens' interests.

When Samuelson revived the discussion about public goods, economists and the world in general had a tendency to favour an active state role in the economy. Many countries then favoured a centrally planned economy; the consequences of this for producing public goods still divide opinions.

Today, Samuelson's theories are mainly used as a point of reference

in the far more extensive debate about public goods which has evolved since the 1950s;[4] this debate reaches back to ideas propounded long before Samuelson. For instance, *Classics in the Theory of Public Finance* by Richard A. Musgrave and Alan Peacock (1958) contains a number of classic economic articles from the 1880s and 1890s, including discussions concerning whether or not states should and can have a comprehensive role in financing public goods and if so, how. Among other things, these articles point out just how imprecise and problematic the concepts surrounding this discussion can be. The economist Adolph Wagner (1888) noted in particular that the state is not a club with mandatory membership, but a voluntary association of individuals, all of whom are looking after their own vested interests and that the principles of supply and demand applying to the private economy should also apply to the public economy. Thus even special interests are better served if public goods are also offered up in free competition. Other theoreticians, however, begged to differ.

In 1885, Lorenz von Stein delineated how the relationship between the individual and the state is a dualistic one; the state is built on a sense of community as well as on individuals; the relationship between these two levels is based on reciprocity. This relationship was indeed called the principle of reciprocity. According to this mode of thinking it would be impossible for the state to offer any individual any type of service costing money without that individual returning part of his or her income to the state. This is made possible through the existence of the community and the reciprocity that exists between the two levels comprising the sum total of individuals and the state. "As long as human beings and nations exist, this reciprocal process will continue, even though the individual may neither want it nor even be aware of it. This is the economic principle of human society."[5]

According to this way of reciprocal thinking it is not possible to trade in public goods the same way you trade in private goods and services. In an article from 1896, Knut Wicksell realized that the use of individual margin calculations would lead to "meaningless" results, offering the folowing argument:

> "If the individual is to spend his money for private and public uses so that his satisfaction is maximized, he will obviously pay nothing whatsoever for public purposes…Of course, if everyone were to do the same, the State will soon cease to function. The utility and the marginal utility of public services (Mazzola´s public goods) for the individual thus depend in the highest degree on how much the others contribute, but hardly on how much he himself contributes…Equality between the marginal utility of public goods and their price cannot, therefore, be established by the single individual, but must be secured by consultation between him an all other individuals or their delegates."[6]

Wicksell´s central message is this: That an individual alone neither wants to nor should pay for the production of public goods because this lone individual cannot expect to gain a maximum profit from this particular investment. If, on the other hand, all citizens of the state (individuals) contribute, the utility value will be much greater. Thus the market mechanism cannot determine the price for the production of public goods; this price-setting task should be left to the democratically elected representatives. The price of public goods, therefore, will be whatever price these representatives (who compete with each other to become elected in the first place) determine. If the prices they determine for the various public goods run contrary to the preferences of the people, they will not be re-elected. Capitalization of public goods will most often be off the mark if determined by non-elected representatives of the states.

These principles are extremely akin to the principles on which the Danish welfare society is built and which the labour organizations call the principle of solidarity. And it does stand to reason that it would be very difficult to extract maximum profit from a judicial system, a parliament, or a national defence. All are areas that serve as a common underpinning for peace and security. Likewise, individuals may profit individually from special public goods when they are hit by infectious disease, are disabled or marginalized in other ways. These are goods that cannot be offered up for sale in free competition; they must be procured according to principles of reciprocity or solidarity.

Hence Samuelson's conception of the state as the ideal factor for gauging the preferences of its citizens (especially through capable civil servants) – and establishing public goods in accordance with these preferences – reaches the point where not only the state is functioning ideally, but citizens' preferences are also more directly expressed through representative democracy. Meghnad Desai, whose article has largely inspired this review of the historical roots of the debate, takes this argument one step further, pointing out that the most crucial question still remains how to elucidate citizens' preferences and that, viewed theoretically, representative democracy is not the answer to this question.

The citizens as a whole represent a wide array of preferences going in many different directions; politicians, in their efforts towards gathering a "winning coalition" must take all preferences into consideration even when they clash. In our time, this phenomenon has been called the way political parties take a "non-ideological" view of politics, the reason being that political parties have to adapt to the fragmented demand for public goods stemming from a multitude of small groups. This means that procuring public goods and securing citizens' access to them becomes a much more "robust" political process than the abstract social welfare function represented by Samuelson or

Wicksell.

Yet Desai sees nothing wrong in this. The result may admittedly be more modest than the optimum would be from an economic point of view, but it is sustainable thanks to the citizens' commitment to the political process and their willingness to accept the result. This still leaves the question of maximum economic efficiency unanswered, but according to Desai this question is a matter for economic research.[7]

A NEW INTERPRETATION OF PUBLIC GOODS

In her introduction to the book *Global Public Goods* (1999) and in the two seminal articles *Defining Global Public Goods* (1999) and *Advancing the Concept of Public Goods* (2003), Inge Kaul and her co-authors offer a reinterpretation of the *public* good concept as a *global* public good concept.[8] Kaul's premise is that people's welfare and efficient economic growth demand that a suitable amount of necessary public goods are procured. She asks two questions: How does the increasing economic activity across national borders affect the demand for public goods? And does this economic activity imply a need for procuring global public goods?[9] Two important and relevant questions; they are, however, much more difficult to answer than it may sound. Therefore, before we return to this premise, we will review her arguments.

We have primarily chosen to outline the discussion concerning public goods in a national context since the states are traditionally responsible for furnishing these goods. But along with globalization it has become relevant, highly urgent even, to discuss how we can guarantee the most necessary public goods on a global level. In this survey we shall follow the method employed by Kaul in the two articles mentioned above.

From the outset it is important to underline that it is in no way determined beforehand which goods are defined as public and which are defined as private. This is due to the fact that goods *per se* should be understood as a *social construction* established by peoples and governments through political action, laws and regulations, and through other actions, both collective and private. Most goods – public as well as private – are created by a certain society – just as history teaches us how the need may arise to define a new type of good or to redefine an already existing good in order to satisfy new demands. After September 11 2001, for example, the need to ensure physical safety for individuals as well as entire states has acquired an entirely new meaning, as fighting terrorism has gained top priority in most countries and in

the UN system.

When discussing different examples of public goods we must be mindful of the fact that, in many instances, they carry more than one significance as the text will seek to demonstrate. When the same public good can signify several things it is either because there are several layers of significance (i.e. layers of abstraction), or merely because there are more ways than one to look at them. The absence of corruption, for instance, is in itself a public good; at the same time, absence of corruption is also a precondition for introducing other public goods. Indigenous peoples can in and of themselves be regarded as a public good (cultural diversity) – and at the same time, there is the need to protect the access of these people *to* public goods.

A *public good* is defined by Kaul as a thing or object we all have a common interest in having available for public consumption. There must be such a public interest in having the good around; this is how we legitimize that it is up to the state to procure it. In the specific society in which we live we have, either by consensus or through a *representative majority,* reached the agreement that it is necessary to place a number of public goods at every individual's disposal should the need arise for us to consume the good in question; or we have agreed that society as a whole needs that good.

Kaul subdivides public goods into pure and impure public goods. In Kaul's interpretation, *pure public goods* are things or conditions not subject to market mechanisms either because they are not profitable or because their price cannot be effectively fixed.[10] Therefore, they can be defined as the things, conditions or services that *cannot* – or can only to a very slight degree – be procured by means of free competition, or as exclusive services because no one can or will pay the price for those particular goods. Moreover, pure public goods have to fulfil two criteria: they must be *non-exclusive* and *non-competitive*; i.e. there must be free access to the public good in question and everybody must be able to consume the good without it being used up. In other words, the good must be in plentiful supply.

Indeed, according to Desai, this also means that there are actually very few pure public goods.[11] They are often linked to local political tradition and rarely have a clear-cut global definition.

Furthermore you could argue that pure public goods often designate the ideal state of something we wish and strive for, but don't possess. If, for instance, we wish to create lasting peace we may characterize this state as a pure public good that can only be brought about by conscious human effort. Here we can say along with Kaul that if we desire lasting peace we must initiate an eternally progressive process where we strive towards this ideal state. Peace (as opposed to war) is a commonly shared good which we all

partake of once established. It can neither be bought nor sold and it requires a common and sustained, even continuous, effort.

Kaul illustrates this with an example, a pure public good associated with a particular historic era, namely industrialization (here we are at an abstract level since industrialization certainly also had many negative consequences for both urban and rural populations). This is a good created by society. She explains that in order to have traffic flow smoothly in densely populated areas we have to regulate it. This can be done by rules spelled out in legislation; that we must drive on the right side of the road, that we move about regulated by traffic lights, roundabouts or an officer directing traffic; and by limiting the amount of cars allowed to drive in city centres. If there are no set rules, or if traffic is not regulated, it creates chaos, pollution or perhaps accidents. We could hardly do without traffic regulation, but on the other hand we cannot imagine that we ourselves (privately or in our local residential environment) should make traffic rules or buy a stoplight – even though the possibility of course exists. Therefore we ask that the public authorities set the rules and procure this public good.[12]

Clean air and clean oceans, commonly accessible roads, peace and stability, personal safety and security, law and order, free trade, economic stability, curbing infectious disease and traffic regulation could all be mentioned as examples of pure public goods.[13] In other words, pure public goods can be characterized as a thing or condition which concerns all of us and which cannot be secured by private and individual activity. They attract so much public interest that access to them is regulated, or should be regulated, through national political mechanisms, legislation and economic policy; as well as international political mechanisms and conventions in many cases.

PRIVATE AND PUBLIC GOODS

There is often great political disagreement as to defining the demarcation lines between public and private goods. There is also disagreement as to the role of the state in procuring public goods. Somewhat extreme ends in this way of thinking can be seen in the differences between the USA and Europe. The USA has a tradition for going a long way in protecting private goods and limiting public goods as much as possible while Europe has moved in the opposite direction; since the beginning of the 20th century, European states have increased the number of pure as well as impure public goods, exemplified through the growth of the social welfare state.[14]

What characterizes *private* goods is that they are *competitive* (i.e.

scarce) and *exclusive* (not everybody has access to them) and by the fact that the property rights to them are clearly defined. This means that the right to private ownership is in itself a public good since it is both a right and a human right,[15] while the object of the ownership (the property itself) is a private good. Prices can be set for private goods; they are traded freely in the marketplace and as a general rule the owner may decide how he or she chooses to consume the good, as long as this is done in compliance with existing rules.[16]

Food is also a private good, as long as a population is not threatened by famine. Corn and other food staples compete in the marketplace and when the year´s crop of corn has been consumed others cannot get access to it. However, if a dearth of food staples arises, this requires public intervention and often an international effort to supply the good. Therefore, basic foods may temporarily become the object of public intervention aimed at satisfying the population's need for a reliable food supply.[17] Thus the basic food supply provisionally becomes a public good; often being subsidized as well. The alternative would mean a threat to life itself, especially in areas where private producers are unable to supply the necessary food. This very phenomenon – that the government has a duty to ensure conditions securing an adequate food supply – is a public good. On top of this, it is also a human right.[18]

Other goods can be *both private and public.* Pure water, like a reliable food supply, is a vital necessity, and the right to water is also a human right.[19] Water can be both a public and a private good, but is increasingly protected as a private good as water increasingly becomes a scarce resource. The problem inherent in the privatization of water drillings is that often, the poorest part of the populations has no access to pure water because they lack the purchasing power and therefore cannot buy control over water. Therefore there is a discussion about how it is possible to protect water as a public good; over time, water has become both more exclusive and competitive as well as the source of a growing number of conflicts. In Denmark, for example, politicians and interest groups are discussing whether public or private water works should be allowed to buy up the land surrounding water drillings with a view to safeguarding public health.[20]

Land has increasingly become a negotiable commodity because land has been made private property and thus a private good. Normally, states are also "private" land owners and therefore have the option to buy and sell land resources, forests and other open spaces, just as they can opt to grant independent producers access to, say, common forests and range land. The fact that private land ownership has been introduced practically everywhere on the globe may perhaps have solved conflicts in some instances simply in that it has become statutory.[21] Yet it has also given rise to new conflicts.

Even though states have the right of eminent domain, private land ownership is normally not infringed upon. Private land ownership precludes potential producers amongst the poorer part of the population from access to land of their own. Therefore in some places, you see large areas of land becoming concentrated on fewer owners and conflicts arise concerning access to land as a production good for the landless and indigenous peoples.[22]

Intellectual property rights are an example of a private good that may clash with the need to procure public goods. This is about the right to health and curbing infectious disease. The conflict has arisen because research financed by private corporations can be capitalized, patented, and subsequently turned into production and sold. Thus the knowledge accumulated through many years of research becomes an entirely private, exclusive, and competitive good protected against public and free use.

In recent years, however, organizations championing rights of the HIV and AIDS infected have pointed out that exclusive rights to access to this medicine is a common and thus public issue. They argue that patents covering prophylactic drugs should be partially foregone to pave the way for cheaper, generic medicine that can benefit poor and exposed patients.[23] In doing so, these organizations are really against protecting intellectual property as a competitive and exclusive private good if such a construction prevents curing patients suffering from mortal and infectious diseases. On the other hand, private producers are arguing that they cannot invest in expensive and advanced research if this research is not protected, patented and sold at competitive prices permitting sales and profits, which then again will lead to new research and investments.

This example is interesting because the UN has established the World Intellectual Property Organization (WIPO); a private organization, almost entirely privately financed, with the express purpose of protecting patent rights globally.[24] According to WIPO's own declared purpose, this also comprises protecting intellectual property in poor third world countries; including culture, folklore, and the utilization of the genetic information stored in, say, the tropical rain forests. Here we apparently have yet another unsolved dilemma whenever protecting intellectual property – motivated by concerns about the motivation for new research (in the rich countries) – has an adverse effect on public health in the poor countries.

"IMPURE GOODS"

Only very few public goods can be characterized as *completely* pure goods. Impure public goods fall into two categories: *exclusive club goods*, which are non-competitive, and *competitive goods*, which are not exclusive. As examples of exclusive club goods you could mention research and development, non-commercial knowledge, norms and standards, as well as respect for human rights.[25] To this, in our opinion, you might add due process. Competitive and scarce goods might be, say, access to higher education and health, wildlife, and fishstocks.

The protection of human rights and due process ought to be pure public goods. These goods, however, should justly be called *exclusive club goods* since everybody is not yet guaranteed access to these goods. This is due to several factors. For one thing, many states are too weak to protect human rights; for another, many states themselves violate human rights.[26] Moreover, due process requires that both the accuser and the accused can afford to pay for a trial. But when the state cannot provide appointed counsel for an indigent defendant – as is the case in many developing countries – securing a fair trial becomes impossible.

Another example of a public exclusive club good could be access to public pension schemes/social security, which in many developing countries is only available to civil servants since a comprehensive national pension is non-existent in most of these countries.

Liberty to travel abroad and free movement across boarders – which for example is granted when you become an EU citizen – is another exclusive good which most stateless people, refugees without a Convention Passport, and citizens of the poorest countries alike cannot get access to. Contrariwise, any EU citizen can be issued a passport that will give you admission to visit almost anyplace on earth.

Elementary schooling is an example of a good, which in most countries ought to be a pure good as well as a fundamental human right. Nevertheless it is also an example of a good that exists in four possible versions in the real world:

1. as a pure public good, if all children are constitutionally entitled to free and equal access to public schools;

2. as a competitive public good, if there is not sufficient capacity to admit all potential pupils to public schools with adequate resources;

3. as an exclusive club good, if certain criteria have to be met for kids to

have access to schools, e.g. if girls must wear (or are not allowed to wear) ceremonial scarves, if pupils must wear school uniforms or buy their own books, or if schools are situated so far away that it prevents them from attending; and

4. as a private, competitive and exclusive good if only pupils with specific qualifications may attend for a fee.

Finally, this good could also be said to exist in a fifth version: the outward effect, or simply misery, or evil, as we shall henceforth call it. This is when poverty, culture, and the lack of overall relevance of elementary schooling prevent children from attending school, as in Niger, where more than 80 per cent of the population is illiterate.

There is also an entirely different type of public good, which could be characterized as biodiversity and culture. For instance, these concepts encompass natural preserves, monuments and art treasures.[27] They do not possess the same value as vitally important public goods; they do, however, carry an existential value normally appreciated by the general population.[28] These public goods are often subsidized by the state, by private foundations, and the like.[29] Besides, individual citizens also often contribute by paying to see these goods, as in Beijing, where you pay entrance fees to access public parks – making them, too, an exclusive club good.

OUTWARD EFFECTS OR EVILS

The *positive outward effects* or *negative outward effects,* respectively, arise as the result of an action influencing the public space, which has either a positive utility value or a negative side affect on third parties. The effect can be that a third party reaps the benefit of an action or has to bear the negative consequences of an action without being personally involved.

An example of how this issue presents itself is that educating women can have a positive side effect on children's living conditions since it can be documented that the children of women possessing just basic elementary education live better lives and longer in general. Another example is inoculation against infectious disease since this does not only prevent illness; it also keeps potential carriers from passing on the illness to others. On the other hand, the discharge of polluted wastewater can have a negative effect on the environment and water resources. And even the example bringing positive side effects just mentioned – inoculation – could also entail negative side effects. In Nepal, when the population was inoculated against malaria, the subsequent influx of

new settlers in the area thus made inhabitable was so massive that it quickly became uninhabitable because it wore down the environment.

Furthermore, the *utility* value of a good will not be perceived the same way in different societies.[30] A library has great utility value in a society placing high priority on knowledge, or where knowledge is a scarce commodity. But the utility value will perhaps be less obvious if a country is on the verge of famine. Adequate production, sale and distribution of food will have a high utility value in all countries, but an especially high value in countries where famine is a regular occurrence.

Kaul describes the sum of negative effects concerning society as a whole as *public evils*. Examples of public evils are polluted air, oceans, and water; inadequate infrastructure; strife and the lack of stability and personal safety; anarchy; free trade barriers; financial and economic instability; lack of control with infectious disease; illiteracy; transgressions against and lack of protection of human rights; failure to regulate private ownership; and the absence of a stable food supply.

Public evils often afflict poor countries and exposed groups far more profoundly than affluent countries and wealthy parts of the population who are more able to protect themselves against the worst effects of crises and instability.[31] Thus these evils are very unequally distributed amongst the 195 or so nations of the world. Today, for instance, the big cities in the EU are less polluted than major cities in African and Asian countries, just as the lack of stability, democracy and development follow a similar pattern.[32]

THE FREE-RIDER PROBLEM AND THE PRISONERS' DILEMMA

As has been mentioned previously, public goods are an example of "market failure," i.e. that the market is not economically efficient. The market will not produce public goods of its own accord so, typically, procuring public goods will be beset with problems. This may cause a behavioural pattern which could be rational from the individual's point of view, but which may be less than perfect or perhaps even disastrous seen from a societal point of view. In procuring public goods, society faces two problems that have been called the *free-rider problem* and *the prisoners' dilemma.*[33]

The *free-rider problem,* described by David Hume in his *Treatise of Human Nature* as early as 1739, arises when private individuals, political parties, or states, from fear of having to bear the costs of procuring a public good, avoid indicating to society when they require or need certain goods

– or when they seek to shirk their share of common burdens by shifting these burdens onto others.

The problem can be illustrated by an example from the Danish political agenda. When the Danish Government tightens residency rules for refugees, Sweden claims Denmark is free-riding. The Swedish Government argues that the financial, resource and political responsibility for the protection of refugees is off-loaded on them as a neighbouring country. That is the reason the EU seeks to limit free-riding through harmonization of the rules of asylum within the Community.

If you accept that disarming Saddam Hussein in Iraq amounted to an attempt at securing peace and stability, the NATO crisis arising between the USA on the one hand and Germany, France, and Belgium on the other is an example of how nations may accuse each other of free-riding. The USA accused the European allies of coasting along since their countries would not unreservedly deliver troops for attacking Iraq and defending Turkey. An American professor compared the situation to World War II, opining that France was in fact free-wheeling then. His argument: American soldiers fought and died instead of French soldiers in the fight against Hitler.[34]

These examples do not prove who is right, but they do illustrate how difficult it can be to determine precisely who is doing the free-wheeling.[35]

Furthermore, private citizens show a tendency to optimize their consumption of common, competitive goods when given the chance. Since they are competing with others consuming the same goods this often leads to overconsumption of the common good in question. The many cases about fishing quotas illustrate this problem where overfishing of a common, public good has become hostage in fishermen's struggle to maintain a private (and necessary) livelihood.

Overconsumption of common goods and free-riding illustrate the conflicted nature of the discussion about public goods and also show how difficult it is to create the requisite respect and will to pay for such common goods.[36] Typically, public goods will be scarce and distribution of these resources will rarely be ideal.[37] Also, public goods like, say, deciding to go to war for the sake of peace will be so dictated by ideology, politics, power struggles, and inconsistency that they will probably never lend themselves to objective analysis in the way a theory on public goods might perhaps lead us to believe.

The prisoners' dilemma describes how lack of information and communication may thwart cooperation, which could actually benefit all parties involved.[38]

Often used as an example, the prisoners' dilemma involves two

prisoners being charged with the same crime and detained in different cells without mutual contact. Each prisoner has to evaluate whether confessing or denying the charges will be most beneficial. The fact that the example can be viewed as immoral because the object is to avoid justice is less important in this context.

The core of the prisoners' dilemma is that there are four possible sentences: if they both plead innocent, their sentences will be reduced since their crime cannot be proven, meaning they will each receive one year in prison. If one of them confesses and the other pleads innocent, the first prisoner will be rewarded with an acquittal, while the other will receive a stiffer sentence of five years. If both confess, they will both get a reduced sentence of three years. If the prisoners were to cooperate they would thus, by denying having committed the crime, both be able to get off with one year in prison. But since none of them wishes to risk the stiffer sentence they both end up confessing, both of them being sentenced to three years in jail.[39]

Illustrative as it is, this example should be superfluous. It ought to be self-evident how important it is to cooperate on all levels towards procuring public goods and how substantial the losses can potentially be if such cooperation is not achieved. The prisoners' dilemma shows how easy it is to forfeit cooperation unless formal mechanisms for such cooperation are in place.

It also demonstrates how important it is that you think through the consequences of your actions and agree upon a common strategy before any action is taken.

THE EXPANDING PUBLIC SPACE

In theories of social science the state and civil society are often viewed as complementary and separate elements that mutually influence one another.[40] Kaul and Mendoza's contributions involve exciting new approaches that redefine the relationship between the public and private spaces.[41]

Their point is this: There has been significant change regarding what was previously seen as strictly public or private. Private areas have increasingly become public, and vice versa. Shareholders and consumers wish to know more about companies, about their production and marketing principles - and they demand informative labelling and insight into working conditions for employees. They do not want companies to produce if it contributes to pollution and child labour. Public norms assist in the definition of expected standards set by consumer organizations and others. Organizations in civil

society investigate companies, assessing and publishing results on their so-called "corporate responsibility," i.e. the effort companies put into achieving greater legitimacy among the population by furthering non-commercial activities and contributing to society in general.[42] Private companies have become self-regulating. They set their own standards for proper working conditions and mediate in conflicts.

By the same token, states are increasingly following market mechanisms. They quite often stimulate private activity by offering bids for tender or outsourcing tasks to private enterprise. A privately held company handles most of Denmark's ambulance service; receiving and counselling refugees is taken care of by the Danish Red Cross and the Danish Refugee Council; while both are private organizations, many would consider them semi-public for this reason. Similarly, prices are fixed for certain public services such as parking in congested city centres, or fees are charged for certain services within health care (e.g. dental care).

Furthermore, private citizens tend to demand transparency and credibility from states in general. Every year, reports from Transparency International point to the fact that public institutions in a great number of countries are corrupt, untransparent and lack credibility.[43] Kaul argues that public institutions are not sufficiently surrounded by public disclosure.[44] Not only do private organizations take responsibility for procuring public goods for payment, they also regulate parts of the public space. Thus the International Red Cross administers the humanitarian sections regulated by the Geneva Conventions. As has been previously mentioned, the privately financed UN organization WIPO oversees a number of conventions protecting intellectual property.

Also, private companies are increasingly concerned with public issues in general and they go about their business in a manner that does not suppress human rights. In Danish business, correct corporate social and ethical behaviour has been codified by the so-called Nørby report on corporate governance.

Similarly, private companies have developed considerable expertise within a number of areas carrying significance for combating public evils. In South Africa under the apartheid regime, private business and commerce played an important role in achieving peace and reconciliation, helping persuade the ruling white minority to establish majority rule.

Also, private companies and states are sometimes highly critical of organizations in civil society that do not practice full public disclosure; organizations that are not transparent, representative, and legitimate. Thus Kaul and Mendoza speak about *the expanding public space* where the key players – the state, private companies, civil society and private households

(individuals and families) – are increasingly concerned with public issues; about what others expect of them, and about whether or not their activities have an outward effect upon others than themselves (see figure 1 below).[45]

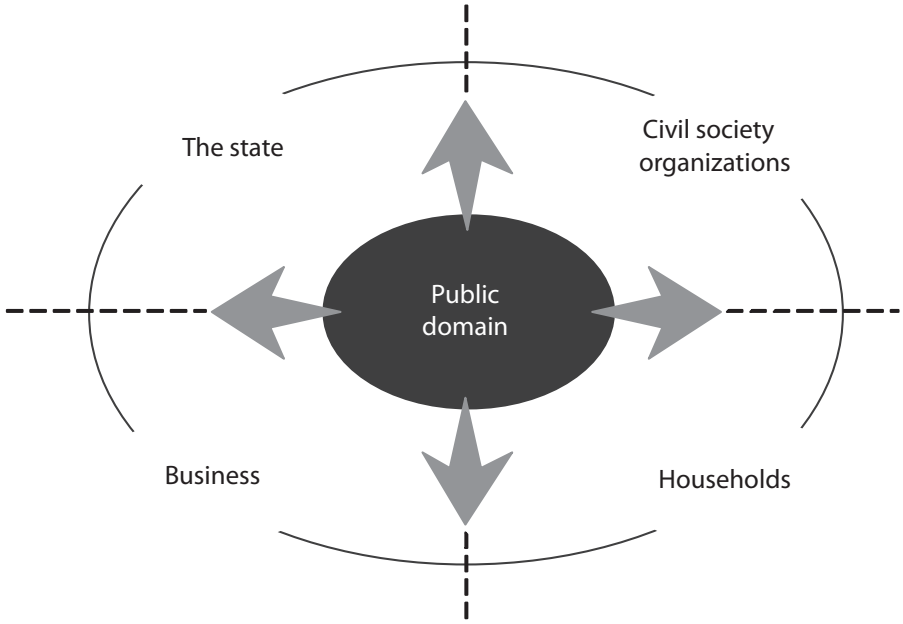

Figure 1: The expanding public space

The authors suggest that the public space has become more spacious. Thus, what we are witnessing may be the shaping of a new concept of public space where that space is regulated by private as well as public players.

Critics of this development fear that private players will assume excessive power whilst others see the trend as an opportunity to find new points of balance between the state and the market.

In our opinion we are dealing with an ongoing process unfolding between the key players. In Europe, private players have historically procured public goods in periods where states have been unable to do so.[46] States have subsequently taken over some of these responsibilities while new evils have concurrently arisen. Then, once again, private initiatives will lead the way and states will be pressured to assume part of the responsibility. If states do not succeed, they will be criticized by active citizens and private organizations and companies. Thus there will be an ongoing, parallel battle or dialogue between state and private players concerning the procurement or non-procurement of

public goods.

Thus, according to Kaul and Mendoza, the question is not *whether* the public space should be regulated, but *which* public areas involving both the public and the private spaces need regulation with a view to securing common public goods.

Therefore, it is necessary to examine how public and private players can access information; how decision-making processes can be made ever more transparent and democratic; how state and private organizations can be optimally involved in public decision-making processes (without subjugating these to special interests); how to control negative behaviour on the part of institutions and players alike; and, finally, which institutions and which networks will procure public and private goods most expediently.

GLOBAL PUBLIC GOODS

By extension, like a national public good, a *global* public good may be defined as being universal and affecting all countries, people and generations. In principle, it is accessible to all and thus non-discriminatory (Kaul et al.)[47] One practical working definition operates with global public goods as products, resources, services, sets of rules, and political systems; all with great external significance across borders and thus important for development and for eradicating poverty; all dependent upon cooperation and unified action among developed and developing countries if they are to be procured in sufficient quantities.[48] The two definitions complement each other quite nicely, enabling us to make a conceptual as well as a practical delimitation.

Global public goods can be a clean environment, e.g. clean air and oceans, open and integrated market economies, financial stability, and battling infectious disease. For practical purposes, Kaul and Mendoza propose that we distinguish between different categories of global public goods.[49] Their typology is based on different types of public manifestations of these goods, making it possible to discuss in detail how and on which levels one should handle, procure or protect the global public goods.

The first type constitutes global, natural, shared goods like the atmosphere and the oceans. Usually there will be free access to such goods, but access may also be restricted in order to protect resources and access may have to be regulated through agreements and rules.

The second type is global, humanly created shared goods like, say, global networks and international standards, norms, and knowledge. In this instance, access will often be free for everybody, as is for instance the case with non-

commercial knowledge. In other cases, access may be limited, e.g. when we are dealing with patented knowledge. Finally, it may be a process involving an increasing number of new users or an expansion of positive externalities; e.g. when we are dealing with norms and standards such as international trade agreements or the Universal Declaration of Human Rights. The dissemination of such goods may come from above (from the international to the national level) as well as from below (more and more countries join up.)

The third type is the adoption of global areas of policy. We may be talking about global initiatives to make universally accessible what are essentially private goods; e.g. basic education, health and a secure food supply. Or we may be talking about goods whose utility value and cost for practical and technical reasons cannot be parcelled out, like peace and security, financial stability, and protection of the environment.

In this connection Pedro Conceição has suggested calibrating an index of countries' actual and present contribution to the procurement of global public goods, since this could provide a decision-making basis for international initiatives in areas that are under-supplied with vital global public goods.[50] This might be a useful tool in a practical sense, yet there are a number of methodology problems in calculating such an index; and also, it would remain just that, only a tool that does not in itself solve the political problem of defining, precisely, what constitutes vital global public goods and how to procure them.

Within the framework of this book we aim to discuss whether global public goods, besides encompassing peace and stability, should also cover sustainable and democratic states, due process and equality before the law, access to information and freedom of speech, access to education, as well as safeguarding access to global public goods for exposed groups.

Since man-made evils have a tendency to become globalized, these goods need to be procured at a national as well as a global level. The means employed in procuring these goods have to be made available through national and international cooperation and through new local and global alliances and initiatives. This is where the principles that lie at the core of human rights can play a crucial role.

NOTES

1. Ken Heather: *Modern Applied Economics. A Problem-oriented Approach to Economic Theory*, Harvester Wheatsheaf, New York, London, Toronto, Sydney, Tokyo, Singapore, 1994, pp. 197-201.
2. Overproduction occurs when the producer can transfer part of the costs to a third party, e.g. environmentally related costs to society in general. Underproduction occurs when, say, the producer possesses a *de facto* monopoly.
3. Paul A. Samuelson: "The Pure Theory of Public Expenditure," *Review of Economics and Statistics*, 36 (4) 1954, pp. 387-389; Meghnad Desai: "Public Goods: A Historical Perspective," in: Inge Kaul et al. (eds.): *Providing Global Public Goods. Managing Globalization*, UNDP, Oxford University Press, New York and Oxford, 2003, pp. 64-65; Agnar Sandmo: "International Aspects of Public Goods Provision," in: Kaul et al. (eds.): 2003, pp. 112-113.
4. Desai, 2003, pp. 69-75.
5. Stein (1885), quoted from Desai, 2003, p. 70.
6. Wicksell (1896), quoted from Desai, 2003, p. 71. The marginal value limit (or limit value) is a mathematical term used in economic theory to describe the added result gained by an added effort. For instance, marginal costs are costs deriving from the unit last produced. Danish tax payers are familiar with the so-called marginal tax rate (i.e. the tax levied upon the last earned Krone). In this particular instance, marginal utility means the added utility gained by consumption of an added product unit – or in this case, a good.
7. See for instance Todd Sandler who, in the chapter "Assessing the Optimal Provision of Public Goods: In Search of the Holy Grail" seeks to identify the "Holy Grail," i.e. to pinpoint the optimum economic conditions for procuring public goods (Kaul et al. (eds.), 2003, pp. 131-151). Stig Rée has adduced that there is also an efficiency optimum for the consumption of public goods: "So it is necessary to find the correct balance between the private sector and the public sector in societal economy as well as in the global economy. Imperfections exist in the public as well as in the private economy, leading to either overproduction or underproduction. The problem lies in estimating the demand curve; with regard to public goods, this curve is calibrated by vertical addition for any given price, as opposed to horizontal addition. Although the willingness to pay differs, everybody consumes the same production volume; no one can be excluded from comsumption; therefore, most people will tactically abstain from giving a correct answer (the free-rider problem). Thus, the operational problem inherent in public goods is to devise methods that can replace or supplemet the price-setting mechanism; naturally, this problem is compounded at the global level where you find considerably more turbulence in the functions of supply and demand as well as production." (Personal communication, e-mail, April 15th, 2003).
8. Inge Kaul, et al.: "Introduction" [1999a] in: Inge Kaul et al. (eds.): *Global Public Goods. International Cooperation in the 21st Century*, UNDP, Oxford University Press, New York and Oxford, 1999; Inge Kaul et al.: "Defining Global Public Goods" [1999b] in: Kaul, et al. (eds.):, 1999, pp. 2-19; Inge Kaul and Ronald U. Mendoza: "Advancing the Concept of Public Goods," in: Kaul, et al. (eds.), 2003, pp. 78-111. We have taken the liberty of referring only to Kaul and not the co-authors in the text when citing shared

views in the two theoretical articles.

9. Kaul et al., 1999b, p. 2.
10. Kaul et al., 1999b, p. 2; Kaul and Mendoza, 2003, p. 80. Regarding "impure" goods, see below.
11. Desai, 2003, p. 72.
12. Kaul, et al., 1999b, p. 2. The example has been slightly altered to illustrate the rule.
13. Kaul and Mendoza, 2003, p. 82, figure 2. The logic of the figure has been simplified.
14. Desai, 2003, p. 65.
15. The Universal Declaration of Human Rights, Article 17: The International Convention on the Elimination of All Forms of Racial Discrimination, Article 5; and the European Human Rights Convention, Article 1 in the Additional Protocol (1952).
16. Kaul and Mendoza, 2003, p. 81.
17. Among the eight UN Millennium Goals adopted by the General Assembly in 2000 is the eradication of extreme poverty and hunger. See www.un.org (UN Millennium Development Goals).
18. The Universal Declaration of Human Rights, Article 3, (the right to life); Article 22 (social security); and Article 25 (the right to health).
19. www.unhchr.ch; United Nations Economic and Social Council: *The right to water*, E/C.12/2002/11, 20 January 2003 (General Comments).
20. The Danish daily *Politiken*, February 13th, 2003.
21. Kaul and Mendoza, 2003, p. 81
22. For instance, in Guatemala, the indigenous population has lived under extremely difficult conditions since it has been divested of, or forcibly removed from, land previously owned. Guatemala has the most unequal land distribution in Latin America. (See www.um.dk/danida/landestrategi/guatemala). This has led to the (re)seizure of land along with the demand that this land be given back to the indigenous population. (Ibis: "Bøndernes hårde kamp for jord," *Zig Zag*, nr. 93, October, 2002). What we are witnessing here are both a struggle against the concentration of land rights, the lack of access to rights held by customary law, and an expression of the extreme scarcity of land resources.
23. www.ms.dk/politik_presse/presse_arkiv/livsvigtig.htm. Press release from Danish NGOs at the WTO Ministers Conference in Seattle, December 1st, on *Vital medicine.*
24. WIPO was formally established in 1970 and was designated as a UN special organization in 1974. WIPO is in charge of the administration of 23 international treaties on intellectual property and has 179 member countries; also, 172 NGOs have observer status. The idea of protecting intellectual property legally goes back to the late 1893 when the precursor of WIPO, BIRPI, was founded. The first treaties to be internationally ratified were the Paris convention on the protection of commercial property (patents, brands, and designs) and the Bern convention on protection of literary and artistic works, adopted in 1883 and 1886, respectively (www.wipo.org). Also, see Carlos M. Correa: "Managing the provision of Knowledge: the Design of Intellectual Property Laws," in: Kaul et al. (eds.), 2003, pp. 410-429.
25. Kaul and Mendoza, 2003, pp. 82-83.
26. See for instance the land reports from Amnesty International, Human Rights Watch and

the US State Department.

27. www.whc.unesco.org
28. Countless protests ensued in 2001 when the Taliban demolished two giant Buddha statues in Aghanistan's Bamiyan valley.
29. Kaul et al., 1999b, p. 5.
30. Kaul et al., 1999b, pp. 5-6.
31. Mark Malloch Brown: "Foreword;" in: Kaul et al. (eds.), 2003, pp. xv-xvi.
32. UNDP: *Human Development Report 2002. Deepening democracy in a fragmented world*, UNDP, Oxford University Press, New York and Oxford, 2002.
33. Kaul et al., 1999b, pp. 6-8.
34. Quoted from the Danish Broadcasting Corporation's evening news, February 2003.
35. Thus, in response to criticism directed at the role of France during World War II, you could adduce that Germany declared war against the United States in December, 1941, making it understandable that American soldiers died in the fight against Hitler. Also, you might add that France was defeated by Hitler in 1940, leading to the death of many French soldiers. Furthermore, the United States chose an isolationalist policy during the inter-war years, leading to uncertainty as to whether or not the USA was going to enter the war at all, right up until Hitler's declaration of war at the end of 1941. The point here, however, is not to find "the truth," but to illsutrate the different views and accusations that are prevalent in discussing the issue of free-riding.
36. Desai, 2003, p. 65.
37. Kaul et al., 1999b, p. 7.
38. The prisoners' dilemma has been thoroughly analyzed in the theory of games and is used in a great variety of contexts; for instance, in international politics, where the realist school would claim that it illustrates a fundamental dilemma in interstaterelationships. See, e.g., Bertel Heurlin: *Verden 2000. Teorier og tendenser i international politik*, Gyldendal, Copenhagen 1996.
39. Kaul et al., 1999b, p. 7.
40. See for instance Ann McKinstry Micou and Birgit Lindsnæs (eds.): *The Role of Voluntary Organisations in Emerging Democracies*, The Danish Centre for Human Rights and Institute of International Education, Copenhagen, 1993.
41. Kaul and Mendoza, 2003, pp. 78-80.
42. Kaul and Mendoza, 2003, p. 78; Michael Edwards and Simon Zadek "Governing the Provision of Global Public Goods: The Role and Legitimacy of Nonstate Actors"; in: Kaul et al. (eds.), 2003, p. 205.
43. Transparency International (www.transparency.org); Peter Eigen and Christian Eigen-Zucchi: "Corruption and Global Public Goods;" in: Kaul et al. (eds.), 2003, pp. 576-597.
44. Kaul and Mendoza, 2003, p. 78.
45. Kaul and Mandoza, 2003, s. 79.
46. Desai, 2003, pp. 66-67.
47. Kaul et al., 1999b, p. 16.
48. African Development Bank et al.: *MDB Support for Global Public Goods Provision.*

Progress Report, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, International Bank for Reconstruction and Development, 2002.

49. Kaul and Mendoza, 2003, pp. 99-100.

50. Pedro Conceição: "Assessing the Provision Status of Global Public Goods;" in: Kaul et al. (eds.), 2003, pp. 152-179.

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Kaul, Inge et al.: "Defining Global Public Goods" [1999b] in Kaul et al. (eds.), 1999, pp. 2-19.

Kaul, Inge et al. (eds.): *Providing Global Public Goods. Managing Globalization,* UNDP, Oxford University Press, New York and Oxford, 2003.

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On human rights

Lone Lindholt and Birgit Lindsnæs

INTRODUCTION

Within the sphere of Western culture, the origins of human rights can be traced back to classical Antiquity – and their reach extends from the past all the way up to their present, international format as they have been formulated globally as well as regionally following World War II.

The fundamental starting point for human rights is the relationship between the individual and the state, between citizen and society, between individual interests and freedoms and collective needs. Thus human rights express a desire to achieve an ideal and compared to their precursor, the concept of natural law, they represent a social construction. Finding the proper balance between these two poles is a process which every society must go through, reflecting a country or nation's collective political, historical, cultural, and religious profile. While all such aspects must continually be taken into consideration, there still remains a framework for emphasis in this equiponderance – namely the international body of human rights instruments, declarations, and international practice established primarily during the latter part of the 20th century, which will be described below.

The definition of human rights, then, spans universalism and relativism,[1] which is not, however, in itself contradictory; rather, it contributes to rooting human rights in each specific society which will consequently feel an ownership and subsequent responsibility for their practical application. Therefore, an indicator showing the degree to which a given country respects human rights is not only the number of international conventions that a country has acceded to, but also how steps have been taken to ensure their national implementation by inscribing the principles in the nation's constitution and legislation. A final crucial factor is how institutions vested with authority and, if necessary, power,

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 53-70
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

i.e. armed forces, police, and public authorities of all kinds, actually further human rights by respecting the boundaries established for their treatment of citizens. In the final analysis, this is where we gauge the extent to which states have fully incorporated human rights. In this connection, human rights are not only defined positively with respect to the fulfilment of concrete needs, but also negatively as freedom from infringements.

The substance of human rights are the fundamental human life conditions. Their basic universality is apparent in the desire to live in security and be treated with a minimum of dignity and respect, to exert a certain influence upon your own situation and upon your immediate surroundings, to satisfy your basic needs for interpersonal contacts, clean water and adequate nutrition, a roof over your head, the possibility for personal education and development, plus the secure knowledge that there will be assistance from your surroundings if you are unable to make it on your own. These needs are seen as so fundamental that they should in principle be fulfilled for all human beings. In this respect they should be natural and self-evident, as opposed to the so-called "club goods"; for this to be true, they must be linked to the idea of fundamental solidarity. Since a *de facto* precondition for all rights is that they must concern the presence of some sort of resources, the problem arises that some will want more and give less, and that some resources may be scarce. Since human rights sometimes compete with each other, measuring the importance of the rights of certain persons against others in a given context can become a question of political choices rather than legal mechanisms.

The fundamental solidarity expressed in human rights especially stresses safeguarding the interests of the so-called vulnerable groups like women, ethnic minorities, migrant workers, traditional cultures, and, particularly in Europe, the unemployed; common to these groups is the fact that human rights violations often have a far more dire effect on them than on more fortunate groups.

These are needs that people in most societies will acknowledge; similarly, it is difficult to imagine that a society could be able to maintain a stable function over a longer period of time if all or most of these needs are not fulfilled for its members. Characteristically, almost every constitution and national legislation mentions these fundamentals to one degree or another, either specifically as individual (judiciable) rights or as a more general policy which must be prioritized by the states in question. In certain instances, human rights may even be stipulated in non-written form, partially through what is sometimes known as international customary law, partially through traditional customary law at the local level.

It is, however, difficult to presuppose an absolute universality when

these abstract needs are to be translated into specific rights that again have to be interpreted and defined. One example is the principle that life must be valued and protected, which is interpreted as each individual having the right to life, which again could be interpreted as either prohibiting abortion or the death penalty. In other words, in order for the rights to carry meaningful weight we often, to a greater or lesser extent, have to accept that there is no universal agreement as to the precise boundaries and how we should prioritize individual versus collective needs. The problem here is that we risk entering a slippery slope leading to relativization of human rights violations and even worse, politicizing the human rights issues, which throughout decades has unfortunately done human rights and the human beings invoking the supposed protection of human rights more harm than good.

A case in point is the rift between, on the one hand, civil and political rights and freedoms and, on the other, economic, social, and cultural rights which existed between the East and West during the cold war – contrary to the close interrelation between these rights spelled out by the Universal Declaration of Human Rights. A similar separation can now be seen in the dichotomy existing between North and South with developing countries insisting that food, housing, and medical care should be priority one, while for many years, donor countries insisted that freedom of choice is at least as important. Happily there is a growing international acceptance that the complexity of the human rights question can only be grasped when viewed in its entirety and that the different types of rights serve to consolidate each other rather than being competitive.

THE DUTY OF NATION STATES, THE RIGHT OF INDIVIDUALS

When working with human rights hands-on, a number of different players are crucial – this is true of the international institutions and organizations and the various regional fora; all generally play a positive role. When we turn to the so-called "big states," they can of course act constructively as well, especially in monitoring, dialogue, and development assistance and by assuming responsibility for "global leadership." Unfortunately, they may also contribute negatively, especially when they do not participate in furthering a positive development, or when they do not play by international rules. The non-governmental players, be they market forces or NGOs, can be important, although a major difference between human rights and global public goods lies in the fact that the former cannot be privatized.

Even though human rights standards have been established internationally it fundamentally remains the duty of the nation states, i.e. the individual governments and their organs, especially the civil services, police, armed forces and the courts, to ensure that the human rights outlined in any given convention are upheld and executed – an obligation following from the ratification.

The human rights conventions represent a normative system entailing that member states have a legal obligation to respect, protect, and observe human rights.[2] The obligation to respect implies that states cannot violate rights by, say, exposing citizens to torture. The obligation to protect means that states must prevent third parties from violating rights, e.g. paramilitary groups. The obligation to observe implies that states must enact legislation and ensure political and administrative initiatives, including national action plans, which together further implementation of the rights. This may range from establishing legislation and pertaining legal guarantees to ensure equal access to primary education for all children, access to clean drinking water, etc. On the other hand, failure to observe these rights may be rooted in lack of resources, especially in developing and transitional societies.

Furthermore, states also have a duty to promote human rights. Among other things, this duty means that states have to disseminate knowledge about human rights and make sure relevant information about government policies and state activities is accessible to all. This may be done through the states' own agencies as well as through civil society and is greatly facilitated by founding national human rights institutions.

Equal rights and non-discrimination are two of the most fundamental principles in international human rights legislation. Hence human rights stress the protection of individuals and groups that are particularly exposed, vulnerable, marginalized or socially ostracized. Therefore, resources must be allocated to change legislation and reform institutions that support discrimination, as well as to ensure that exposed and marginalized groups enjoy equal access to goods like health and a fair trial.

The universality, indivisibility, and mutual interdependence of human rights are three fundamental principles linking the different types of rights; including civil and political rights on the one hand and economic, social, and cultural rights on the other. The principle of universality and their mutual interdependence implies that no rights are more important than others and that it may prove difficult to guarantee some certain, specific rights without having cemented other rights. For instance, it may be difficult to safeguard participation in democratic decision-making processes if poor and exposed groups are not also guaranteed access to clean drinking water, food, health,

primary education, and information about administrative plans and political decisions made, or if they are denied the right to organize in labour unions.

Moreover, a number of fundamental principles underpin international human rights legislation. This means that citizens can insist on their rights and that states are obliged to fulfil them and to ensure that authorities can be held responsible for their actions. Therefore, the authorities' decision-making procedures must be open and accessible, public administration must be transparent, and authorities have to carry out their public offices effectively, especially when protecting rights and individuals.

One thing this means is that the individual citizen must have access to information regarding public decisions, budgets, the management of taxpayers' money, and about who represents them in select areas. Unfortunately, many countries have yet to make their administrations public or pass legislation in this area.

Likewise, authorities should ensure that citizens have the right to participate in public and democratic decision-making processes, including free and fair elections and hearings regarding the reform of legislation and public institutions. Here, too, authorities must ensure that weak and exposed groups are able to participate.

OBLIGATIONS REGARDING SOVEREIGNTY

States become signatories of the entire international set of norms constituting the core of international law when signing and ratifying each convention (see below). In doing so, the states accede to institutions and principles above the decision-making powers of single states and, in principle, above each state's legislation as well. Thus you could say that the absolute principle in international law concerning non-interference in a state's internal affairs has been softened with regard to human rights since individual nations – by ratifying international conventions – submit to international control of affairs previously considered internal, sovereign concerns. Human rights, therefore, become a global concern and, increasingly, a global good.

Through membership of the UN and the regional fora, a state assumes an obligation to protect the rights of each individual and the specially exposed groups within that state's borders. Furthermore, the UN recognizes the rights of certain groups transcending borders and regardless of their place of sojourn; for example, the right of refugees not to be deported back to the country where they were persecuted[3] and the rights of indigenous peoples. Hence each individual has achieved internationally acknowledged rights that

are monitored by the UN and – pursuant to amendments – rights that can be invoked before special UN bodies.

The strength of the international system of human rights and conventions lies in the fact that individual governments are bound by their accession to the international human rights conventions to which they must adhere in good faith. This means that states have been made mutually dependent upon common international monitoring above the politics of each country. It also means that a democratically elected government cannot violate international obligations entered into by the state in question without violating international law as well.

RESERVATIONS, SUSPENSION, AND ABSULUTE RIGHTS

Reservations generally fall into three categories, the first being purely technical, for instance allowing an individual country to amend or change existing legislation without delaying accession to the treaty as a whole. Here, states are generally very thorough when preparing their accession to conventions, ensuring that their provisos correspond to such legislation in the prospective nation that does not mesh with stipulations in the convention at the time of signing. Therefore, such reservations will often be withdrawn as soon as the legislation in question has been changed. One example: At the time when the European Human Rights Convention was being ratified, Danish legislation permitted the incarceration of vagrants solely on the grounds that they had no permanent address; this would be at odds with personal freedom of movement. In another category, closely related to the first, a country may wish to make reservations with regard to specific regulations in a convention if the express purpose is to secure an even higher degree of respect for the rights of individual citizens - for example by excluding cases regarding children and close family ties from the public trial requirement. Ordinarily, these two types will not give rise to criticism; other signatories to a convention will usually accept them.

There is, however, a third category not equally acceptable since, in practice, its function is to rescind significant elements of a state's obligations according to the convention. One example in particular is a number of Islamic countries' reservations in relation to the Convention on the Elimination of All Forms of Discrimination against Women. According to these provisos, all family issues questions shall be regulated according to common law or Islamic law. Similarly, reservations may stipulate that large parts of a convention

shall simply be subjected to national legislation; a *de facto* annulment of the protection that international regulation is supposed to provide. Obviously, this reduces the states' obligations and thus hampers implementation of the conventions and citizens' rights in general.

Even though human rights are indivisible and mutually interdependent, conventions like the UN International Covenant on Civil and Political Rights give countries the option to suspend these rights by derogation if a state of emergency threatening the nation's survival arises. This can only happen in cases of absolute necessity and if such a deviation does not entail discrimination. Any deviation from the convention must be reported to the Secretary General of the United Nations and the other signatories of the convention immediately. There are, however, a number of rights established by this convention that states can never derogate from, not even in a state of emergency. They are called absolute rights and states must respect, protect, and observe these at all times. This is true of the right not to be arbitrarily deprived of life; furthermore, the death sentence can only be imposed in accordance with the law in force at the time of the crime, not retroactively (article 6); the ban against torture and cruel, inhuman or degrading treatment or punishment (article 7); the provision that no one shall be subject to slavery or slave-trade in all their forms (article 8); that no one shall be imprisoned merely because of inability to fulfil a contractual obligation (article 11): that no one can be found guilty of a crime retroactively (article 15); that everybody has the right to be recognized as a legal subject (article 16); and that everyone has the right to freedom of thought, conscience and religion and to manifest their belief in practice and teaching (article 18).[4]

The corresponding article in the UN Covenant on Economic, Social and Political Rights is phrased in an entirely different way. Here, signatory states recognize that "the parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." (article 4).[5]

In other words, there can be no restrictions of economic, social, or cultural rights unless the purpose is to further the aims of this convention. On the other hand, if a country has declared a state of emergency, it can institute limitations in civil and political rights that are in direct opposition to the stated purpose of the Covenant on Civil and Political Rights.

As far as the three regional conventions (see the following section) are concerned, both the European and the American Human Rights Convention

contain similar provisions regarding derogation, although the exempt rights are not entirely the same in all conventions.[6] By contrast, the African Charter has no provisions for derogation.

In the following section, the international human rights systems will be described and analyzed with a view to highlighting inherent potentials as well as problems.

REGIONAL MECHANISMS – A PREREQUISITE FOR AN EFFECTIVE UN SYSTEM?

At present, legally binding, general human rights conventions with attendant bodies have been established for three geographical regions: Europe, America, and Africa.[7] These systems are a supplement to more general multilateral organizations in the different regions, such as the African Union (AU) and the European Union (EU), the latter encompassing the regulation of a vast number of areas that also affect human rights and regional public goods.

The oldest of these systems is the European Convention on Human Rights, established under the Council of Europe in 1952; this convention, now totalling 44 member states, has been acknowledged as the most effective of the regional systems primarily due to the very fact that all member states respect it as a binding, normative system. Originally the convention had both a Commission and a Court, the first with the possibility of filing direct complaints, but now, after the adoption of the 11th amendment in 1994, only a court remains. The rulings of this court are also respected as binding and scrupulously adhered to by member states. This widespread judicial practice has also created many precedents for the interpretation of a series of human rights principles, largely limited, however, to civil and political rights.

The American continent got its own first Declaration of Human Rights as early as 1945, established under the auspices of the OAS, and in 1978, the Convention on Human Rights became effective (at present, the OAS has 25 member states). Here, the two–tier system of both a commission and a court has been preserved; in recent years, the latter has begun establishing a significant practice. The convention itself deals with civil and political rights as well as economic, social, and cultural rights through an additional Protocol.

In 1981 the African countries making up the OAU (now the AU) established the African Charter on Human and Peoples' Rights which came into effect from 1986 and at present has been ratified by a total of 50 countries, making it the largest regional convention. This convention embraces civil, political, economic, social, cultural and collective rights, but is somewhat

macerated by the many implicit ways states can set aside its principles in favour of national legislation. Originally only a commission was established, but pursuant to an amendment in 1998 a court is now being established as well.

All these general instruments are supplemented with conventions on specific areas such as torture and women's and children's rights.

The primary role of these institutions in relation to the UN system is the opportunity for individuals to complain directly since they have traditionally served as a relatively open forum for complaints regarding human rights violations perpetrated by member states, while the strength of UN institutions has been general monitoring and reporting, etc. In recent years, however, this difference is gradually being evened out as the different bodies in the UN system are becoming more open to individual complaints (see above), while the growing number of member states is making the regional institutions focus on fewer, but more fundamental rulings.

The United Nations (UN)

The UN was established in 1945, right after the end of World War II. The purpose of the UN is to maintain international peace and security, as laid down in the UN Charter, as well as human rights. The Universal Declaration of Human Rights, the foundation for the UN's activities, was adopted by the General Assembly of the United Nations on December 10, 1948. At this point, the UN consisted of 58 states representing the five continents.[8] Today, the UN has 191 member states - in effect, most of the international community's nations – except nations like the Vatican City and Taiwan, both non-members.[9]

The UN is a forum for international cooperation and the only international body in which all the nations of the world discuss global politics and negotiate the norms and principles that form the foundation of international behaviour and cooperation. Therefore, the UN should also play a pivotal role in the discussion about how to prioritize and procure global public goods.

The fact that the UN is founded on the concept of international cooperation suggests both its potential and its limitations set by the political compromises entered into by the UN bodies, the General Assembly and the Security Council. But when reviewing the conventions and treaties that have been agreed upon during the relatively short life span of the UN one could argue that the UN has set its sights on many important goals and has reached relatively big results, establishing agreements between member states that are legally binding. On the other hand, the UN and especially the

individual member states have a long way to go when it comes to the actual implementation of these instruments.[10]

The UN works on the following levels:

- *Politically-internationally:* At the political/international level there are ongoing discussions between member states in a number of different fora, among these the supreme body of the UN, the General Assembly, as well as in different representative organs; most important among these are the Security Council and the Human Rights Council.[11]
- *International cooperation* through UN bodies and a number of specialized organizations.
- *Bilateral cooperation* through negotiations, agreements, and action plans that are to be carried out internationally.
- *Settling disputes.* This is to a great extent mediated by the Secretary General of the UN and the Security Council.
- *Documenting the extent to which member states observe human rights.* The UN's Human Rights Council, special monitoring mechanisms such as thematic and country reapporteurs, as well as systems of reporting and complaints under various treaty organs.
- *Legal proceedings.* To a very limited extent, the special courts under the UN have the possibility of initiating legal proceedings against war criminals.
- *Securing access to special goods or rights* (food, water, shelter) especially during crisis, war, conflict, and famine.

The UN is either weak or has limited influence in the following areas, all relating to the fundamental principles of the sovereign state and non-interference in internal affairs:

- *Implementation* – perhaps with the exception of questions regarding peace and security.
- *Punishing or pursuing reported human rights violations*. This is true in all areas, from the reporting and complaints systems to monitoring and legal action.

- *Legal action against states.* The international complaint bodies cannot take direct legal action against states.

A normative point of departure – the legislative function

The basis of the UN is that, under the General Assembly in New York, the member states collectively adopt a number of human rights instruments in the form of conventions and resolutions. It is then up to the Human Rights Council in Geneva to advance and monitor compliance. Furthermore, the Security Council can, in principle, make crucial decisions regarding peace and stability.

Since the UN was established, several hundred international human rights instruments, conventions, and declarations have been adopted. Among these, about 10 are regarded as central human rights conventions; because, among other things, they are the conventions primarily dealt with by the UN Human Rights Council and the High Commissariat for Human Rights, both located in Geneva, and because they have some sort of adherent supervisory agency.[12] Alongside the Universal Declaration of Human Rights, two convenants, the one on civil and political rights and the one on economic, social, and cultural rights both from 1966 are considered to be bulwarks. The two convenants have been ratified by 152 and 149 countries, respectively.

The Convention on the Rights of the Child has been ratified by most countries, 192 to be precise. Next is the Convention on the Elimination of All Forms of Discrimination against Women, ratified by 177 countries; the Convention on the Elimination of All Forms of Racial Discrimination; ratified by 169 countries; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by 136 countries; and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, so far ratified by 25 countries.[13] Add to this a number of protocols, like the abolition of the death penalty and access to complain about human rights violations to the UN complaint bodies for citizens of states that have ratified the Convenant on Civil and Political Rights and the Conventions against discrimination of women, against racial discrimination and against torture.

Mechanisms of sanction – the executive and judicial function

Despite its international mandate, the UN only has very limited powers to enforce the implementation of these conventions. Within the UN structure there

are no central authorities analogous to the executive branch of government, like ministries, police or a UN army. The only exception to this is the fact that the UN Security Council can decide to initiate military action in order to secure peace.

Also, setting up bodies with direct executive powers would violate a fundamental UN principle, inscribed in all treaties and conventions, namely that each individual state is always responsible for carrying out the provisions of a convention (regardless of whether or not the states are entitled to international or bilateral third party assistance).

As far as the judicial function is concerned - apart from the International Court of Justice in The Hague which only deals with cases between states – the UN established a number of courts in the 1990s, including ad hoc courts to deal with ex-Yugoslavia and Rwanda, respectively. Additionally, a permanent international criminal court was established by an international treaty in 1998 especially directed at violations committed by dictatorships, genocide, and serious war crimes where the guilty parties are typically outside the reach of a single country's jurisdiction. The Statute of the International Criminal Court entered into force in 2002 after 60 countries had ratified it.

The UN also has a number of complaint bodies rooted in amendments to treatises and conventions. The most far-reaching complaint bodies are the ones affording access to individual complaints in direct connection with the ratification of the convention itself, including the Committee on Torture (article 22 in the Convention Against Torture, CAT), the Committee on the Elimination of Racial Discrimination (article 14 in the Convention on the Elimination of Racial Discremination, CERD), and the two complaint bodies established by amendments, the Human Rights Committee under the Covenant on Civil and Political Rights and the most recent addition, the Committee under the Convention on the Elemination of All Forms of Discriminatioin of Women, CEDAW. Under the Covenant on Economic, Social and Political Rights, a number of member countries are working on an amendment making it possible to complain about violations of this convention. So far, an open work group has been formed with participation from countries wishing to join; this group will be charged with assessing the *possibilities* of drawing up an Protocol. Since states disagree on whether or not economic and social rights can be made judiciable (i.e. whether they can form the basis of resolving legal disputes), it will probably take several years before a proposal for an amendment (or several) can reach the meeting agenda of the Human Rights Council.[14]

On the other hand, a number of special bodies under the UN are charged with assisting states in implementing specific tasks or resolutions.[15] They focus

directly on problems dealt with normatively in treaties and conventions so that all important regulations in the different conventions should in principle be overseen by just one special body. Yet, since these bodies have developed in different directions at different speeds, there is no clear, systematic accordance between conventions and special bodies in this area.[16]

A number of special bodies focus on particular (vulnerable) groups and are therefore able to work on the basis of specific conventions, e.g. UNHCR (refugees), UNICEF (children), and UNIFEM (women). Others focus on topics (or public goods), such as WHO (health), UNDP (development), and WFP (food). However, there are no special bodies devoted to, say, abolishing discrimination or the rights of migrant workers and their families.[17]

Overall, the task of the High Commissariat for Human Rights, OHCHR, is to follow up resolutions of the Human Rights Commission and its subdivided organs, assisting the specially appointed land and thematic Country rapporteurs,[18] as well as doing follow-up on the 1993 implementation conference in Vienna. Here, the focus was on national implementation mechanisms, including the strengthening of national institutions working towards furthering and protecting human rights.

In addition to this, a few of the UN special bodies and programmes deal with areas that are as yet not adequately covered by international law.[19] This, for example, is true of the Educational, Scientific, and Cultural Organization, UNESCO, the World Bank and the International Monetary Fund (the so-called Bretton Woods institutions). Other examples are the International Trade Center, which is an executive body under the United Nations Conference on Trade and Development UNCTAD, and the World Trade Organization WTO, which expedites technical trade cooperation with developing countries. This area is not regulated by UN treaties, but belongs under the WTO-treaty, which stands outside the UN, but does number 145 member states.[20]

In relation to the discussion about global public goods it is interesting that the right to essentials like water is neither mentioned specifically as an independent right in the convention nor has its own special body.

Settling disputes

One of the most important purposes of the United Nation's is to ensure international peace and security; this is where the Security Council plays a very crucial role.[21] Usually, this is done by peaceful diplomatic efforts, but under exacerbated conditions this goal may also be pursued through economic or other sanctions against one or several countries. Likewise, the UN can deploy peace-keeping forces on the basis of a ceasefire or a peace agreement

between warring sides (e.g. Cyprus and Bosnia and Herzegovina). Add to this the fact that the UN Security Council has authority to launch smaller peace-keeping operations in cases where international peace and security is jeopardized and cannot be maintained through peaceful means (cf. the 1990-1991 Gulf War). A military peace-keeping operation also requires that none of the permanent Security Council members choose to veto such an effort. The UN treaty originally envisaged a permanent UN army at the Security Council's disposal, but since it has proven impossible to establish such an army in practice, military operations are initiated on a case-to-case basis using armed forces from select UN member countries.

Human rights and fighting poverty

Fulfilling the rights contained in the Covenant on Civil and Political Rights is fundamentally dependent on implementing the Covenant on Economic, Social and Cultural Rights and vice versa. Both kinds of rights are crucial to actuating a global strategy against poverty. The UN Convention on Economic, Social and Cultural Rights calls upon signatory states to take steps "individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." (Article 2).

Thus responsibility for fighting poverty has been made a universal obligation for UN member states. Although the individual states are still responsible for implementing human rights within their jurisdictions, other states and non-governmental players are also enjoined to contribute towards this goal. This means that the richest countries have a duty to contribute to the development of the poorest, and that these contributions must be rooted in the conventions passed by the UN.

To wit, most affluent countries do in fact contribute to developing countries through multilateral and bilateral aid. The UN target for contributions from rich to poor countries is 0.7 per cent of the GDP. Only five countries have as yet lived up to this goal.[22]

The ongoing path towards full implementation of economic, social, and cultural rights also means that all rights cannot be effectuated at once in the poorest countries; they must be achieved by progressively. As a consequence, it may be necessary to prioritize as to which rights should be implemented first, while a minimum level for all rights should be set; for example, civil and political rights should also be respected.

CONCLUSION – THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND GLOBAL PUBLIC GOODS

As is evident from the above, human rights and global public goods are closely interconnected. A number of the public goods discussed in the other chapters of this book are defined as actual rights/freedoms – for instance, freedom from discrimination and the right to work, health, information, and education. Others have inched their way towards the standard or are standing at the threshold since they are defined through interpretations of existing rights – e.g. access to land, property and water.

Other concepts discussed under the heading of global public goods are not wholly recognized as discrete rights in the same manner – this is true of concepts like good governance, peace and stability, trade, information technology, and even rule of law and freedom from corruption.

As already illustrated above, another difference between these two areas is that human rights on a global, regional, and national level is deeply rooted in institutions – through legislation, practice, qualitative considerations, etc. Here, global public goods stand as a relatively new concept as yet not specified in international sets of norms and therefore still open to development and definition as to their application.

With regard to their content they have in common that both are influenced by a considerable number of national and international players – and yet human rights are more focused on the relationship between state and individual where for example other states and private forces play a more significant part with regard to global public goods.

One final aspect the two areas have in common is that they only authorize "soft" kinds of sanctions and pressure since both are meant to reflect a respect for the fundamental sovereignty of states, although the degree of institutionalization does enter into it, for instance in the vast system of complaint and maintaining bodies that has evolved around human rights throughout the latest decades.

Although there is no absolute congruence between the two concepts we will probably see global public goods and human rights exerting an ever-increasing mutual influence upon each other. They cannot replace each other, and their different nature must be respected, but then the synergy between the two discourses can contribute to a greater level of achievement against the common goal of improving human living conditions, especially in those vast parts of the world where the majority of the population do not see their basic needs (rights or goods) fulfilled.

NOTES

1. See the *Vienna Declaration and Programme of Action*, UN, A/CONF.157/23, 12 July 1993, article 5.
2. OHCHR: *Draft guidelines. A human rights approach to poverty reduction strategies*. Office of the High Commissioner for Human Rights, UN, 10 September, 2002, pp. 2-3.
3. Cf. the principle of non-refoulement (Convention on the Status of Refugees, article 33).
4. The Covenant on Civil and Political Rights, article 4.
5. The Convenant on Economic, Social and Cultural Rights, article 4.
6. The European Human Rights Convention (article 15) mentions as exceptions life, torture, slavery, and retroactive punishment. The American Human Rights Convention (article 27) mentions the same exceptions, but adds the rights to be recognized as a legal subject, freedom of faith and conscience, the right to family life, to a name, to participation in the governing process and children's rights.
7. For the following, see Minnesota Human Rights Law Library, www1.umn.edu
8. See for instance Ditte Goldschmidt et al.: *Menneskerettigheder. En Grundbog*, Gyldendal Undervisning, Copenhagen, 1997, and Ditte Goldschmidt: *Frie og Lige. Menneskerettigheder*, Pædagogisk Psykologisk Forlag, Copenhagen, 1998.
9. http://www.un.org/Overview/unmember.html
10. See for instance the *Vienna Declaration and Programme of Action*, UN, 1993
11. Previously called the Humna Rights Commission (until 2006).
12. UN Commission on Human Rights: *A Time for Deep Reflection*, IOR 41/025/2002, p.3.
13. As per July 28, 2004: cf. http://untreaty.un.org/ENGLISH/bible/englishInternetbible/partI/chapterIV/chapterIV.asp
14. Despite the fact that an extensive amount of literature asserts that it is absolutely impossible to make these rights judiciable. See for example Asbjørn Eide et al. (eds.): *Economic, Social and Cultural Rights*, Kluwer, Dordrecht, 1995.
15. For the following, see www.un.org and www.un.dk, which contains links to a number of organizations, among these www.wfp.org; www.who.org; www.undp.org; www.intracen.org and www.unesco.org.
16. For instance, the UN Development Programme, UNDP, has, over time, become an important player regarding the implementation of human rights in developing and transitional societies, despite the fact that the right to development is only losely anchored in the conventions.
17. http://www.un.org/aboutun/chart.html
18. At the 2004 meeting of the Human Rights Commission, more than 20 special rapporteurs, independent expert organs, representatives of the Secretary General, and work groups testified to their work on a number of specific human rights themes. Add to this several country rapporteurs.
19. One example is UNFPA, which concerns itself with contraception – which – although

many, but certainly not all states are in support of this – is not regulated in the human rights codex or other international legislation.

20. www.wto.org

21. For the following, see http://www.un.dk/danish/new/peaceandsecurity/index.htm and http://www.un.org/Docs/sc/unsc_background.html

22. The five countries are Denmark, The Netherlands, Luxemburg, Norway, and Sweden.

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The global and the regional outlook

How can global public goods be advanced from a human rights perspective?

Birgit Lindsnæs

> "It is up to the state to protect citizens and society from the consequences of the soaring economic development.", (Joseph Stiglitz)[1]

INTRODUCTION

In international and multilateral forums there is a widespread consensus about the way procurement of global public goods should be prioritized and about which human rights standards and international sets of rules – also known as international law – should apply worldwide. Therefore it would be almost superfluous to discuss relative priorities of global public goods and human rights standards. Discussions should focus on how and with which means global public goods can be secured. From this point of view there are a number of difficult global challenges we need to face.

In the first place we need to discuss how to create sufficient political will and cohesiveness to establish constructive international and multilateral modes of cooperation in order to provide this broad spectrum of global public goods as they have been codified, for instance, in the UN Millennium Goals and how to do so in a manner that does not approach the issue as an "either-or," but as a "both-and."

In the second place it is relevant to look at the ways individual states synergize at the regional and international level, including whether or not global public goods can be procured at all without some sort of global governance. This question should be addressed in the light of the fact that, according to international law, states have the sovereign right to self-determination and that it is up to the states to protect citizens and society against the consequences of a soaring economy and against human rights violations, while individual states cannot alone counteract the negative effects of globalization or procure global public goods on their own.

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 71-112
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

In the third place, after September 11, 2001, merely maintaining human rights standards and preventing them from slowly petering out has become a challenge. At the same time, many states have acknowledged that a much greater need for focusing on implementing and protecting human rights now exists internationally as well as nationally.

Fourth, it remains difficult to secure continued support for the long haul - assisting developing countries and fledgling democracies in their efforts to build competencies in the general population and capacities in the institutions charged with implementing and enforcing the Millennium Goals and human rights.

Finally, it is imperative that we look at how we can create greater cohesiveness between domestic and foreign policy, including how we develop new international and civil modes of cooperation, as well as how we channel increased funding into national, regional and global implementation.[2]

If we do not constantly face these challenges, there is a risk that the world's strong nations and regions will erode and block global implementation to a degree hitherto unseen; as well as the risk that weaker states, even in the future, will still be unable to contribute to the global community. Furthermore, there is the risk that the overall course will become muddled and even beset with contradictions if strategies for actuating the Millennium Goals and global public goods are not ensured within a framework that clearly spells out the prevailing international set of rules.

This is already very much the case in the human rights conventions and in other pillars of international law; thus they should form the basis of discussions.[3] Otherwise there is a danger that a new set of values supervene, values not rooted in the human rights that states have agreed upon after much difficulty, and a concomitant danger that the framework for procurement of global public goods will come into conflict with human rights standards and international law. In that case, we run the risk of developing a discourse without a political and legislative platform for organizing and concerting the collective efforts; efforts which will then lose the impact and long-term perspective required to resolve questions as formidable as how we implement the Millennium Goals and global public goods.

DEFINITIONS, SIMILARITIES AND DIFFERENCES

The concepts of human rights and public goods are derived from the same philosophical tradition,[4] but during the course of the 20th century they have evolved in two different academic directions; the legal, human rights path

expressing a normative system and thus an attempt at creating consensus around a universal set of norms; and an economic theory capable of characterizing, analyzing, and calculating the nature, derived effects and interrelationship of public goods.

Global public goods and human rights both emphatically focus on the same social conditions and both express social constructs reflecting man-made aspirations. The key concepts originate in the conception that they are universal, indivisible and mutually interdependent, founded on the principle that goods as well as human rights must be accessible to all. Problems that transcend borders and boundaries need to be resolved and the solutions must benefit all countries, populations, and generations. Global public goods and human rights need to be ascertained through international and regional cooperation, but they primarily have to be effectuated nationally.[5]

There are, nevertheless, also significant differences between the two concepts. As Inge Kaul understands the theory of global public goods, it involves the idea of preventing "evils" as an economic persuasion. It is cheaper to prevent than to cure evils (like traffic injuries, pollution, infectious diseases, wars, genocide, and masses of refugees). World Bank president James Wolfensohn uses this argument when he points out that an estimated USD 900 billion is used worldwide for military purposes, while only USD 60 billion is spent for fighting disease. He also adduces that battling poverty can abet in the prevention of conflicts, and that the relationship between these expenses ought to be the opposite. "if, instead, USD 900 billion was spent on development, it would probably not be necessary to use more than USD 50 billion on defence."[6] Although this argument is economically based, it is reminiscent in its content of the goal to safeguard rights (the right to life, access to pure water, education, health, protection against human rights violations, prevention of genocide, and the right to asylum.)

The public good theory is an excellent analytic tool for analyzing how resources are best allocated to benefit most people, but it does not automatically safeguard the interests of each individual. Human rights, on the other hand, are legally binding. States assume the obligation to implement them; after ratifying the conventions they must protect and secure the rights of each individual. Contrariwise, according to the theory of public goods, states are under no obligation to provide these, but can elect to do so. The same goes for private players who also help procure these goods. Thus the theory of global public goods implies neither a national nor a worldwide guarantee that global goods are actually provided.

Furthermore, the theory of global public goods rests implicitly on a value-based way of thinking comparable to the legal basis of human rights.

The difference is that procuring global public goods is not a responsibility that can be placed on the states and that they are not necessarily conceived as subject to international sets of rules and complaints boards or tribunals.[7] On the other hand, the protection of human rights is ruled by principles that are not subservient to economic incentive. On the contrary, they dictate that states must protect each and every individual – regardless of cost, at least in principle.

The theory of public goods is primarily a strategic tool and herein lies its strength. It provides a unique opportunity for analyzing how public goods can be integrated in an operational economic and organizational context. The strength of human rights is complementary to this strategic, economic analysis as they express a legally binding set of rules meant to safeguard and protect individuals and exposed groups against transgressions as well as to ensure them access to a number of civil, political, economic, social, and cultural rights. Thus human rights can counteract as well as complement economic goals. On the other hand, economic preconditions play an important role in facilitating human rights, especially in the developing countries.

The latter fact poses an important argument in favour of a definition of global public goods that is not only based on economics. The question regarding the relationship between state duty and citizens' rights is crucial to the procurement of global public goods. Public goods, after all, are characterized precisely by the fact that they can only be produced in sufficient quantities through collective decisions, be they national or international, since it is completely unlikely that global public goods can be provided entirely through market mechanisms, volunteer and private organizations, or households.[8] States, in other words, should work to ensure and create the framework for global public goods and human rights.

FRAMEWORK OR CLASH

Human rights and international law can be viewed as global public goods *per se,*[9] embodied in legally binding agreements.[10] Although certain global public goods, such as traffic lights, regional air traffic regulation, and environmental protection cannot be seen as human rights, the procurement of these goods should still be normatively rooted in international law and human rights principles – irrespective of whether or not this may lead to unresolved problems. The alternative would be resorting to an ideological point of departure in the sense that it would be up to the different institutions responsible for their establishment to decide the direction and define the

principles - without basis in democratic decisions and consensus as to the values behind their effectuation.

By way of example, there are public goods which should ideally be rights, but which are not recognized as legally binding rights or which have an as yet undefined element of protection – in the sense of state protection of the individual. Here one could mention areas such as the individual right to citizenship, inoculations, and the availability of affordable drugs against infectious and terminal diseases such as HIV/AIDS. Exposed groups have a special need of protection against medical experiments, or they need medical treatment for HIV/AIDS – a treatment hitherto hampered by the ongoing, as yet unresolved discussions regarding intellectual property vs. the production of cheap, generic versions of patented drugs.

You can also point to global public goods that have no immediate bearing on the human rights discourse, such as the question of financial stability. Here it is relevant to discuss how financial instability should be dealt with from a human rights point of view. Financial instability, the consequences of government intervention, and the counselling of international financial institutions are precisely examples of factors that can contribute to human rights violations. This may occur when, say, as a corollary to a financial crisis, you see measures like user payment for elementary schooling, less funds for health care, or rising unemployment, raising the level of absolute poverty as well.[11] Presumably, financial instability would be handled quite differently from a human rights perspective than from an economic one. Solution scenarios also indicate that financial crises could possibly be resolved by states through international cooperation; say, by the introduction of a common or universal currency.[12]

Contraception and access to abortion are examples of controversial public goods that are not recognized as independent rights.[13] All the same, the United Nations Population Fund (UNFPA) does assist with programmes for reproductive health, family planning and sexual health as well as professional and technical aid to poor countries with a view to combating the reasons for and the consequences of population growth. It could be relevant, but also difficult, to establish and ensure women's rights to the control over their own bodies, contraception and abortion in a way that furthering these public good goals were combined with commensurate rights and obligations for states.

If the most important global public goods could be implemented as human rights and embodied in international law, their procurement could be made contingent upon active state participation and not just upon the normative values of individual states and private players; values which may conflict with human rights already established.

Global Public Goods (non-exhaustive)	Internationally binding agreements incl. human rights and international law *i*	UN and international organizations *ii*	Millennium Goals *iii*	Multilateral development banks	EU	Sweden
Peace, security, disarmament, fighting terror, crime, controlling weapons of mass destruction	The UN Charter; the Universal Declaration of Human Rights, 12 anti-terror conventions	UN, Security Council, UNIDIR, NATO, OSCE	**X**	**X**	**X**	**X**
Human rights, equal rights and protection of vulnerable groups	150 human rights conventions and protocols	UNHCR, the Council of Europe, EU, OSCE, AU, OAS	X		X	X
Democracy, good governance	CCPR articles 18,19,21,22,25; OSCE CPH; ACHR 13,15,16, 23; ACHPR 9,10,13	UNDP, OSCE, AU, OAS	X	X	X	X
Sustainable environment	Montreal and Kyoto; UNCCD; UNFCCC; etc.	IAEA, WMO, IPCC, UNEP, UNDP	X	X	X	X
Health, fighting HIV/AIDS and other widespread diseases	Universal Declaration 25; ESCR 7,11,12; CERD 5; CRC 23,24; CEDAW 12; EU SC 11; ACHR 16	WHO,UNICEF, UNFPA	X	X	X	X
Free trade	GATT – harmonization	WTO (not the UN); UNCTAD, UNCITRAL	X	X	X	
Financial stability		The World Bank, IMF	X	X	X	X
Telecommunication, transportation, sea and water conduits	Over 30 conventions, protocols, and agreements	ITU, ICAO, IMF, UPU, IMO	X	X	X	X
Intellectual property, technical standards	The Universal Declaration 27.2; CESCR 15,1,c; the Paris and Berne conventions	WIPO UNESCO		X	X	X
Water, food security	CESCR articles 11,12; ACHR article 12	WFP , FAO	X		X	X
Equal access to primary education	The Universal Declaration 26; CESCR 13; CERD 5,7; CRC 17; CEDAW 13; ACHR 26, ap 13; ACHPR 17; CADS	UNICEF, UNESCO, UNITAR, UNU	X	X	X	

Figure 1. 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 (X).

COMMON GLOBAL PRIORITIES

When carried from the national to the global level, the debate regarding public goods can move from contributing to theories regarding the evolvement of welfare states to contributing towards an international and global way of procuring global public goods as well as rights. The UNDP, the World Bank, the regional development banks, the EU, as well as bilateral donors, particularly Sweden and France, have contributed to this debate which focuses on prioritizing goals, economic analyses, organization, and novel modes of cooperation, financing, and implementation strategies,[14] while political and integrating elements are not quite as predominant.

Figure 1 illustrates the most commonly mentioned prioritizations for procuring global public goods. They are protected in human rights conventions and international law and are part and parcel of the mandates of the UN and other international organizations, the Millennium Goals, as well as the policy documents behind the multinational development banks, the EU and individual nations. Sweden has been included for comparative reasons, since the Swedish Government has been the first to formulate a cohesive policy attempting to integrate goals for global public goods with Swedish foreign and development assistance policy.

Notes to figure 1.

i) Covenant on Civil and Political Rights (CCPR); Covenant on Economic, Social and Cultural Rights (CESCR); Convention on the Elimination of all Forms of Racial Discrimination (CERD); Convention on the Rights of the Child (CRC); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention Against Discrimination in Education (CADS); American Convention on Human Rights (ACHR) and additional protocol on economic, social and cultural rights (ap); African Charter on Human and Peoples' Rights (ACHPR); European Convention on Human Rights (ECHR); OSCE Copenhagen document, 29 June 1990.

ii) www.un.org; www.wto.org; DUPI: *FN, verden og Danmark*, DUPI, 1999, pp. 316.

iii) A/Res/55/2, September 8, 2000; UN Secretary-General's Road Map: *Implementation of the UN Millennium Declaration*, A/56/327; Kaul, Inge et al., 2003, p. 44.

There is a high degree of concord between the columns in Figure 1, indicating that a great deal of (formal) international agreement prevails as to which global goods are desirable. The arguments run as follows:

- The Millennium Goals, adopted by 191 states, are almost identical to the global public goods. They are highlighted in the policy documents of international organizations and must therefore be regarded as a pivotal reference document for procurement of global public goods.

- There is agreement between the Millennium Goals, the goals for global public goods and the human rights goals. It is therefore more than reasonable to expect that internationally recognized human rights standards could work as a natural framework for reaching the Millennium Goals and producing global public goods. Where such an agreement does not exist, or wherever local public goods conflict with human rights, there may be reason to set certain minimum standards in regard to specific targets.[15]

- International special interest organizations, most of them under UN auspices, are attached to human rights goals as well as to producing the specific global public goods. This is true even despite the fact that some special interest organizations, like the World Bank, do not have a human rights perspective explicitly included in their mandate. However, since the 1993 Vienna Conference, which focused on implementing human rights, an increasing number of UN organizations have sought to engraft human rights into their work.[16]

- In their policy documents, all international organizations recognize that furthering public goods is a global as well as a national concern. Furthering these goals is not only a question of development assistance; on the contrary, it is a question of investing in global peace, security, and social stability.

- We lack an overall, holistic perspective; and there are only scant suggestions as to how we can build political and organizational structures to procure global public goods.

GLOBAL LEADERSHIP OR REGIMES

The year 2015 has been set as the deadline for reaching the Millennium Goals. However, it is difficult to see how these vastly ambitious goals can be reached

if national governments as well as regional and international organizations do not set the agenda and ensure that words are followed by action and implementation.

The UN General Assembly is the only worldwide forum representing virtually all nations on Earth in practically all areas covered by the Millennium Goals. The General Assembly can adopt resolutions, formulate new conventions, and delegate specific mandates. For instance, in 1993, the United Nations adopted the Vienna Declaration mandating – among other things – a post as High Commissioner for Human Rights.[17] The General Assembly also adopts numerous resolutions each year and member states are presumed to comply with these.

On the other hand, the General Assembly holds no executive power to enforce that governments actually comply with its resolutions or recommendations. Of all the UN bodies, the Security Council holds the greatest power since it is authorized to make decisions concerning the promotion of peace and security as well as military questions. Furthermore, pursuant to Chapter VII of the UN Charter and through a Security Council resolution, the Council may, under special circumstances, mandate that the UN interferes in a state's internal affairs.[18] For their part, member states are obliged to comply with Security Council resolutions, 1550 of which have been passed between 1946 and July, 2004. The UN itself does not have a standing army at its disposal, but the Council does have the mandate to delegate peace-keeping operations to regional organizations as well as to impose sanctions upon states in violation of international law. In recent years, peace-keeping military operations have been undertaken by NATO[19], by ECOWAS[20], and - not without controversy - by the United States.[21]

Also, following the events of September 11, 2001, the Security Council passed Resolution 1373, directing states to fight terrorism by criminalizing direct and indirect financial and other support of terrorist acts; furthermore, member states are enjoined to increase international exchange of operational information and to introduce tighter surveillance of borders and asylum seekers and urged to accede to the 12 anti-terror conventions and protocols, particularly the convention aimed against financing terrorism.[22] In addition to this, the Council established the Counter Terrorism Committee (CTC), consisting of the members of the Security Council and entrusted with monitoring the implementation of this resolution. Moreover, a subcommittee assists member countries in drafting legislation to prevent financing terrorism and trafficking in illegal arms, legislation concerning customs, immigration and educational issues, and the role of police and other enforcement agencies. The adoption of Resolution 1373 has meant significant tightening of national legislation

worldwide and is arguably one of the most effective decisions by the Security Council affecting UN member countries.[23] Furthermore, compliance is under diligent surveillance by the otherwise UN-sceptical United States.

There has been long-standing general criticism of the UN system, not least from the US, even though in recent years some UN bodies, notably the UNDP, have undergone major internal restructuring and decentralization with a view to furthering global public goods and good governance. The UN member states themselves have pointed out the need for sweeping reforms: In order for the UN to be able to bear the responsibility of global political leadership and play a central role in the future, it needs to ensure a greater coherence between the UN and its special bodies and agencies, the national parliaments and their own global organization (The Interparliamentary Union), the private sector, and organizations from civil society,[24] Among the criticism voiced is the fact that the Security Council only consists of 15 countries[25] and that its resolutions are sometimes inconsistent with treaties and resolutions already adopted; clearly this undermines the rule of law and sovereignty for the states themselves.[26]

Figure 2 is a representation of the mandates of UN agencies and bodies within the parameters of the traditional division of powers (legislative, executive, and judicial branches). The figure also displays whether the organizations in question provide public goods on a national or global level, or both. The purpose is to evaluate on which levels the UN operates and regulates international relations, as well as how the UN has the possibility of furthering its objectives through its own organizations.

You could argue that there is a legislative, democratic capability at the General Assembly level (one country, one vote) and that the Security Council functions is an executive branch. Moreover, a judicial branch has, to a certain extent, been established. Contrariwise, the UN does not possess any real political decision-making capabilities in the sense that the UN carries out a kind of global governance which stands for procuring the entire spectrum of global public goods in a cohesive and comprehensive perspective. This is fundamentally due to two factors: First, the UN organization is not set up to play such a role; second, neither the UN nor its subdivided bodies and agencies possess any actual executive powers, except the unique authority bestowed upon the Security Council.

On the other hand, the UN has in fact established a large array of mechanisms and organizations (28 in all are examined above, plus the WTO), each of which is charged with procuring global or national public goods as well as ensuring international regulation in a number of similar areas. All told, 10 UN organizations are responsible for furthering human rights, including the

protection of refugees, and 8 focus on international law. 2 UN organizations are courts of law, and 2 are mandated to protect exposed groups (refugees). Unfortunately, the individual UN organizations and their mandates are very poorly integrated. The UN has as yet to create a single organization capable of solving problems from a comprehensive point of view.[27] This may be because the UN lacks the mandate to ensure or enforce implementation and because the UN organizations are not integrated with regional and national institutions. Similarly, the UN lacks the mandate to levy taxes to finance the mandates of its subsidiary and special agencies and bodies.

Arguably, global questions are in fact not dealt with from any comprehensive point of view; rather, they are regulated according to a number of different, disparate and not immediately interconnected *regimes* represented through international organizations with quite specific and limited mandates. According to Stephen Krasner, a regime presupposes a set of rules as well as a high level of institutionalization and formalization; the definition being "a set of implicit or explicit norms, rules and decision-making procedures around which the players' expectations converge within a given area in international relations"[28] The definition is illustrated with an example: The GATT-agreements were originally conceived as a way of regulating international trade, later to be further developed through the formation of an international organization, WTO. The theory behind the General Agreement on Tariffs and Trade is that global welfare is best maximized through norms, including rights and obligations on the part of individual states; case in point: reducing tariff barriers to the greatest possible extent.

In addition to this, a set of rules is set up for settling disputes; e.g. whether special rules should obtain for certain countries, as well as procedures for decision-making and routines.

Together with WTO, each of the 28 UN organizations represent their own regime: norm setting through conventions and treaties (legislative); peace and security (executive); courts (judicial); along with trade, human rights, health, education, etc. Fundamentally, they correspond with global public goods and the Millennium Goals. Nevertheless, the mandates for these international organizations are designated according to their own inner logic and value frameworks - without there necessarily being a clear coherence and integration with other areas of policy and regimes. Thus it is by no means a given that the consequences of carrying out the goals pursued by one regime are evaluated within a comprehensive, global political context; nor will the organization representing the regime in question necessarily take measures to assuage possible damages occasioned by their own endeavours if this requires the involvement of other regimes.

UN Organizations i	Number of decision-making member states	Year of establishment	Mandate (regime)
The core UN:			
UN General Assembly	191 v	1945	Peace, security, human rights, international rule of law, social progress, tolerance
UN Security Council	15 vi	1945	Peace and security
ECOSOC	54 vii	1945	Economic and social development
Court of Justice (ICJ)	189 viii	1946	Disputes between states
International Criminal Court (ICC) ix	94	1998	Genocide and war crimes
Bodies and agencies under the UN:			
WFP	36 x	1963	Emergency aid, food relief
UNHCHR	194 xi	1993	Promoting human rights
UNCTAD	192	1964	Developing countries' participation in world trade
UNDP	166	1965	Financing and coordinating development, aid, and the environment
UNICEF	158	1946	Children's rights in local society
UNEP	58	1972	Sustainable environment
UNFPA	179	1967	Population growth, health, HIV and equal rights
UNHCR	66	1951	Protecting refugees and emergency aid
UNCHS	58	1978	Improving physical living conditions
UNDCP		1997	Fighting drugs
UNIFEM		1984	The political and economical plight of women in developing countries
UNRWA	194 xii	1950	Palestinian refugee programme
UN Special Agencies			
WHO	192	1948	Health
UNESCO	190	1945	Education, science, culture
FAO	49	1945	Agriculture, natural resources, food supplies
ILO	177	1919/ 1945 xiii	Workers' conditions, child labour
IFAD	163	1974	Poverty in rural areas
UNIDO	171	1966	Sustainable industrial development
Autonomous UN organizations			
UNIDIR	xiv	1980	Research, disarmament, and weapons control
UNRISD	xv	1963	Research on social development
IAEA	137	1957	Peaceful utilization of nuclear energy
WIPO xvi	180	1967	Intellectual property
The World Bank, IMF xvii	184		Financing
Other international organizations			
WTO xviii	147	1948/1996	International trade cooperation
Total: 29			

Figure 2. The UN and international organizations with global mandates.

Legislative	Human rights ii	Internationally binding agreements and international law	Executive	Peace-keeping forces	Sanction mechanisms iii	Protection iv	Court	Global public goods	National public goods
X	X	X						X	X
		X	X	X	X			X	X
	X							X	X
		X					X	X	X
		X					X	X	X
									X
	X							X	X
								X	X
									X
	X								X
		X						X	X
	X							X	X
	X					X		X	X
									X
		X						X	X
	X								X
	X					X		X	X
								X	X
	X							X	X
									X
	X								X
									X
									X
								X	X
								X	X
								X	X
		X						X	X
									X
		X						X	X
1	10	8	1	1	1	2	2	19	29

Notes to figure 2.

i) DUPI: *FN, verden og Danmark*, DUPI, 1999, pp. 316.

ii) UN organizations with stated human rights mandates, including the protection of refugees.

iii) Regarding non-military means of sanctioning, like economic, diplomatic, communications, and trade sanctions, cf. e.g. the UN Charter, Chapter VII, Article 41.

iv) International courts and organizations mandated to protect exposed groups (like refugees).

v) The UN website, www.un.org, April 2003. Switzerland became a member in 2002.

vi) The UN Charter, Chapter VII, Article 39.

vii) 54 members; the countries are elected by the General Assembly for a period of three years.

viii) 15 judges are appointed by the General Assembly and the Security Council for a three-year period. 63 states have accepted to have the court's jurisdiction imposed upon them. This is the only international court of law with a general jurisdiction in case of inter-state disputes. It has two functions: rulings on a) questions regarding territory and sovereignty; and b) disputes regarding more than 260 bilateral and multilateral conventions. The Security Council and the General Assembly may seek council from the court in legal questions. General Assembly: *Official Records*, A/56/4, 2001.

ix) Prior to this, by mandate from the UN Security Council, the two ad hoc war tribunals for the former Yugoslavia (1993) and Rwanda (1994) were established. Among countries that are not signatories of ICC is the USA.

x) Like UNRWA, the WFP is an inter-governmental body making political decisions.

xi) 191 UN member states and three non-member states, territories or units have acceded to one or more international human rights conventions.

xii) See note xviii.

xiii) The ILO became part of the United Nations from 1945.

xiv) An institute of training and research.

xv) An advisory agency consisting of academics, activists, ambassadors, and individual citizens from private organizations.

xvi) The World Intellectual Property Organization (WIPO) is based on: a) The Convention establishing WIPO; b) the Paris Convention on protection of industrial property rights (1883); c) the Berne Convention on protection of literary and artistic work (1886); as well as all other existing international agreements in this area. www.wipo.int.

xvii) The Bretton Woods Institutions, the World Bank, and the International Monetary Fund have formal status as UN special organizations, but function independently of the UN in practice. DUPI: *FN, verden og Danmark*, DUPI, 1999, pp. 316.

xviii) The WTO is based on an extensive treaty complex (GATT) which is not part of the UN. DUPI, 1999, pp. 316.

Thus it remains a pivotal question whether the Millennium Goals and global public goods can be sufficiently promoted through regimes and national governments in a globalized world without global governance – in a world where the majority of the world's states can hardly be characterized as open democracies practicing good governance.[29]

Developments display opposite tendencies: All in all, there are signs of positive developments in the new Europe, including the Balkans, in the former Soviet Union, in East and parts of Southern Asia; while parts of Latin America, large parts of Central Asia, the Middle East and especially Sub-Saharan Africa leave much to be desired.[30] Particularly since the fall of the Berlin Wall in 1989, the world has seen an increase in states opting for democratic rule (if limited),[31] adopting democratic constitutions, and ensuring that fewer rights are violated, especially political rights.[32] On a global level there is also a marked increase in children gaining access to primary education,[33] while the requisite rights and democratic guarantees that need substantial and long-term reforms are still lacking in most regions of the world.

Therefore it is relevant to discuss whether multilateral, regional forums and organizations – through pressuring national governments – can assist in furthering the Millennium Goals and global public goods.

THE EU A MODEL FOR INTERNATIONAL COOPERATION?

Seeing as it is no problem for the UN to specify which Millennium Goals – and thus which global public goods – the world needs, why, then, is it so difficult to reach these goals? The answers are not simple, but perhaps the EU could serve as a regional model for "good practice" – even when we take into account the EU's prevailing democratic deficit, its lack of transparency, and how challenging the populations of EU member states find it to submit to supranational rules and decisions. This, of course, is especially true when the member states' national parliaments are not sufficiently involved in policy and legislative processes.[34] And, finally, the EU is considered by some to be a club for the rich, often called "The Fortress of Europe."

In the spirit of Immanuel Kant,[35] you could argue that the prelude to the EU cooperation was war, whereupon followed post-conflict reconstruction. The establishment of the OECD (1948), the Council of Europe (1949) and then the European Coal and Steel Community (1952), and the EEC (1958), later to become the EU (1992), are all the result of a way of thinking reminiscent of the global public goods way of thinking. Crucial to this school of thought

is the idea that peace and security are best achieved through prevention and procurement of public goods on all levels and by pursuing a "progressive strategy," brick by brick, so to speak.[36] The USA reached a similar conclusion post-World War II, deciding that the US should extend considerable political and economic support to war-devastated Europe – notably, through the Marshall Plan.

The first steps taken towards creating a European safety zone were securing supranational control of the production of coal and steel. Then followed the establishment of an economic and monetary union through building and harmonizing a common inner market and the creation of a customs union. Concurrently, steps were taken to cultivate proper conditions for evolving the European welfare states. In the EU's own words the purpose was "by implementing (..) common policies or activities (…) to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non inflationary growth respecting the environment (… raising the standard of living and quality of life, (…) and solidarity among Member States.[37] The strategy, then and today, was and is a gradual procurement of regional and national public goods, all mentioned in the EU treaties: establishing peace and security, common foreign policy as well as common policies regarding trade, agriculture, fishery, the environment, security; harmonization of communication and transportation, cooperation in law enforcement and the courts, including harmonization of national legislation; creating financial stability, adopting a common currency, supporting higher education, furthering information technology and research, free access to employment in other member states, bettering employment in member states, and bettering public health and consumer protection. The list is long and could go on and on.

Likewise, the EU furthers development of the poorest regions in member states by providing them with considerable financial support.[38] Also, development is bolstered by supporting democracy and institutions in the new Europe as well as by assistance to developing countries.

The strength of the EU lies not only in economic integration and the fact that the EU contributes to the proper framework for procuring regional public goods. Its success can also be attributed to the fact that the overall EU visions are closely interwoven with the levels meant to ensure political, legal and institutional integration,[39] plus the added fact that they are united in a common overall set of values. On the political level, the EU is built on two fundamental principles – intergovernmental and supranational cooperation.

The EU has three bodies with a legislative function, namely the Council of Ministers, the Parliament, and the Commission. The central, and, at the

same time, the executive body is the Commission, laying out the political gridiron, visions, and values. In a number of key areas, the Commission has a monopoly on proposing new legislation. Besides having the responsibility for implementing EU policy and budgets and negotiations, it is up to the Commission to ensure that states comply with the EU's laws and regulations; say, trade agreement with third part countries. Since November 1, 2004, the Commission has consisted of 25 commissioners, each responsible for a department of policy. Although each commissioner is appointed by a member state, all are, in principle, independent. Thus the Commission is considered to be a supranational body. It has a well-educated machinery of officials numbering about 23,000 employees.[40]

The Council of Ministers represents the views of individual member states.[41] Depending on the agenda, foreign ministers or other specific ministers will take part in the meetings. The Council of Ministers and the European Parliament share the right to propose, change, and reject legislation. The Council of Ministers is an intergovernmental body, while the European Parliament is supranational. The European Parliament's 732 members are elected directly from each member state – for example, Germany has 99 members, Hungary has 24, Denmark has 14, and Malta has 5 members. Although the bigger states have been given more seats in Parliament, the smaller states have a proportionally bigger say compared to population sizes.

Along with the Commission, the European Council, consisting of all heads of state and government and the EU Presidency, constitute the executive branch of power. It is an intergovernmental body. The European Council has quarterly summit meetings. The Presidency chairs negotiations that deal with the most sensitive issues like, say, admitting new member states. For example, holding the rotating Presidency, Denmark chaired the negotiations that led to the admission of 10 new member states as of June 1, 2004.

The Presidency, the European Council, and the Council of Ministers are the most powerful bodies. They determine roadmap policies and make the fundamental political decisions. On a day-to-day basis, however, the Commission, along with the European Council, has the right of initiative, while the European Parliament is primarily in charge of surveilling, controlling, and rubber-stamping, so to speak. Yet the Parliament does have a crucial role to play in relation to the Commission, since it has to approve the choice of chairman and commissioners. Parliament can deliver a no-confidence vote, thereby dismissing the Commission. Furthermore, the Parliament has to approve the EU budgets, appoint the EU Ombudsman, and participates in preparing legislation.

The EU treaties constitute the primary legislation behind the Union

and must be signed by all member states. The most important ones are Paris (1952), Rome (1957), the Single European Act (1985), Maastricht (1992), Amsterdam (1997), and Nice (2000). Also, in June 2004, a treaty preparing a Constitution for Europe was approved – containing, inter alia, a chapter on rights.[42] The future of this Constitution is now uncertain following its rejection by France and the Netherlands.

The new EU member states have to adapt their national legislation to the so-called Copenhagen Criteria; a number of political, economic, and legal benchmarks. Most importantly, applicant countries must have stable institutions protecting democracy, rule of law, and minorities; as well as ensure that the countries are fit to enter a market economy. Moreover, they must adjust their national legislation to EU regulations – the so-called *EU Aquis*, encompassing about 26,000 acts, or approximately 80,000 pages.[43] Applicant countries must prove they have the capacity to carry out the required legislation before they are approved for full membership.

The ratification and implementation of the Council of Europe's human rights conventions are also an important precondition to being accepted into the European Union. One thing this means, for instance, is that the death penalty has rapidly been abolished in the new EU countries and that all countries have had to establish a complaint body for grievances against racial discrimination as of June 1, 2003.[44] Human rights violations in Turkey are an important reason that this country has difficulty measuring up to the EU's admission criteria. At the same time, these EU demands are the reason Turkey is striving to live up to the Copenhagen Criteria. Besides constitutional reform, reform packages dating from 2002 and subsequently contain stipulations abolishing the death penalty in times of peace, more freedom rights, legalisation permitting use of the Kurd language in radio and TV and education in that language, reducing the military's influence on civilian life, reform of the police and the courts, development of civil society, plus stipulations of special property rights for non-Muslim religious groups.[45]

The judicial power in the EU is called the European Court of Justice, located in Luxemburg. It has authority to decide cases pertaining to disputes between member states, EU institutions, companies, and individuals. This court has a major significance for the integration process, as its decisions are not only binding for all member states; they also take precedent over national judgments. As of the end of 2003, 974 cases were pending, while the first instance court had 999 pending cases.[46]

In addition to this, member states and individuals are entitled to have cases of human rights violations tried at the European Court of Human Rights in Strasbourg provided national recourses of complaint have been exhausted.

In 2003, the Court of Human Rights handed down 703 rulings, while 16,724 cases were rejected.[47] For new EU applicant countries it is a precondition that they have ratified the Council of Europe's human rights conventions. Thus membership of the Council of Europe is an indirect prerequisite for EU membership.

The underpinning principle of the EU remains that all implementation must spring from the lowest possible level (the principle of subsidiarity). Yet the strength of the EU also lies in the fact that regional institutions have been established on both the legislative, the executive, and the judicial levels and that several Pan-European institutions have come into being, like the European Central Bank and the European Atomic Energy Agency. On top of this, several more shared institutions are in the offing; institutions that could come to play a very crucial role – *viz.* especially the discussions about establishing a formal defence cooperation.

The EU is a finely interwoven system on two fundamental levels. Partly through supranational, legal and institutional integration, formulating simultaneous paths and visions for the EU and its member states and limiting the operational options for member states; partly through international cooperation that still leaves room for political negotiations and counterbalancing differences while looking after national interests.[48]

The EU has created a European community that contributes comprehensively to European peace and security. Beset with certain deficiencies, to be sure, but then, so are most or all parliamentary and institutional systems. Since 1945, no EU member states have gone to war against each other, and Germany has been successfully reunited without this leading to renewed, armed conflict. Furthermore, since World War II, the EU countries have become both more affluent and more stable in a wide array of areas.

From an international point of view, the EU has taken a strong position in trade and development assistance and, to a certain extent, in shaping policy as well. The EU's share of the global market amounts to about 20 per cent. In negotiations with the WTO, the EU stands as an important player – also when facing the United States' efforts to gain unlimited access to EU markets. In this regard, the EU has managed to speak with one, collective voice.[49] Also, the EU has entered into a trade agreement with 77 developing countries (the Cotonou agreement) – counting EU member states, this agreement comprises 102 countries.[50] A regional collaboration has been established in the politically feeble Balkans – the Stability Pact – with a view to paving the way for possible EU membership. On the other hand, the EU has lacked efficiency with regard to preventing wars and human rights violations in the Balkans

since the 1990's. Although the EU does have plans to mount a common force of 230,000 troops it remains uncertain how such a force would be able to carry out peace-keeping operations.[51]

If you compare the mandates of the UN organizations with the EU, both systems encompass the entire spectrum of global public goods, with one major exception: the EU integrates the political, economic and legal spheres at the multinational as well as the supranational levels, including applicant and partner nations. Also, these levels are interwoven with the EU and the EU countries' individual institutions. By contrast, the UN organizations work in regimes. Instead of working diagonally among the different kinds of levels and institutions, they operate inside each UN organization's regime. Thus the UN bodies aim their policies within each regime, each constituting a separate and independent pillar, whereby the individual regimes forfeit access to crucial knowledge, input, and challenging dialogue that might prove very important to decisions made by UN organizations. This way, the UN loses an opportunity to spearhead single, comprehensive policies as an example of global governance. One case in point is the Security Council's effort to fight terrorism. Although the Security Council does refer to human rights in its resolutions, these are wittingly not fully integrated in the practical follow-up work which instead focuses rather one-sidedly on decisions and monitoring instead of causes and contexts.[52]

OTHER REGIONAL, INTERNATIONAL ORGANIZATIONS

From the 1990's, multilateral institutional cooperation became an important factor in cooperation between states, also known as "the new regionalism."[53] This means that regional, yet international organizations have begun cooperating directly amongst each other, thus affecting interregional dynamics as well as the dynamics between the regions and the UN, the WTO, and other international regimes, and between regions and states. Even though the US, as the only remaining superpower, probably wields the greatest global influence regarding political and military questions, the EU still - thanks to a common policy and consensus - has been able to make itself forcibly heard. Other, new forms of cooperation have also appeared, such as processes of dialogue and consensus, and these have later been institutionalized into bona fide organizations for cooperation.

The Helsinki process - starting officially in 1975 as a diplomatic process and continuing to this day - has probably exerted a long-term influence

on discussions regarding democratic types of rule in the former Soviet Union and in the newly formed democracies, and - not least - influenced the shaping of security policies and their relationship to human rights. The final Helsinki document (1975) is a result of this process.[54] These dialogues began before Mikhail Gorbachev initiated *glasnost* and were later continued under the auspices of CSCE/OSCE. The OSCE (which replaced CSCE) is an intergovernmental, transatlantic organization of cooperation building on consensus. There are 55 participating countries, consisting of the USA, Canada, and the countries of Western Europe, including the EU (which systematically coordinates its positions to the subjects being discussed) and countries formerly belonging behind the Iron Curtain.

One indication that the Helsinki Final Document has had an effect is the agreement establishing the Commonwealth of Independent States, the association formed by most of the former republics of the USSR in 1991.[55] This agreement, originally entered into by Belarus, Russia, and Ukraine, refers both to the UN Covenant, the Helsinki Final Document, and other CSCE documents. Apart from proclaiming the end of the Soviet Union, the agreement states that the Commonwealth of Independent States will work for peace and security and that member states will adopt effective means of reducing armaments and military expenditures and strive towards becoming a nuclear-free area under strict international control.[56] Although this agreement also comprises a clause retaining a common responsibility, the mere inclusion of these concessions was quite surprising and would hardly have come about had it not been for the Helsinki Process.

Consensus documents such as the Copenhagen document from 1990[57] have formed the part of departure for countless meetings between the old and new democracies on how to introduce democracy and human rights. These meetings have without a doubt been a source of inspiration for officials as well as NGOs, especially in the early 1990's. Today, however, the usefulness of these meetings remains more doubtful. New states and democracies are facing specific, national problems of implementation and much seems to indicate that the OSCE has not quite been able to adapt to these challenges. Besides, 25 of the 55 OSCE member states are now EU members as well, and some of them NATO partners to boot;[58] more will probably follow in the years to come. The Helsinki process and the CSCE/OSCE have contributed towards reaching their own objectives, albeit in a way that cannot be measured quantitatively. In all likelihood, the OSCE will have to transform its organizational structure in the years ahead while new forms of cooperation - including ones backed by EU and NATO - seem to be taking over in key areas. At the same time, there can be no doubt that the OSCE still - particularly in military terms - can be

an important bridge between the former Soviet Union, Europe old and new, and the United States. For the remaining OSCE members, however, it remains an open question whether and how this regional mechanism can contribute towards putting cooperation and the procurement of public goods more firmly on the agenda.

It is probably more realistic to envisage the remaining members of the Commonwealth of Independent States beginning to create their own structures aimed at procuring regional public goods. The Commonwealth has already established a number of political, military, and economic structures through which such work could be done. This, for example, is true of the councils consisting of heads of state, foreign ministers and ministers of defence; the council for border control; an interparliamentary assembly; an executive committee; and an inter-state, economic committee.[59]

The EU also exerts considerable influence on international regimes such as human rights, trade, and environmental questions, as well as having created a tradition for establishing and institutionalizing bonds with regional organizations and groups. Also, the EU has contributed, either directly or indirectly, to the formation of regional, multi-state organizations. The dynamic evolvement of the trade organizations NAFTA (USA, Canada, and Mexico), ASEAN (South East Asia), APEC (Pacific Asia), and MERCOSUR (South America), and a number of smaller, regional organizations, is all attributed to influences from the EU, and later on North America as well as the new regionalism. A considerable factor influencing this development has been concerns in other regions of the world about the strength the EU has been displaying in the area of trade.

Although the regional, multilateral organizations focus primarily on trade and economy, they have proven useful for defusing crises. NAFTA was instrumental in weathering the storm during Mexicos's financial crisis in 1997 when that country received support from its Northern neighbours. APEC has developed into a forum that also discusses political and security issues; just as ASEAN also tackles questions of security, wage earner issues, and human rights.[60]

By the same token, and increasingly, the UN and the EU are used as models for establishing regional, multilateral organizations. The African Union (AU),[61] created from the OAU in the year 2002, is probably the most ambitious among regional organizations striving to integrate the different strata we know from the EU and the UN. The AU consists of three executive bodies operating on a supranational as well as an intergovernmental level:

1. a commission with a presidency, eight commissioners and several directorates furthering the procurement of numerous public goods (peace and security, including defence; advancing political, social, democratic, and human rights; enhancing infrastructure, energy, education, science, technology, economy, agriculture, women's rights, and research; as well as Afro-Arabic cooperation and legal services;

2. an assembly of Heads of State and Government, consisting also of Foreign Ministers and other cabinet members; and

3. the Security Council, consisting of 15 members and vested with decision-making authority.

In time, the AU parliament, consisting of members selected by the 55 member states' national parliaments, is to make up the legislative power. A human rights court is also being established; the first judges are expected to be appointed in the near future. Furthermore, there already exists an African Human Rights Commission, headquartered in Banjul, Gambia, and authorized to handle complaints.[62]

Most surprising is the mandate given to the AU Security Council, embracing a common defence policy and eventually supposed to be underpinned by five regional standby forces ("African Standby Force" – ASF). Additionally, the Assembly of Heads of State has been empowered with the right to order intervention in a member state in the event of war crimes, genocide or crimes against humanity. It is assumed that the AU Security Council will cooperate closely with the UN Security Council.[63]

Hitherto, however, the AU project remains in the planning stages and weaknesses do leap to the eye. The African Continent is poorly organized on all levels and is very difficult to unite, politically as well as logistically. There are 53 member countries, all with weak infrastructures and communications; only few have – newly established - democratic governments. Also, Africa is the least developed continent in the world measured against the Millennium Goals and the continent most beset with wars, refugee and famine disasters, AIDS/HIV, malaria, etc. Therefore, it is difficult to imagine how sufficient political and economic drive can be put behind the AU's intentions. On the other hand, if the AU can contribute towards providing peace and security it may pave the way for creating a regional security framework which in turn may provide the conditions for political and economic integration and procuring public goods.

It does factor into all this that there are at least seven sub-regional,

multi-state organizations on the African Continent all focusing on trade and integration. Danida has assessed that three of these are important cornerstones for constructing an African security structure.[64] ECOWAS (15 member countries), SADC (14 member countries), and IGAD (7 member countries); covering Western Africa, Southern Africa, and the Horn of Africa. Their three mandates are all primarily targeted at ensuring peace and stability, free trade, financial stability, and strengthening telecommunications and transportation. Also, ECOWAS and SADC have political decision-making powers, albeit diffuse and highly inefficient in the case of SADC because of internal disagreements among member countries.

ECOWAS, on the other hand, is an ambitious project, consisting, as does the AU, of a Council of Heads of State and Government, a Council of Ministers, and a Parliament. A Court is also being established in Abuja, Nigeria, mandated to treat cases of breaches of treaty as well as human rights violations. The ECOWAS court's mandate might even become more extensive than that of the African Court of Human Rights. ECOWAS has also appointed an economic and social council and a technical commission. A common market, individual freedom of movement, and a common passport are expected in 2005, while a union of tariffs is planned for 2008.

It should be mentioned that Western Africa already has a monetary zone comprising eight of the ECOWAS member counties.[65] One of these member countries, Nigeria, has refused to participate. Since Nigeria is the region's "major power" (with nearly twice the population of the other 14 countries combined) it remains far from sure whether the existing monetary zone will ever encompass all ECOWAS member countries.

ECOWAS has successfully mounted peace-keeping operations in Liberia and the Ivory Coast in close cooperation with the AU and the UN. None the less, human rights indicators, regarding both civil, political, economic, social, and cultural rights for Western Africa (as well as the Great Lakes Area) are more negative than for the rest of Sub-Saharan Africa, with the exception of a few, but isolated positive examples (Benin, Burkina Faso, Ghana - and Mali of late).[66] Perhaps for this very reason, the need to create peace might provoke the establishment of a relatively strong (for Africa) regional, multilateral organization.

It is not unlikely that, in the long run, one or more of the regional organizations will become the driving force behind increased stability on the African Continent and thus become important stepstones for procuring regional public goods and strengthening inter-regional cooperation on this vast continent.

In Central America, attempts have also been made to strengthen the

regional integration process, with support from the EU (and with bilateral support from Denmark). In 1991, these efforts were reinvigorated with the signing of the Tegucigalpa-protocol, an amendment to the Charter of the Organization of Central American States (ODECA) from 1951 outlining the framework for multilateral cooperation in the region. Its overall objectives are peace, development, freedom, and democracy, to be ensured through political, economic, social, cultural, and legal integration as well as cooperation in creating a tariff union, a clean environment and assurance of democracy. Although the EU has served as a model for the Central American Integration System (SICA),[67] this system remains far more centralized than the EU. The institutions of SICA are governed by a sort of international, presidential cooperation and do not integrate the horizontal level (international cooperation) with the vertical level (responsibility for societal development and thus for procuring public goods).[68] The supreme body is the presidential meetings. Apart from this, there is a Central American Parliament, a Council of Ministers and a Court, ensuring that multilateral agreements are honoured; an Advisory Committee; and a Secretariat. The crucial fact is that responsibility has not been delegated to one or more executive, supranational bodies armed with the capability of ensuring that policies are in fact carried out and furthering integration in the areas covered by SICA. By the same token, there has been systematic codification of the political resolutions and legal framework; for instance, there is no overview as to which countries have ratified which protocols, just as SICA is lacking in institutional efficiency, partly due to the fact that its institutions are not gathered in one place and because there are no mechanisms for ensuring uninterrupted financing of the organization's activities.[69]

From a total point of view, however, developments are positive. Peace seems firmly established in the region and trade among the countries has increased substantially. Numerous treaties have been adopted as well as a set of rules governing coexistence among member states (The Guatemala Protocol from 1993; the Treaty on Social Integration from 1995; and the Framework Treaty on Democratic Security from 1995), just as there have been a number of collective initiatives aimed at developing interregional agricultural, electricity and health programmes; preventing natural disasters and organized crime, etc. Also, much seems to indicate that a structural and constructive cooperation between the new generation of democratic presidents and fledgling democracies is under slow, progressive construction. This development appears to enjoy popular support, one poll finding that 66 per cent of the Central American populations feel that the region should be heard by the world as one entity.

P= Planned/under Establishment	NATO	EU / EU, Including Cotonou agreements *i*	The Council of Europe	OECD	OSCE	Commonwealth of Independent States (CIS/SNG)	Organization of American States (OAS) *ii*	North American Free Trade Association (NAFTA) *iii*	MERCOSUR / Rio Group *iv*	Inter-American Human Rights Commission	Inter-American Human Rights Court *v*	Arab Maghreb Union (AMU)	OPEC	Association of South East Asian Nations (ASEAN) *vi*	Asia-Pacific Economic Co-operation (APEC) *vii*	African Union (AU) *viii*	Economic Community of West African States (ECOWAS)	Southern African Development Community (SADC)	Inter-Governmental Authority on Development (IGAD)	African Commission on Human and Peoples Rights	African Human Rights Court	**Total**
Political decision-making competence		X	X			X	X		X					X	X	X	X	X				**10**
Democracy and good governance		X	X	X			X									X	X	X				**8**
Peace and security	X	X			X	X	X					X				X	X	X	X			**12**
Military/defence	X					X										P						**3**
Human rights		X	X		X *ix*	X	X			X	X					X	X	X		X		**12**
Common standards/ sets of rules		X	X *x*				X *xi*							X			X					**4**
Environment		X	X		X		X									X	X	X	X			**6**
Free trade		X		X		X	X	X	X			X	X	X	X	X	P	X	X			**19**
Financial stability		X		X		X								X			X	X	X			**7**
Telecommunications, transportation, ports, etc.		X				X	X							X			X	X	X			**7**
Technical standards		X																				**1**
Courts, Councils		X	X				X	X *xii*			X						P			P		**7**
Water and food supply		X																X	X			**3**
Health and infectious diseases		X	X													X		X				**4**
Education				X			X							X								**3**
Development assistance to third party countries		X																				**1**
Total: *xiii* **(max. points: 16)**	2	14	7	4	4	7	10	2	2	1	2	2	1	6	3	7	9	10	6	1	2	-

Figure 3: Regional international organizations arranged according to their mandates.

Notes to figure 3.

i) The EU has entered into agreements with 77 developing countries in Africa, the Caribbean, and the Pacific.

ii) The Organization of American States, including the USA and excluding Cuba.

iii) Besides NAFTA (Canada, Mexico, and the USA) there exists at least five organizations for economic cooperation in the region outside the USA: The Inter-American Development Bank (IADB), the Latin American Integration Association (LAIA), the Central American Common Market (CACM), the Caribbean Common Market (CARICOM), and the Andean Group. Fiona Butler: "Regionalism and Integration;" in: John Baylis and Steve Smith (eds.): *The Globalization of World Politics*, Oxford University Press, 1997, pp. 413.

iv) MERCOSUR comprises Brasil, Argentina, Paraguay, and Uruguay. The Rio Group is more losely organized, but covers both the Southern and Central parts of Latin America. Thomas Christiansen: "European and regional integration;" in: John Baylis and Steve Smith (eds.): *The Globalization of World Politics*, Oxford University Press, 2nd Edition, 2001, p. 515.

v) The USA has not subjected to the jurisdiction of the Inter-American Court of Human Rights.

vi) Members are: Burma, Brunei, Cambodia, the Philippines, Indonesia, Laos, Malaysia, Singapore, Thailand, and Vietnam.

vii) The ASEAN countries plus Australia, New Zealand, and the USA. Also, there are close ties to China, Hong Kong, Taiwan, Japan, India, Latin America, and Europe. Comprises a total of 34 countries.

viii) The AU replaced the OAU in 2002.

ix) Decisions are made based on consensus, but are not legally binding.

x) There are 196 European conventions. See: http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm.

xi) Standards in the areas of trade, development, education, technology, science, corruption, telecommunications, labour market, and tourism.

xii) Not a court, but an arbitration panel set when conflicts arise in individual cases. Christiansen, 2001, p. 513.

xiii) Each cubicle can only give one point.

Figure 3 presents an overview of important regional, multilateral organizations and their mandates in relation to global public goods and the Millennium Goals. Figure 3 also indicates that no other region in the world has developed regional, multi-state organizations that coordinate common sets of values as does the EU - human rights, visions, and goals - with the horizontal and vertical levels needed to ensure political, legal, and institutional integration united in a tangible framework for procuring public goods.

Most regional organizations by far are built on a weak institutional foundation without political or institutional integration and without a

supranational political and institutional lattice. Cooperation thus becomes essentially intergovernmental and relatively one-sided. Out of the multilateral, regional organizations under review, 19 primarily cooperate in free trade and economic integration; 12 collaborate on peace and security issues and integrating "soft" military values (OSCE); while 12 include or focus on human rights.[70] Three regional courts have been established, two of which have the Council of Europe and the EU countries under their jurisdiction, while the third covers the Americas (excluding the USA). Two courts are being established (the African Court of Human Rights and ECOWAS); two tribunals hold *ad hoc* sessions (NAFTA and OAS): Two regional, military defence alliances have been formed and one – with five sub-regional affiliates - is being planned under the AU. Ten regional organizations are vested with political decision-making powers to a lesser or greater extent; eight have furthering democracy and good governance in member countries as their express goal.

It is worth noticing that only one regional organization - the EU - has the task of procuring nearly the entire spectrum of regional and national public goods. In Figure 3 above, the EU scores 14 out of 16 possible points.
Today, most multilateral organizations operate at the regime level mentioned above; their focus being primarily on free trade and economic development. One may wonder why there is such relatively limited focus on the strata and means required for building lasting peace, security, protection of human rights, and welfare in the different regions of the world. Likewise, it is thought-provoking why, along with the efforts to create regional integration, greater attention has not been paid to procuring a wider array of public goods. This, however, may not be so surprising after all, since offensive initiatives do require significant political will, long-term political thinking, a relatively uniform pace of development among the countries involved, adequate financial resources for the proposed cooperation and initiative areas as well as a certain level of security and stability.

At the same time, developments starting in the 1990's indicate that the coming decades will bring a strengthening of regional, multilateral organizations and that these organizations will seek to solve their own problems regionally, rather than leaving it to the UN which, logically, should be guardian of the big picture, but will probably never be caretaker for global governance in a world consisting of about 200 nations and more than six billion inhabitants. If the regional, multilateral organizations can carry a larger share of the burden, can ward off just the major crises and wars lurking on the horizon, and protect people against the most harrowing violations, such an effort would in effect set free resources to procure a much more substantial amount of public goods.

THE REGIME APPROACH

There is a decisive difference between Inge Kaul's model for procuring global public goods and the regional, multilateral models. Kaul speaks of the expanding public space in which public goods are obtained through four equal providers: the state, civil society, the business community, and private households.[71] She does not expressly see states – or multilateral organizations – in the driver's seat developing and protecting the public space in which these goods are provided. Instead, the state is likened to the three other levels without being given a specific, central role. In Kaul's model, decisions that are public in nature are made by private citizens on an equal footing with public players. The consequence of this way of thinking is that private citizens could theoretically procure lots of global public goods with no involvement from the state. On the other hand, according to the same model, the state is under no obligation to ensure that specific goals are actually pursued.

Kaul envisages that this procurement can take place through a horizontal, bottom-up cooperation aimed at reinforcing "global public goods regimes" (without actually employing this concept). More goods can be provided through inter-institutional cooperation within the same regime; examples are peace and security, health, education, public authorities, civil society, the private sector and private households; and through cooperation between sector ministries from different countries and between players within the same sectors. The initiative behind such cooperation can come from various players, but need not come from states or international organizations.

This can be termed a liberalist approach since the right (but not the duty) of initiative is left to such players or regimes that find it in their interest to work together in cross-sector or cross-border networks. This can mean that players in, say, the educational sector cooperate within the networks that they know well: ministries or private school organizations or - depending on their interests or viewpoints - across these partners. This can without a doubt lead to outstanding results, but in areas like peace, security, and health it remains doubtful whether non-obligating forms of organizing such efforts can ensure the desired results. For instance, it would be unrealistic to imagine that peace and security can be safeguarded without the states taking the lead. Lessons learned throughout European history demonstrate that a significant improvement of general health was only possible when the states mounted goal-oriented national efforts, and that a general industrial development and growth in the nation states' economies did not in and of itself lead to improved health.[72]

Although Kaul's theory does contain exciting ideas for meeting the

extreme challenges inherent in reaching the Millennium Goals and providing adequate global public goods, the model seems less than entirely thought through. Kaul neglects to deal with several crucial questions: i) Who will be in the driver's seat at the decision-making level? ii) Who will be held accountable for expediting, protecting, and realizing the goals? iii) Is realizing these goals possible without coordinating policies and an integrated approach at both the horizontal and the vertical level? This means she avoids the really pivotal issues. All solid evaluations of development processes show that precisely political will and leadership, integrated development and local competence and capacity are all-important for effectuation.[73] The two latter criteria, however, also figure prominently in Kaul's theory. Furthermore, the EU peace project would seem to indicate that regional cooperation and integration of the horizontal and vertical levels are essential for securing regional public (club) goods.

Kaul's conceptual framework stands in opposition to the human rights framework where it is precisely the states that take on the responsibility of protecting and upholding human rights. This logic can be transferred to the discussion about how to reach the Millennium Goals and how to provide global public goods – all basically assured by the human rights conventions and by international law. Along similar lines, and along with Joseph Stiglitz, you could argue that it is the duty of the states to protect citizens and society against the consequences of rampant economic development and increasing inequality.

TOP-DOWN POLITICAL LEADERSHIP, INTEGRATION AND REGIMES

The regional, international organizations, on the other hand, are employing a top-down approach – in the case of the EU, an approach based on democratic choices made by democratic member states. Several organizations have established international parliaments and are seeking collaboration with organizations in civil society. There is, however, only one international parliament elected directly in the member states (the European Parliament) while members of parliament in the other international organizations are appointed by member state parliaments (AU, ECOWAS, SICA). Similarly, cooperation with organizations in civil society does not consist of international organizations conferring real influence on their partners; this cooperation is not formalized and is therefore more of an *ad hoc*, informative nature.

Much seems to indicate that the EU could serve as an enlightening

example of how future, regional, international forms of cooperation will look. The EU integrates the political level with economic cooperation, through treaties and resolutions, access to courts, procurement of regional public goods, and building welfare states by offering subsidies to lesser developed sub-regions. There is a clear division of responsibilities between overall political goals and their national implementation. Both the EU and the states are the fulcrum of political leadership and implementation. The EU - simultaneously - conducts an integrated policy with incorporated horizontal and vertical modes of cooperation. Kaul's theory is especially detailed when describing regime cooperation. The EU already practices this type of cooperation to the full, for instance in connection with the integration of the 10 new and the future EU member states, as well as with countries in the EU vicinity (e.g. with Turkey and with the Balkans through the Stability Pact).

Clearly, the key to success is political, economic, legal, and institutional integration; along with a focus on regimes. A few regimes, however, remain separated from the EU. This is true of the human rights area, since the Council of Europe and the apposite Court hold the competence in this field. In the military area, several of the EU countries are also members of NATO, along with the USA and Turkey. Yet the EU has still managed to integrate at least the human rights regime in the overall EU strategy, and human rights do in fact play a central role in the EU's admission criteria. On the other hand, the EU remains weak militarily where the USA holds the upper hand, as it does in the NATO cooperation.[74]

If the global public goods envisaged in the Millennium Goals are to be procured it will require a horizontal and vertical top-down approach as well as a bottom-up approach. As the only regional organization, the EU has managed to develop an approach focusing on regional public goods as specified by the Millennium Goals that cannot immediately and adequately be provided by non-governmental players. Regional collaboration integrating all the levels mentioned in the EU section may be a pipe dream in other regions of the world as this is written, but will presumably be a precondition for a systematic procurement of global public goods and human rights. The development of new modes of cooperation as laid out in Kaul's theory could be a substantial contribution to implementing these.

But without political will and without political leadership being offered by the states and the international organizations it is difficult to believe in a successful execution, especially in the least developed countries and in the non-democratic states since international organizations and the UN system alone cannot create the necessary foundations for meeting such formidable challenges.

The EU model could well serve as a model for a discussion as to how regional, international organizations could be strengthened in other parts of the world. It could serve as a platform for mustering regional, political leadership consisting of a number of regional, international cooperative organizations – and these may become integrated in the UN system. This, in turn, might boost the UN into becoming a more potent body, based on political, economic, and legal integration and on regimes. In the final analysis, regional, international organizations could gain seats in the UN Security Council, making this body more global.

Thus regional, international organizations might theoretically help move "global governance" out of Utopia and into the real world.

NOTES

1. Joseph Stiglitz (Nobel Prize Laureate in Economics, Professor at Columbia University): ”Opgør med markedsfundamentalismen [Rejecting market fundamentalism],” article in Danish daily *Politiken*, April 3 2004.
2. Questions regarding national development and funding will not be dealt with in this chapter.
3. See for instance Det Danske Center for Menneskerettigheder: *Menneskerettigheder*, Vols. I-II (1988), Vol. III (1997), Det Danske Center for Menneskerettigheder, Copenhagen.
4. See the article by Peter Wivel: ”The State and The Citizen: Natural law as a public good” pp. 3-28 in this book.
5. Ken Heather: *Modern Applied Economics. A Problem-oriented Approach to Economic Theory*, Harvester Wheatsheaf, New York, 1994, pp. 197-201; Inge Kaul et al. (eds.): *Providing Global Public Goods*, *Managing Globalization*, UNDP, Oxford University Press, Oxford/New York, 2003, p. 605; Inge Kaul et al. (eds.): *Global Public Goods, International Cooperation in the 21st Century*, UNDP, Oxford University Press, Oxford/New York, 1999; Morten Kjærum: “Menneskerettigheder i et udvidet Europa og en globaliseret verden” pp. 45-62 in: Morten Kjærum et al. (ed.): *Grundloven og Menneskerettigheder i dansk og europæisk perspektiv*, DJØF, Copenhagen, 1997; Ida E. Koch: “Legal Pluralism in the Human Rights Universe;” in: Kirsten Hastrup (ed.): *Human Rights and Common Grounds*, Kluwer Law International, London 2001.
6. James Wolfensohn, Danish daily *Politiken/Ritzau,* April 26, 2004.
7. Inge Kaul and Ronald U. Mendoza: “Advancing the concept of public goods” in: Inge Kaul et al., Oxford/New York, 2003, pp. 78; Statens Offentliga Utredningar: *En rättvisare värld utan fattigdom*, Statens Offentliga Utredningar, SOU 2001:96, Stockholm, 2001; Asian Development Bank: *MDB support for Global Public Goods Provision.* Progress Report, Asian Development Bank, IN. 78-02, Manila, April 18 2002; Udenrigsministeriet, Sydgruppen: *Global Public Goods – et overblik*, Udenrigsministeriet Sydgruppen, S.FIN,119.H.23, Copenhagen, October 16 2002.
8. Kaul and Mendoza, 2003, pp. 78.
9. Ibid, pp. 83.
10. Koch, 2001; Lars Adam Rehof and Tyge Trier: *Menneskeret*, DJØF, Copenhagen, 1990, p. 30.
11. Crises in Indonesia 1997 – 1998 and Argentina 2001 – 2002 resulted in a 20 per cent drop in GDP, with adherent negative social consequences. Barry Eichengreen: ”Kapitalmarkeder,” Danish daily *Politiken*, April 28, 2004.
12. Ibid.
13. CEDAW, however, to which 174 countries have acceded, does mention family planning as important in relation to women’s rights, see Articles 10h, 12.1and 14b of the Convention.
14. Kaul et al. (eds.), 2003, p. 605; Kaul et al. (eds.), 1999; Asian Development Bank, 2002; Udenrigsministeriet Sydgruppen, 2002; Swedish Ministry for Foreign Affairs: *Shared responsibility – Sweden’s policy for global development*, Government Bill 2002/03:122, Stockholm, May 2003; Statens Offentliga Utredningar, 2001, p. 110.

15. It could be especially relevant to examine rights in connection with the mandates of the WTO, the World Bank, and WIPO, since they are often viewed as controversial with regard to safeguarding human rights. The two new conventions on wage earners' rights and curbing corruption might be subjects for such analysis.
16. See for instance: UNDP: *Integrating Human Rights with Sustainable Human Development*, UNDP policy document, UNDP, 1998; World Bank: *Bridging the Gap beween Human Rights and Development*, World Bank, December 2001; OHCHR: *OHCHR Guidelines: A human rights approach to poverty reduction strategies*, OHCHR, September 10 2002.
17. Vienna Declaration and Programme of Action, A/CONF. 157/23, July 12 1993.
18. This happened in Somalia in 1992, in Haiti in 1994, and in Rwanda in 1994, while the USA did not win Security Council support for its invasion of Iraq in 2003. See the article on "International institutions for preserving peace and security" pp. 159-182 in this book.
19. For instance, in Bosnia and Herzegovina, Kosovo, and Afghanistan.
20. In Liberia and the Ivory Coast, in close cooperation with the African Union (AU) and the UN. Alpha Oumar Konoré (Chair): *Vision of the African Union and Missions of the African Union Commission*, draft version, March 2004 (adopted at the July 2004 Assembly), www.africa-union.org.
21. For instance in Iraq where the USA is an occupying force along with a number of other countries, among these the UK and Denmark.
22. S/RES/1373 (2001), September 28 2001.
23. Only a few countries have not ratified the 11 terror conventions. The Convention on Fighting Financing of Terrorism (1999) has been signed, but not ratified, by a number of countries. The USA has ratified all 12 conventions as has Denmark. Denmark has also adopted very wide-sweeping anti-terror legislation. See the chapter "International Instruments: Survey;" in: Peter J. van Krieken (ed.): *Terrorism and the International Legal Order,* T.M.C. Asser Press, The Hague, 2002, pp. 247; www.unodc.org/unodc/en/terrorism_conventions; www.untreaty.un.org; *personal communication: email from the US Embassy,* July 2004; *Status rapport*, Institut for Menneskerettigheder, 2002 and 2003.
24. Millennium Goals A/Res/55/2, September 8, 2000.
25. USA, China, Russia, France and the United Kingdom are permanent members with the right to veto. There are 10 rotating seats. Denmark has been a member since 2005.
26. Paul Taylor: "The UN and International Organizations" in: John Baylis and Steve Smith (eds.): *Globalization of World Politics*, Oxford University Press, Oxford/New York, 1997.
27. This viewpoint is embedded in the Millennium Goals when they speak of empowering the General Assembly to play a far more effective role and about creating cohesion between the various UN bodies and agencies, the Bretton Woods institutions, and the WTO. A/res/55/, p. 8.
28. This definition has been developed by Stephen Krasner (1983); see Richard Little: "International Regimes;" in: Baylis and Smith (eds.), 1997.
29. The concept of good governance was devised in connection with determining goals for development assistance. Hans-Otto Sano: "Good Governance, Accountability and

Human Rights;" in: Hans-Otto Sano and Gudmundur Alfredsson (eds.): *Human Rights and Good Governance. Building Bridges*, Martinus Nijhoff Publishers, The Hague, 2002.

30. From 1990 to 1999, the share of people living in extreme poverty in the developing countries has dropped from 29 per cent to 23 per cent (defined as a dollar-a-day threshold). This is tantamount to considerable progress, especially in Eastern Asia, while the number of under-nourished in Sub-Saharan Africa rose by about 27 million in the same period. UN/A/57/270, p. 8, July 31 2002.

31. The rise in the number of democracies is marked: 1950: 43; 1987: 66; 1989: 69; 1991: 91; 2002: 121; 2003: 117. Notice, however, that the number has dropped from 2002 to 2003. The rise in the number of "free" countries combined with the number of "partly free" countries (having weak protection of human rights and a high level of corruption) is also significant: 1973: 86; 1983: 109; 1993: 135 og 2003: 143. In the same period, the number of "non-free" countries was: 1973: 65; 1983: 58; 1993: 55 og 2003: 49. Freedom House: *Democracy´s Century, 2002*; *Freedom in the World 2004*. Selected data from Freedom House Annual Global Survey of Political Rights and Civil Liberties, Freedom House, 2004. www.freedomhouse.org. .

32. Hans-Otto Sano and Lone Lindholt: *Human Rights Indicators*, Danish Centre for Human Rights, Copenhagen, 2000.

33. UN/A/57/270, p. 9, July 31 2002.

34. The EU clearly goes too far when it dictates standards for the curvature of cucumbers, or whenever standards stand in stark contradiction to popular opinion; e.g. when allowing genetically modified maize to be imported.

35. Immanuel Kant: *The Eternal Peace.* See the previous article by Peter Wivel. Kant claims that peace is not a natural state of affairs, but has to be established. He envisaged, uniquely and ahead of his time, that peace should be founded on a confederacy of free states; a *league* of nations – not a "people's state."

36. Thomas Christiansen: "European and regional integration;" in: John Baylis and Steve Smith (eds.): *The Globalization of World Politics*, Oxford University Press, 2nd Edition, Oxford/New York, 2001.

37. *Treaty on Establishment of the European Union*, Article 2.

38. Ireland has moved towards becoming a welfare state, partly because of the EU regional development funds for developing infrastructure and human resources. This, however, has not been entirely unproblematic, in part because of its status as tax haven. Peadar Kirby: *Is the Irish State Developmental?*, CUF, Working Paper no. 100, 2001, p. 3 and p. 19; T.P. O'Connor: *Foreign Direct Investment and Indigenous Industry in Ireland*, Working Paper 22/01, ESRC University of Sussex, Brighton, 2001.

39. Integration in the sense of "creation of a whole out of separate elements." This concept is crucial to the EU project as such, however complex. Paolo Cecchini (author of the Cecchini Report "The Cost of non-Europe"): *Economic integration: content, effectiveness and policy*, SICA, in "Central America -what's next? The Integration Process in Central America and the role of the European Union", European Commission, Brussels, 2003.

40. *Folketingets EU oplysning*, July 14, 2004. By way of comparison, in 2003, all Danish municipalities had a total of 40,000 employees. (Kommunernes Landsforening: *Kommunestyret i Danmark*, Kommunernes Landsforening, Copenhagen, 2003, p. 24).

41. Lykke Friis: *Den europæiske byggeplads*, Centrum, Copenhagen, 2001, p. 28.

42. *The European Convent*. Proposal, conv/850/03, July 18 2003.
43. The EU *Aquis* is subdivided into 31 negotiating chapters. Udenrigsministeriet: *Danmark og Europa. Udvidelse, globalisering og folkelig forankring.* Hvidbog, Udenrigsministeriet, Copenhagen, June 2001, p. 50.
44. www.*humanrights.dk*/afdelinger/klagekomite.
45. For 2004 – 2006, the EU has allocated 1 billion Euros to Turkey towards fulfilling the political Copenhagen Criteria. *www.eu-oplysningen*.dk/fakta/omEU/baggrund/8.
46. http://*curia.eu*.int/en/instit/presentationfr/rapport/stat/st03tr.pdf.
47. Council of Europe: *Survey of Activities,* 2003. Information document issued by the Registrar of the European Court of Human Rights 2003. There were two cases against Denmark, leading to one conviction and one acquittal.
48. Christiansen, 2001, p. 500, boxes 23.6 and 23.7.
49. Ibid, p. 508.
50. However, much seems to indicate that these agreements are very much to the advantage of the EU as opposed to the developing countries. The Cotonou Agreement, Brussels, February 27, 2003. 6875/3. hhtp://ue.eu.int.
51. Christiansen, 2001, p. 509.
52. Peter Vedel Kessing: "Tortur, statsterrorisme og ikke-statslig terrorisme," *Nordisk Tidsskrift for Menneskerettigheder*, No. 1, 2004, pp. 112-119.
53. Christiansen, 2001, pp. 513.
54. Arie Bloed: "Monitoring the Human Dimension of the OSCE;" in: Gudmundur Alfredsson et al. (eds): *International Human Rights Monitoring Mechanisms*, Kluwer Law International, The Hague, 2001.
55. The Commonwealth of Independent States (CIS) comprises 12 former Soviet republics: Aserbadsjan, Armenia, Georgia, Belarus, Kazakhstan, Kirgistan, Moldova, Russia, Tadjikistan, Turkmenistan, Uzbekistan, and Ukraine.
56. The agreement was signed in Minsk on December 8, 1991, www.cis.minsk.by
57. Conference on Security and Co-operation in Europe: *Document of the Copenhagen meeting of the Conference on the human Dimension of the CSCE*, Adopted by the Conference on Security and Co-operation in Europe on 29 June, 1990.
58. Rianne M. Letschert and Harm J. Hazewinkel: *The fate of the OSCE Human Dimension Implementation Meeting*, pp. 39, Helsinki Monitor, Vol. 15, 2004.
59. www.cis.minsk.by
60. Christiansen, 2001, pp. 513.
61. www.africa-union.org.
62. www.achpr.org.
63. African Union: *Protocol relating to the establishment of the Peace and Security Council of the African Union*. Adopted by the 1st ordinary session of the Assembly of the African Union, Durban, July 9, 2002. The Protocol has been signed by 50 states and is open for ratification from June 12, 2003; Konoré, 2004.
64. Udenrigsministeriet: *Denmark's Africa Programme for Peace. 2004-2009*. Ministry of Foreign Affairs, Danida,Copenhagen, May 2004.

65. West African Monetary Zone. The monetary unit CFA was linked to the French Franc until France switched to the Euro.

66. Udenrigsministeriet: *A Brief Summary of the Human Rights Situation in African States*, based on Danish Institute for Human Rights: human rights indicators covering 2002-2004, Hans-Otto Sano, Danish Institute for Human Rights, Copenhagen, August 2004.

67. The Central American Integration System; the seven member countries are Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and Belize. The Dominican Republic has observer status.

68. Augusto Vela Mena: "Towards the Central American Community" in *Central America - what's next? The Integration Process in Central America and the role of the European Union*, European Commission Brussels, 2003.

69. Oscar Santamaría (Secretary General of SICA): The reform of the Institutional Framework: Lessons and Challenges, in "Central America Integration - what's next? The Integration Process in Central America and the role of the European Union", European Commission, Brussels, 2003.

70. As yet, the African Commission for Human and People's Rights is relatively weak. There has not been established any regional, multilateral human rights organizations in Asia, the Middle East, or the CIS-countries. .

71. Kaul and Mendoza, 2003, p. 79.

72. See the example from England in the 19th century in the article " Health is global - and a moving target" by Poul Birch Eriksen et al. pp. 371-392 in this book.

73. Nils Boesen and Ole Therkildsen: *Danida - Capacity Development Evaluation*, Ministry of Foreign Affairs, Copenhagen, October 2003; Institut for Menneskerettigheder: *Institut for Menneskerettigheders evalueringsrapporter,* (The ongoing series of evaluation reports from the Danish Institute for Human Rights). www.humanrights.dk.

74. During the course of the 1990s, Europe has spent USD 180 million annually for military purposes. By comparison, the United States has increased military spending from USD 280 million to USD 500 million annually. Robert Kagan: "Power and Weakness," *Policy Review*, June 2002, p. 9.

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2

PEACE AND SECURITY

Peace as a global public good

Bjørn Møller

CONCEPTUAL CLARIFICATION

The questions of whether or not peace and/or stability can be labelled as public goods, and what the implications may be of so doing, form the theme of the present article. I shall not elaborate on the general theory of public goods,[1] but merely point to a few terminological problems.

Public Goods and Evils

The term "public goods" refers to goods which are characterized by being available to all, i.e. to all members of a particular system such as a national or an international society. As nobody can be deprived of the right and the opportunity to benefit from the public good, there is no direct linkage between the availability of these benefits, i.e. the production of the public good, and the consumption of it. This gives all members an incentive to "cheat" in terms of production, i.e. for "free-riding"[2]— a well-known phenomenon; prevalent, for instance, in alliances. [3]

It may, however, make a difference whether the system in question is universal or merely forms part of a larger system. In the former case there is nothing beyond the closed system as such, whereas all subsystems are open and correspond to the rest of the system. The "public goods" enjoyed by the white minority in apartheid South Africa—including the privileges derived from skin colour enjoyed by all whites regardless of their attitude to the regime—were thus not genuine public goods, but rather "club goods" enjoyed by the "members" at the expense of the rest of society.[4] The same might even be said about many of the public goods of the developed world,

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 115-158
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

which some argue accrue from the exploitation of the Third World.[5] This does not necessarily imply that it never makes sense to speak of public goods at the level of a (regional or other) sub-system, but should merely serve as a caveat concerning the inherent limitations of the concept.

Confusion may also arise with regard to the second half of the concept, i.e. that of ”goods”. First of all, there is no universal unanimity about what counts as goods, e.g. whether freedom is a good or rather a license for amorality. Secondly, there is no unanimity about the appropriate ranking of any particular good, e.g. about whether to prioritize “honour” (in itself a controversial concept) over prosperity. Thirdly, “goods” cannot merely be defined in positive terms, but also negatively, i.e. as an absence of “bads” or evils—just as health may be defined as an absence of disease and peace as an absence of war (*vide infra*). Public goods may thus be tantamount to either the absence of “public evils” (e.g. war, genocide, pollution or climatic changes) or to a general absence of such “individual evils” as HIV-AIDS, to which the same rule applies, i.e. that an actor cannot escape them by his own devices.

As we shall see below, the concepts of peace, security and stability are just as ambiguous as that of public goods. Before proceeding to this, however, a brief account of the views about global public goods held by the various theories of international relations seems in order.

IR Theories on Public Goods

Within IR (International Relations) theory the various schools or “paradigms” have different views on the issue of public goods.

Liberalism (previously known as idealism) holds a generally optimistic view on the problem, thereby exposing itself to criticism (on the part of “realists”) for being utopian.[6] As the production of a public good (e.g. peace) will benefit all, it will also take place, either because decision-makers will be persuaded of the need to do so, or almost automatically, e.g. by means of Adam Smith’s “invisible hand”, working through the market mechanisms.[7]

> “Every individual ... generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it. By preferring the support of domestic to that of foreign industry he intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention.”

As a means to ensure the good will of decision-makers, some liberalists have envisioned a global democracy of sorts, basing themselves on the belief that

if only decisions are made democratically they will automatically reflect the real interests of the majority which will invariably be to maximize the public good.[8]

Realism has all along been considerably more pessimistic about the possibilities of thus maximising common interests, ever since Jean-Jacques Rousseau wrote his critique of Abbé de Saint-Pierre's blueprint for an eternal peace.[9] If one presupposes rational and utility-maximising actors, these will all be trapped in what is often called dilemmas, but might rather be labelled paradoxes. This is the case of Rousseau's famous "stag hunt"[10] and of Kenneth Waltz's "tyranny of small decisions",[11] producing what others have called the "tragedy of the commons",[12] just as it is the case of the classical "security dilemma" (*vide infra*).[13] If everybody traces private goods, the result may well be the production of public evils such as over-grazing or war, simply because the system and its rules make this inevitable.

The fact that the liberal and realist perspectives are logical opposites does not rule out combinations or syntheses uniting elements of both, as we have seen in the so-called "neo-neo debate".[14] This debate within "mainstream IR" between neorealists and liberalists (now labelled "neoliberal institutionalists") has mainly revolved around the saliency of absolute and relative gains of cooperation, e.g. over the production of public goods. Neoliberals have emphasized the importance of absolute gains as a sufficient propellant for cooperation, whereas neorealists have focused on the risks entailed by ignoring relative gains. Even when cooperation is mutually advantageous, it may tilt the balance of power between the parties cooperating if the relationship is more beneficial to one than the other.[15]

Neoliberalists have typically acknowledged that this may be the case (e.g. in relationships such as that between East and West during the Cold War) while maintaining that such relations are the exception rather than the rule.[16] Between the vast majority of the world's countries, war is simply inconceivable and the significance of relative gains thus negligible. This is not merely the case with so-called "security communities" (such as that of the Nordic Countries or perhaps the entire European Union),[17] where war has become inconceivable. It also applies to countries which have so little to do with each other that it strains the imagination to envision a war between them. Denmark and Uruguay may be a case in point.

Due to the fact that the difference between the neoliberal and neorealist positions is thus merely one of degrees and estimated probabilities rather than of absolutes, this debate may be approaching (or may already have produced) a synthesis. A similar and related synthesis between neorealists and neoliberals is found in the theories of "cooperation among adversaries",[18] which highlight

the fact that the vast majority of relations between states represent blends of shared and opposing interests. All opponents thus collaborate to a certain extent,[19] and opting for the right strategy may render such collaboration even more likely. There even seems to be a direct and positive correlation between the planning perspective and the feasibility of cooperation. The longer the "shadow of the future", the greater importance the two parties will attach to the continuous collaboration and by implication the absolute gains (including the public goods) which this may produce, in comparison to the relative gains which they might be able to "cash in" in the "last round". If the possibility of such a last round before the final battle is not assessed as high, a far-reaching cooperation may well turn out to be the rational choice.[20]

To the same category of theories might be added that of "common security",[21] which appeared in the 1980s. It was partly intended as an escape route from the so-called security dilemma by way of a defensive restructuring of the armed forces.[22] A state's security will normally (i.e. if pursued through an arms build-up) entail a reduction in the security of its respective opponents, who are therefore likely to respond with a countervailing arms build-up, thus landing both sides in a situation of lesser security than before—a clear "public evil". However, by devising strategies and force structures which maximize defensive while minimising offensive strength, it might be possible to achieve security without doing so at the other side's expense—and two opponents could thus simultaneously improve their national security.

Certain IR analysts, including realists such as Robert Gilpin,[23] have highlighted the fact that special rules seem to apply to the largest members of a system. For them there may actually be a direct correlation between consumption and production of public goods, simply because their share of total production is so large that it has noticeable implications for what is available for consumption. Hence, the very largest members not only have the leverage to punish free-riding, but also an obvious incentive to do so and achieve a fair distribution of the production. This has made various IR scholars point to hegemony (a concept of Greek origin, but usually associated with the political thinking of Antonio Gramsci)[24] as the solution to the public goods problem.[25] The preconditions for such a hegemony were to a certain extent present within the two opposing alliances during the Cold War, just as they were within the international monetary system as long as the US dollar remained the universal reserve currency.[26] The preconditions of hegemony may also be present on a regional or subregional level where one state often surpasses all the rest in terms of the relevant elements of power, as seems to be the case of South Africa in Southern Africa and of Nigeria in West Africa.[27]

Regime theories may be combined with such "hegemonic stability"

theories. They emphasize how the regulation of international relations is in the self-interest of all states, *inter alia* because they reduce transaction costs and other "negative externalities", thereby allowing for mutually advantageous cooperation and promoting the production of public goods.[28] Such regime theories are easily compatible with hegemony theories, simply because it seems a reasonable assumption that the "regime entrepreneurs" (also called "drivers") are typically great powers acting in their own interest, but thereby also promoting the common good, by adopting and enforcing the sets of norms and rules constituting the regime.[29]

The so-called "English School" has all along been located somewhere between liberalism and realism, but quite close to regime theory. Its unifying theme has been the notion of an "international society", i.e. the conception of the world as a society, constituted as such by a modicum of shared values and norms—even though this society remains anarchical, i.e. without any supranational authority comparable to the state in national societies.[30] While the "solidarists" within this school resemble liberalist with their emphasis on international law and justice, its "pluralists" are closer to the views of realists with their emphasis on the sovereign rights of states, i.e. "order".[31] The basic tenets of the English School are easily compatible with theories of public goods, if only because the "order" of the anarchical society described by Hedley Bull constitutes a public good.

ARE PEACE AND STABILITY PUBLIC GOODS?

Before proceeding with the analysis of whether or how peace and stability may be viewed as public goods, the concepts need to be defined, which is more controversial than one might assume.

The Norwegian peace researcher Johan Galtung distinguishes between "positive" and "negative peace"; the latter referring to a simple absence of "direct violence" (e.g. war), whereas the former is more comprehensive and diffuse. Positive peace may be defined as the absence, not merely of direct violence, but also "structural violence", defined in turn as a "relative deprivation" of values.[32] In the latter sense, peace is thus incompatible with, for instance, oppression, extreme inequality, etc. This does, however, make the concept almost all-encompassing, thus detracting from its analytical value. In the following I shall therefore focus on negative peace in the narrow sense of an absence of wars and other major conflicts.

From this analytical point of departure, it soon becomes obvious that peace thus understood does not imply stability in a wider sense. On the

contrary, the absence of open war may even presuppose a profound instability such as that represented by an almost even balance of power.[33] It is even possible to argue that peace is built on instability, as was indeed the official policy of the United States and NATO throughout the Cold War, where the philosophy was that it was exactly the unpredictability of the military balance which secured the peace. If the adversary, e.g. the USSR, could not know for sure the exact location of the nuclear threshold, any aggressive step would entail a risk of nuclear war, which in turn would deter aggression and thus ensure peace.[34] A higher nuclear threshold (e.g. as a consequence of a no-first-use strike strategy for the nukes) might, on the one hand, improve stability by making an inadvertent nuclear war less likely, but this might, on the other hand, actually endanger the peace.[35]

If peace is an unconditional good, stability is thus not necessarily a good to be pursued in all cases. Nor is it self-evident—the positive connotations of the concept notwithstanding—that stability is a good at all, as the concept signifies a preservation of a status quo which is not automatically beneficial to all parties. Stability may thus (just as negative peace) be opposed to the demand for justice, e.g. in the sense of "distributive justice",[36] which also entails a reduction of inequalities, at least with regard to options. As mentioned above, inequality was a central element in Galtung's concept of structural violence, which means that its elimination or reduction is a precondition of his "positive peace". On the other hand, its abolition may occasionally require the use of direct violence, i.e. a breach of the negative peace. The victims of structural violence may thus have the right to (or at least feel entitled to) resort to direct violence, i.e. to violate the negative peace in order to secure positive peace by removing structural violence.[37] We have seen this in a long chain of revolutions, beginning with the American and French revolutions in the 18th Century and continuing in modern wars of liberation—some of which have even seen a resort to means which some would label terrorism.

It is thus far from self-evident that negative peace in the narrow sense is necessarily a good, much less a public good. To thus deny that peace is an unconditional good may appear heretical as the concept has at least as positive connotations as "stability". On the other hand, only radically principled pacifists would deny that certain wars may be just and good, hence that certain types of peace may be bad. If the UK had not declared war on Germany in 1939, the Nazis might perhaps have undertaken the Holocaust with impunity as well as have conquered most of Europe, including Denmark—which would surely have been a most unappealing negative peace. It must also be acknowledged that a war is always, in a certain sense, caused by the defender who always has the option of simply surrendering without resistance, thus avoiding a war—as

Denmark did on April 9th, 1940. Most would agree that wars thus "started" by the defender are not automatically "evil".

Furthermore, peace is eminently dividable, and not even the so-called World Wars have included the entire world. In all known wars, there have been neutral parties, either as a consequence of a deliberate policy of neutralism,[38] or simply because the states in question happened to be outside the area of war and did not make the deliberate decision to nevertheless become involved.

Finally, there may be a rather direct link between production and consumption of security and peace. Indeed, this is the reason why most states field a defence force and/or join alliances, i.e. in order to deter attacks from other states. Alliance membership automatically entails a certain contribution to the production of the common good, as the very membership is tantamount to choosing sides, thereby running the risk of becoming involved in a war of which a state might otherwise stay aloof.[39] On top of that normally comes, for obvious reasons, some pressure from the other alliance members to make a military contribution to the joint defence or deterrence.

WAR AS A PUBLIC EVIL

All the above qualifications notwithstanding, there can be no disputing that wars are generally phenomena deserving the label "public evils" in the sense of evils afflicting everyone, either directly or indirectly—in the latter case either because of the side-effects of an actual war or because of the preparations for a possible war.[40] However, wars do differ in this respect as well.

Types of War

In the following we shall proceed from a (perhaps excessively) simple categorization of wars into pre-modern, modern, nuclear and "wars of the third kind"—a classification which builds on history, but nevertheless is not strictly historical, as pre-modern wars may also occur in this day and age.

Pre-modern Wars

Medieval and even earlier wars were typically waged by a wide range of actors, including the monarchy, the church, feudal lords, etc.—in most cases mainly by means of professionals, i.e. mercenaries.[41]

For this reason, as well as because of the scarcity of means to rent and/or arm and equip armies (*inter alia* because of inadequate capacity to

tax the population), wars were usually rather limited, the opposing armies manoeuvering rather than fighting and often doing so in order to avoid encountering the adversary rather than to force him into battle. When actual fighting nevertheless took place, it was almost exclusively directed against the soldiers of the respective opponent. Of course there were civilian victims and suffering in such wars, e.g. in the form of looting and sporadic violence, including rape perpetrated by the soldiers but these effects were rather limited and far from indivisible as they could be escaped from. However, in parallel with the growth of populations it became more difficult to flee (at least permanently) which gave the effects of war a public evil character. As argued by Jeffrey Herbst, however, this trend was largely confined to Europe, whereas escape remained an option in most of Africa because of its low population density.[42]

On top of these direct consequences came side-effects such as an easier spread of infectious diseases by marauding armies, and often a reduction in the harvest yields and a heavier taxation for the financing of the war—but even these consequences tended to be rather moderate.

Modern Wars

Certain changes took place in this system during the Renaissance as a result of the "military revolution" of the 16th and 17th centuries, *inter alia* related to a strengthening of the state. This entailed an improved taxation capacity which allowed for larger and standing armies, a growing arms production, etc.[43] Even though this made wars more of a burden on the civilian population (creating a larger public evil), the real transition to modern wars only occurred with the combination of the French and the Industrial Revolutions by the end of the 18th Century.

The Industrial Revolution made it possible to equip mass armies and the French Revolution allowed for mobilising such armies through universal conscription ("*levée en masse*"). Conscription might be seen as representing the norm (which gradually spread to the rest of Europe) that the state should represent the people (the principle of people's sovereignty), whose duty it therefore was to contribute to the defence of the state.[44] National defence was thus defined as a public good, as were, to a certain extent, even wars of aggression, which were also supposed to serve the interests of the state and, *ipso facto*, of the people as well. When war, as formulated by Clausewitz, was conceived of as a "continuation of politics by other means",[45] and when politics was to be determined by (or at least on behalf of) the people, then the spoils of war were to be seen as public goods for the society in question—

which did not, of course, rule out abuse on the part of incumbent governments who merely had to claim that their political goals served the common good.

The costs of war, on the other hand, became a public evil, both because of the civic duty to serve in the military and the more effective taxation, not least intended to finance wars. Another public evil appeared as a consequence of the emergence of mass armies, which not only made wars more destructive, but also made it harder to escape from them. The culmination of modern wars were the two *World Wars* of the 20th Century, both of which represented unprecedented public evils. Whereas the casualties in the first were mainly military (but usually conscripted citizens), in the second they were mostly civilian—partly as a result of the massive aerial bombardment of major cities, intended to defeat the respective opponent by indirect means, i.e. by inflicting harm on his civilian society.[46]

Nuclear War and Deterrence

The culmination of these aerial bombardements of civilian targets were, of course, the two nuclear bombs used by the USA against the Japanese cities of Hiroshima and Nagasaki in August 1945,[47] which heralded a new era. As most were soon to realise, nuclear weapons and war could henceforth (as formulated by Bernard Brodie)[48] only serve to prevent war, since the gap between means and ends had become too unbridgeable for war to remain rational in the sense of something that could be waged with gain.

Nuclear war thus came to be seen as an obvious public evil, and increasingly so the more that became known about the indirect and long-term side-effects of nuclear weapons, such as long-term radioactive contamination.[49] In the 1980s, research findings were published according to which even a medium-sized nuclear war (i.e. one in which neither side used its entire arsenal) might effect climatic changes (the so-called "nuclear winter"),[50] which would make the Earth largely uninhabitable by humans and other vertebrate species. To this unquestionable public "super-evil" were added other side-effects such as radioactive contamination as a result of atmospheric nuclear tests (until the entry into force of the Limited Test Ban Treaty of 1963) as well as, of course, the economic costs of the nuclear arms race. [51]

It may, nevertheless, be disputed that nuclear deterrence as such was a public evil. No nuclear weapons were ever used, and the upkeep of the nuclear arsenals may still have been cheaper than it would have been to deter the respective opponent by means of conventional forces. An argument can also be made to the effect that nuclear deterrence was the main reason for "the long peace" experienced by Europe,[52] which was undoubtedly a collective good of

sorts as it did not merely include the members of the two alliances, but also neutral states. It would, however, be a logical fallacy to deduce from the fact that deterrence did not fail to its having been required in the first place. As pointed out by John Mueller and others, many alternative explanations of the long peace recommend themselves.[53]

On the other hand, it is impossible to disprove that nuclear weapons were a major cause of the long peace. It seems plausible (albeit impossible to prove) that nuclear weapons have had a general deterrent effect, i.e. that one side's nuclear weapons have not merely deterred the respective other from a nuclear attack, but that the "existential deterrence" (a term coined by McGeorge Bundy) worked at all levels.[54] Precisely because the arsenals and their deployment were designed to safeguard the ability to retaliate under all circumstances, they entailed a certain risk of being triggered by mistake—e.g. as a result of a misinterpretation of warning indicators, because of a technical error, or via a "Dr. Strangelove scenario", starting with a human error and then producing a crisis spinning out of control.[55] However, exactly these risks and their potentially apocalyptical consequences gave both sides to the confrontation a very strong incentive to tread very gently in their interaction with the other.[56]

It is thus worth noting that (as far as is known) not a single shot was ever fired between the two superpowers during the entire Cold War, and very few between their respective allies. Wars were, however, fought by the two blocs "by proxy" in the 3rd World. Here, each side typically supported its side in wars, be they between states or between rebel movements and states aligned with the respective opponent.[57] These proxy wars were undoubtedly public evils for the civilian population in the countries where they were fought, but they still do not quite satisfy the criteria of global public evils, as they were presumably beneficial for the "backers", who were also able to escape the consequences.

"Wars of the 3rd Kind"

After the end of the Cold War (1989/91), other forms of war have attracted attention; they have been labelled "new wars" (Mary Kaldor), "uncivil wars" (Donald Snow) or "wars of the third kind" (Kalevi Holsti).[58]

They are wars like those we have witnessed in the Balkans (e.g. in Bosnia and Kosovo)[59] as well as in Africa (e.g. in Liberia, Sierra Leone and the so-called Democratic Republic of Congo, DRC),[60] but which resemble previous wars such as those in Lebanon or Afghanistan following the Soviet withdrawal.[61] These wars have typically involved actors other than those

appearing in the modern wars mentioned above—both a larger number so that they could not be understood as bipolar, and other actors than states. Many have even been fought in the absence of organized non-state actors such as guerilla movements and have presented a complex picture of government forces and militias (including child soldiers), warlords, bandits, etc.

Moreover, these actors rarely have clearly defined political goals, meaning that the wars cannot be understood as a "continuation of politics by other means". Either war has been fought over control of resources such as minerals or timber—or war itself has become a form of life; a trade and a business for those involved, who have therefore not really fought for anything, but rather continued the war for its own sake and for the sake of the ideal conditions which the state of war had created for all sorts of murky, but profitable, business ventures.[62]

Such wars almost exclusively harm the civilian population who are, moreover, not "merely" collateral casualties, but often the direct target of warfare. Sometimes the purpose is simply to expel the civilian population in order to gain unhindered control over a piece of territory. In certain ethnically and/or religiously motivated wars, they are even waged against the civilian population as the embodiment of values which are deemed by the aggressors as incompatible with their own, or against the antithetical ethnic identity itself. War may thus assume the form of veritable genocide as in Rwanda[63] and/or it may feature forms of "combat" such as organized rape, intended to "contaminate" the nation being fought, as it happened extensively in Bosnia.[64]

All too often, alas, all of the above motives are combined. Such "wars of the third kind" are indisputable evils, often of massive proportions, such as the war in the Democratic Republic of Congo with an estimated casualty toll of more than three million, almost exclusively civilians.[65] They also meet the criteria of public evils, as they inflict harm indiscriminately and because the victims cannot escape the consequences. Their prevention will therefore represent a public good.

Even though these wars of the third kind are ("by nature") intrastate wars, many become internationalized, i.e. transformed into what might be called "transnational wars", typically involving neighbouring states as secondary actors.[66] On the other hand, the frequency of "real" international wars has been decreasing (or at least remained at a very low level), as is apparent from Table 1. Some of the wars listed here as international (e.g. in the Balkans) are even wars of secession which have merely been labelled international as a consequence of a (more or less unanimous, but almost always arbitrary) international recognition of the secessionist parts, whereas other wars of

secession have been categorized as intrastate, either because the secessionist movements have not achieved international recognition or because they have lost (or perhaps not yet won) the war in question; as is, for instance, the case of the war in Southern Sudan.[67]

Category	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Intra-state	43	45	52	51	42	42	33	33	30	31	29	28	29	26
Transnat.	2	2	1	2	5	1	1	1	3	5	6	4	5	4
Internat.	3	3	1	1	0	0	1	2	1	2	2	2	1	1

Table 1: Armed Conflicts 1989-2002[68]

A few of the international wars belong to the classical type, as was (to some extent, at least) the case of the war between Ethiopia and Eritrea from 1998 to 2000,[69] whereas others are more appropriately called "interventions". Most of these have even been referred to as "humanitarian" —at least by those undertaking them— i.e. as motivated by humanitarian concerns.[70]

We shall revisit these humanitarian interventions below. Suffice it therefore at this stage to indicate that, to the extent that these interventions are really humanitarian (or at least predominantly humanitarian, as most wars can have a host of different motives), they may be said to be military actions for the creation of public goods. Whether they deserve this designation also depends on whether they succeed in actually mitigating the humanitarian problems in question, and whether the costs of doing so (e.g. measured in terms of human lives) compare favourably with the gains. There is no automatic correspondence between humanitarian motives and consequences, and it is perfectly conceivable that interventions spurred by humanitarian concerns may exacerbate the humanitarian problems—or indeed that interventions undertaken for other reasons may lead to a clear improvement of the humanitarian situation. Whereas the US (but UN-authorized) intervention in Somalia probably belongs to the former category, Vietnam's intervention in Cambodia may belong to the latter, as it removed from power one of the most genocidal regimes the world has ever known.[71]

Indirect evils

Many of the above-mentioned wars have wide-ranging side-effects, almost all of which deserve the epithet of public evils. One of the most prominent side-effects of wars is flows of refugees, often massive and usually going to immediate neighbours, as illustrated by the statistics for the Horn of Africa in

Table 2.

Origin	Residence	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Djibouti	Ethiopia	-	0.0	18.0	18.0	18.0	8.0	3.0	1.5	1.6	0.1
Eritrea	Sudan	502.6	424.5	419.3	282.8	328.3	315.0	342.3	342.1	367.7	324.5
Ethiopia	Sudan	200.9	173.2	160.6	48.1	51.5	44.3	35.6	35.4	34.1	16.1
Somalia	Djibouti	20.0	17.7	20.6	21.3	23.0	21.5	21.6	21.6	21.7	21.7
Somalia	Ethiopia	406.1	228.1	269.7	305.4	287.8	249.2	195.3	180.9	121.1	67.1
Sudan	Ethiopia	25.6	44.4	51.8	61.1	75.7	56.9	58.6	70.3	71.7	80.9

Table 2: Refugee Flows in the Horn of Africa[72]
(thousands, only included if the number exceeded 5,000 in at least one year)

This table does not, however, distinguish between war refugees and people fleeing for other reasons, e.g. because of natural disasters or famine. Even the latter, however, may well be indirect war refugees, as wars often have detrimental environmental consequences and hamper agricultural production, thus jeopardising food security.[73]

On top of these indirect effects come the expenses incurred by upholding a certain level of armaments, and the negative effects of this on the national economy, not least for developing countries. Even though some have claimed that an arms build-up in "backward" countries may contribute to modernization,[74] most analysts today agree that the opposite is normally the case, i.e. that an arms buildup comes at the expense of economical and social development.[75] As these negative side-effects typically affect the entire economy, they represent clear public evils.

The same applies to industrialized countries, even though there is often a certain "spin-off" from investments in military high technology, especially as far as research and development (R&D) are concerned—to which effect the Internet and the GPS (Global Positioning System) may testify. However, this overall effect of large R&D investments should rightly be compared to the hypothetical effects of a comparable investment in civilian R&D, which most analysts agree would be larger, *inter alia* because concerns for national security often require that military research remains classified, which hampers spin-off.[76] In this sense, military expenditures represent unproductive "waste", and even more so for the large majority of countries that rely on imports for almost all their military equipment, thus not benefiting from spin-off effects at all. Concerns for national security may, however, make such "waste" indispensable.

Other indirect costs derive from the losses incurred by the collaboration

with neighbouring countries (or others) that does *not* take place because of wars or the preparations for war. These so-called "opportunity costs", likewise, have indiscriminate effects, thus representing public evils.[77] Even though it is complicated (and inevitably counterfactual) to calculate the hypothetical gains from trade with others that does *not* take place because of the presumed risk of war, they may well be considerable, at least when affecting developed countries with a large foreign trade having the potential for this (as in the East-West conflict).[78]

Trade, Democracy and Peace

We may even be dealing with a vicious circle here, as foreign trade and the resultant interdependency between states have been credited by many (especially liberalists) with having a war-preventing effect.[79] If the fear of war curtails trade it will thus eliminate some of the inhibitions against war, therefore making it more likely.[80]

Almost all wars also have detrimental political effects, e.g. with regard to human rights. At the very least, freedom of expression is usually limited in warring countries or countries experiencing acute fears of war, to which are often added internments of (alleged) potential traitors and "fifth columnists" - *inter alia* because many issues, about which debate and expressions of dissent would otherwise be entirely legitimate, become "securitized" (i.e. transformed into issues of national security), which may be (ab)used to justify "extraordinary measures" such as limitations on civil rights.[81]

We may be encountering a vicious circle in this field as well, because wars and preparations for them thus tend to weaken or even destroy democracy, thereby removing what the same liberalists regard as an important obstacle to war. This theory of the "democratic peace"[82] (dating back to Immanuel Kant)[83] comes in three varieties,[84] which may be designated as monadic, dyadic and systemic; the latter appearing in both a weak and a strong version.

- The monadic version has it that democratic states are simply more peaceful than non-democracies, *inter alia* because decisions about going to war will be taken by the entire population, i.e. by those who would be most affected by the consequences of war. However plausible this thesis may appear, there is no statistical evidence to support it, at least as far as international wars are concerned, which are just as often started by democracies as by non-democracies. On the other hand, there is strong empirical support for the thesis that democracy may prevent

intrastate conflicts, or rather make resorting to violent means in such conflicts less likely.[85]

- According to the (much more prominent) dyadic version, democratic states are very reluctant to go to war against each other, *inter alia* because they understand each other better due to the more transparent mode of decision-making. Even though it is often claimed that there is strong empirical evidence to support this thesis, the evidence is actually much more ambiguous. In fact the theory may be either trivial or dubious. Either it rests on a solid empirical foundation, the relevance of which is questionable (as with the numerous analyses based on the behaviour of the Greek city states during the Peloponnesian War in the 5th Century BC),[86] or it rests on a rather narrow empirical basis of obvious relevance, i.e. stable modern democracies, of which there have been quite few. If the empirical basis is extended to include partial democracies such as the German Empire prior to the First World War in 1914, or Serbia prior to the Kosovo War of 1999, too many exceptions to the general rule appear (in the sense of democracies actually going to war against each other) for the theory to remain unfalsified. If the criteria are tightened to what count as democracies, the result not only becomes a too narrow empirical basis on which to base a theory; this small population of stable democracies also consists of states which have numerous other reasons not to go to war with each other, making it impossible to determine what role democracy may play.

- According to what we may call the "weak systemic version", it is simply possible to generalize or extrapolate from the dyadic to the global level, i.e. that of the system. Considering that the world may be viewed as consisting of dyads of states (Denmark-Norway, France-Uzbekistan, Uruguay-Malawi, etc), the total likelihood of war may presumably be reduced by making as many states (and by implication dyads) as possible democratic. This variant may, however, be criticized for being reductionist, as quite different dynamics and rules may apply at the systemic and the dyadic level—just as a book is not necessarily well-written just because all words are spelled correctly and the grammar of each sentence is correct.

- The strong version of the systemic variant of the democratic peace theory claims that war may be prevented by means of democracy at the systemic level, i.e. some form of global or cosmopolitan democracy;[87] terms which are hard to define and undoubtedly even harder to realize.

Does global democracy mean that all states should have the same influence, or that all citizens should? The logical implications of the former assumption would be that China with its 1.3 billion inhabitants should only have the same influence as, say, Denmark with around five million; whereas the latter would mean that China should have four times as much power as the United States and 250 times as much as Denmark. A combination of the two may also be possible, e.g. in a bicameral system in which one chamber represents the states and the other the peoples. But is it likely that the West would relinquish power to the extent implied by such a system? And does global democracy not presuppose that all the component parts, i.e. the states, are democratic, as it surely cannot be taken for granted that governments of non-democracies always speak and vote on behalf of their citizens.

PEACE AS A PUBLIC GOOD: THE "PEACE DIVIDEND"

If war is a public evil, it almost logically follows that peace must be a public good, either for the individual state or for world society as a whole. In this sense, the public goods aspects of peace are sometimes referred to as the "peace dividend".[88] Even though this dividend may assume many different forms,[89] most attention has been given to its economic aspects.

War and the preparations for war simply cost money, which may be saved in the event of peace and, even more so, as a consequence of expectations of a lasting peace; making preparations for war superfluous or, at least, less urgent. How this peace dividend may be "cashed in" through arms reduction or disarmament, however, is more complicated; just as measuring the peace dividend is difficult. Apart from what is measurable, of course, non-economic benefits of spending societal resources on something useful also need to be considered.

It is certainly possible to approach these matters from a macro-economic perspective, taking national account figures of defence expenditures as the point of departure and combining these with the multiplier effects to assess the indirect consequences.[90] As far as the salary part of defence expenditures is concerned, it will have to take into account the rate of employment, determining whether former military staff can be employed in the civilian sectors of the economy, or whether they will end up on the dole or in early retirement; the difference between former salaries and future pensions or unemployment benefits (as well as potential "golden handshakes"; the share of income and consumer taxes in this difference; the savings and import rates of disposable income; and the demand implications of the anticipated decline in income for

the affected personnel.

As far as the remaining costs are concerned, the import rate is an important factor, especially for countries such as Denmark which have only a very limited indigenous production, but where co-production agreements may, on the other hand, have to be factored into the calculation, likewise taking account the multiplier effects.[91] Even though no calculations shall be attempted here, a reasonable assumption is that the net effect of gross savings on the defence budget will be much smaller net gains, at least in the short term. It also matters whether the dividend is simply saved, e.g. by reducing the public debt or lowering taxes,[92] or whether it is recycled and if so, as what.[93]

All this is further complicated if an attempt is made (as has been done)[94] to calculate the macro-economic effects of global reductions of military expenditures, as this will depend on which countries stand for how large shares of total reductions, how the reductions are subdivided into salaries, weapons purchases and other expenses; what the import rates are for the respective countries, both for arms purchases and for consumer goods; what the tax rates are; how the saved funds are spent, etc. Unfortunately, however, global military expenditures do not seem to decline. Rather, after an initial decline following the end of the Cold War, they seem to be rising again, as shown in Table 3; not even taking into account the most recent (and very substantial) rise in the US defence budget.

Region	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Africa	7	8	7	7	7	8	8	9	9	10
N-America	365	344	324	306	304	298	299	310	313	344
C-America	3	3	3	3	3	3	3	3	4	3
S-America	18	17	20	18	21	20	20	20	22	21
Asia	120	121	123	128	128	127	129	134	140	147
Europe	196	192	178	177	177	175	177	180	181	181
Middle East	54	54	50	52	57	61	60	67	74	n.a.
World	762	740	707	691	696	690	696	723	741	784
Change	n.a.	-2,9%	-4,4%	-2,3%	0,7%	-0,9%	0,9%	3,9%	2,5%	5,8%

Table 3: Global Military Expenditures (bill. US$, constant 2000-prices and exchange rates)[95]

If we apply a combined micro-economic and sociological perspective to the elusive peace dividend, further complications arise, as there is far from perfect substitution, neither with regard to productive capacity nor to personnel. Hence, plants which see their orders for military equipment decline cannot necessarily convert into civilian production, the numerous studies of such plant-level conversion notwithstanding.[96]

Nor is all military personnel directly employable in the civilian sector. In countries with general conscription a large part of this problem is, of course, statistical, as they have the option of shrinking their armed forces simply by refraining from conscripting part of an age cohort or by shortening the term of service. This simply entails that there will be more young people to share the available jobs. In other countries, the problems are more concrete, as it is here a matter of dismissing employees who may or may not be retrained for other jobs which may or may not be available.[97]

In the aforementioned "wars of the third kind", this is often a very acute problem. If a peace treaty is signed after a protracted civil war, a large part of both government forces and former insurgents need to be disarmed and demobilized. If the former soldiers and/or guerillas are not provided with alternative employment and integrated into civilian society, experience shows that they will often resort to arms again, either through a renewed rebellion or in criminal activities, thereby benefiting from their skills in the use of weapons. Considering that societies such as these are often in a desperate economic situation caused by a protracted armed conflict, there is usually a need for foreign aid for such "DDR&R"-programmes (for disarmament, demobilization, repatriation and reintegration).[98] A successfully implemented DDR&R-programme would warrant the label of a public good as it may be a precondition for preventing a conflict from flaring up again, easily affecting an entire region.

THE PROVISION OF PEACE AS A PUBLIC GOOD

In principle there are many ways to create a public good, not least by limiting the public evil represented by wars and preparations for them. It stands to reason that different types of measures will be called for to prevent different kinds of wars, to bring different forms of raging armed conflicts to a halt and thus to make the preparations for them superfluous. There are no universally applicable instruments or strategies, but rather a need for a well-stuffed "tool box" and a broad panoply of strategies and skills. Likewise, the involvement of a wide variety of categories of actors may prove relevant.

The scope of the present article does not allow for anything like an exhaustive account of these issues, and will thus confine itself to a categorization of actors, strategies and instruments. Needless to say, these are closely linked, as instruments must be selected according to what is attempted, i.e. the strategy, which in turn is determined by the actors on the basis of their identities, interests and goals.

Actors: Identities, Interests and Goals

The most obvious actors involved in the provision of global public goods are, of course, international organizations which are almost "born" in order to produce public goods or reduce public evils. Relevant distinctions here are the geographical ones between global, regional, subregional and other organizations; as well as the functional ones between, on the one hand, organizations created in order to manage problems of peace and security and, on the other hand, organizations which may either make indirect contributions towards these ends or which become involved almost by accident. Table 4 enumerates some of the most important international organizations that have already played such roles.

	Global	**Regional/subregional**	**Others**
Created for peace	UN (Security Council and Secretariat)	OSCE	NATO
Created for other ends	UN organizations (UNHCR etc.) World Bank, WTO	ASEAN, ECOWAS, IGAD	Commonwealth, G-8
Both peace and other ends		EU, OAS, OAU/AU, ARF, SADC, CIS	

Table 4: International Organizations Involved in Peacemaking (examples)
(UN: United Nations; OSCE: Organization for Security and Cooperation in Europe; NATO: North Atlantic Treaty Organization; UNHCR: United Nations High Commissioner for Refugees; WTO: World Trade Organization; ASEAN: Association of Southeast Asian Nations; ECOWAS: Economic Community of West African States; IGAD: Intergovernmental Authority on Development; EU: European Union; OAS: Organization of American States; OAU: Organization for African Unity; AU: African Union; ARF: ASEAN Regional Forum; SADC: Southern African Development Community; CIS: Commonwealth of Independent States)

A standing debate within IR theory is whether international organizations are independent or, at least, autonomous actors with their own identities and interests or mere instruments for the interests of the states comprising their membership. This controversy is closely related to the aforementioned one between neorealists and neoliberal institutionalists, where the former represent the first point of view and the latter the second. The answer to these questions may well be either/or, as some organizations, even though they may have been created by great powers as their instruments, may gradually develop their own identities and play partly independent roles, at least in areas which none of the stronger member states regard as "vital issues". They may thus gradually build capacities (provided by member states) for independent action.

Another category of potential actors are the states which are, however,

also part of the problem. A useful distinction may be between states which are directly involved and others. Most of the following considerations, however, also apply to the parties to the above-mentioned wars of the third kind, i.e. to both states and rebel movements if only the latter are relatively organized.

Even though the states involved have, on the one hand (usually, albeit not always) an interest in avoiding war, they have an equally obvious interest in not losing it, should it nevertheless occur; these two sets of considerations may well point in opposite directions. The latter interest may call for an arms build-up before the war as well as for an escalation after it has begun, which may well make the very outbreak of war more likely and increase the destructiveness of the ensuing war. It is thus highly significant how the two sets of interests are prioritized.

Some analysts have, for instance, claimed to have identified a radical change of priorities in the USSR around 1983/84, based on a reassessment of the chances of avoiding war as better than previously assumed. This made it less urgent to guard against losing and generated an interest in disarmament and international cooperation, i.e. in the provision of public goods. In conformity with this amended set of priorities, the Soviet leadership around Gorbachev thus suddenly took the debate on "global problems" (e.g. related to the environment) seriously and accepted a share of responsibility for their solution, which it had previously refused.[99]

The reverse may, of course, also be true, i.e. that a party to a conflict comes to realize that it cannot win, which gives it an obvious incentive to bring the conflict to a halt on the best obtainable terms, often couched in terms of a truce and a subsequent peace treaty. It is even possible that both sides may reach such a conclusion simultaneously, but unfortunately this does not automatically lead to peace. Sometimes, a continuation of the war may still appear to decision-makers as the lesser evil, since they would otherwise have to justify the "sunk costs" which the war has already brought about, both economically and in terms of human lives. Moreover, the very state of war can have its attractions, and decision-makers may further be concerned about their international reputation, which may be decisive for their power position in the longer run. A state which has to surrender almost invites attacks in the future or to have its vital interests infringed upon by others at a later stage,[100] at least unless it allows itself to be protected by others, as was the case of post-war Germany and Japan.

Sooner or later, however, what William Zartmann has aptly called a "hurting stalemate" usually develops, i.e. a situation where both sides realize that neither one can prevail, but where this stalemate also hurts, giving both sides an incentive to seek peace.[101] The same may be the case in a cold war

such as the East-West conflict where the arms race imposed burdens on both sides, but especially on the USSR as the weaker side; burdens it was unable to shoulder in the long run.

External powers may also play a role in such conflicts, either between states or between states and rebel movements.[102] In some cases, they may be affected by the conflict (e.g. as host countries for war refugees), providing them with a clear self-interest in bringing the conflict to a halt. In other situations, their international role may almost demand involvement. A global or regional hegemony that does not interfere in a serious conflict within its sphere of influence risks loosing part of its acceptance as a hegemony. Finally, there are certainly states (to which Denmark has traditionally belonged) which simply take their international (legal or moral) obligations seriously.

Besides states and international organizations (consisting of states), non-state actors can occasionally play a role. These may be subdivided into various categories, depending on their character, identity and ambitions, i.e. their self-defined roles. In Table 5 such a categorization of some important actors has been attempted, but it should be noted that some actors combine the different roles.

Character / Role	NGOs	Firms	Others
Policy-making, information	Peace movements, ICG, AI		
Humanitarian	MSF, ICRC,		
Mediation	SCG		Churches
Other		PMCs	

Table 5: Non-State Actors (examples)
(NGO: Non-Governmental Organization; ICG: International Crisis Group, MSF: Médicins Sans Frontiers, ICRC: International Committee of the Red Cross, SCG: Search for Common Ground; PMCs: Private Military Companies)

Strategies, Methods and Instruments

The above (categories of) actors have widely diverging identities, interests and objectives, which is, *inter alia*, manifested in different strategies, all amounting to specifying goals in terms of subordinate objectives and allocating means to these goals and objectives.

As illustrated in Figure 1, actors are faced with a number of questions in these contexts, not least because they usually have to prioritize their activities, *inter alia* in order to maximize public goods. This obviously means that it would be irrational to spend resources on some tasks which are insoluble if

this comes at the expense of others that would be soluble.

The figure describes the ideal picture of rational decision-making, whereas reality is often much more diffuse. Rather than optimising the effort, decision-makers frequently need to "satisfise" (as administration theory has it; an alternative to optimising),[103] i.e. to opt for the first reasonably satisfactory solution—also because decisions have to be made urgently and often not in the "right" order. If a country has become engaged in one conflict in one country, this may often exclude its becoming involved in a conflict elsewhere, even if the latter is more serious and important.

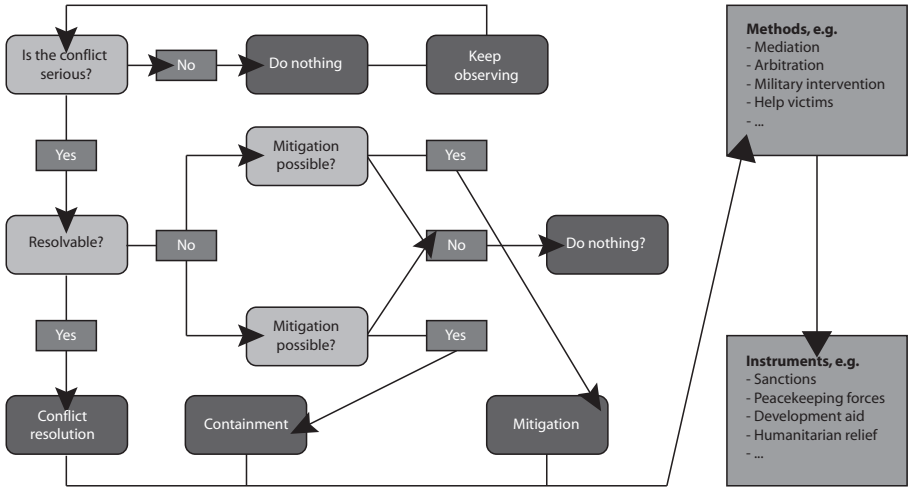

Figure 1: Conflict Management Strategy

We may also categorize the relevant measures by their timing, e.g. in relation to a conflict cycle as illustrated in Figure 2.[104]

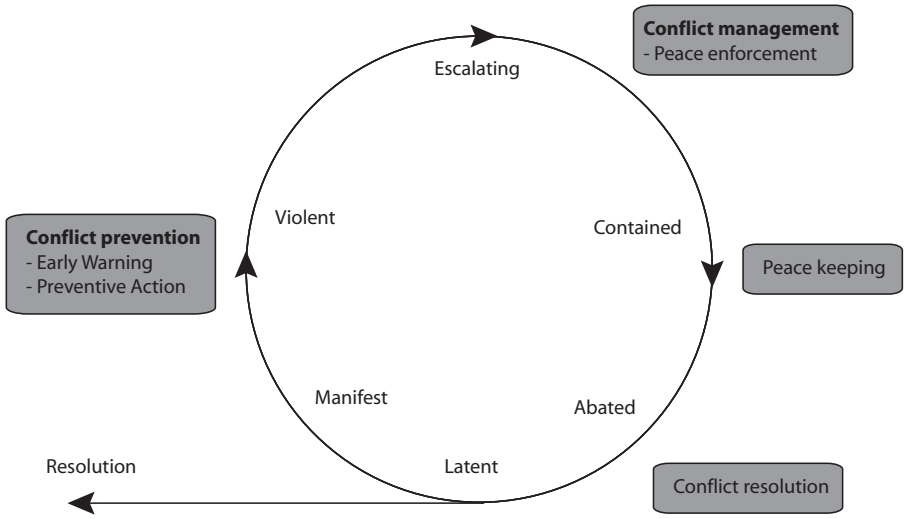

Figure 2: The Conflict Cycle

Ideally, of course, a conflict should be prevented—even though this a rather misleading term, as conflict (in the sense of competition and clarification of divergent interests) is not something to avoid. What should be avoided, however, is the resort to violent and destructive forms of conflict behaviour. It is useful to distinguish between "structural" and "operational" prevention;[105] the first referring to the resolution of latent conflicts such as dramatic inequalities, rank imbalances, etc.,[106] i.e. the removal of the basic causes of conflict. As far as developing countries are concerned, development aid may be used as a means to this end, as many donors have indeed come to realize.[107] The codification of rules may also contribute to structural prevention, both as far as general rules (e.g. in international law) and more concrete ones (such as arms control agreements) are concerned.[108]

Operational conflict prevention is about preventing the outbreak of an immediately impending conflict; here, most attention has been devoted to the need for early warning as a background for preventative action. Unfortunately, both are hampered by serious complications.

As far as early warning is concerned, the requisite data are often missing. Even if data are available, even the best ones lend themselves to divergent interpretations.[109] Moreover, even if the relevant decision-makers reach the conclusion that a conflict is impending, they will have to make sure that they will subsequently be able to substantiate this assessment. Ironically, this will become ever more difficult the more successful potential preventative initiatives will be. If they succeed 100 per cent, the result will be that nothing

happens, and it will be very difficult to prove what would have occurred in the absence of the preventative measure.

This may not be an insurmountable problem as long as merely "soft" instruments are employed, such as support for civil society organizations, mediation efforts, and the like, but it will be a serious obstacle to more "muscular" measures such as economic sanctions[110] or (even more so) military intervention. Considering that "old-fashioned" economic sanctions typically hurt the innocent the most, recent years have seen a growing interest in the development of "smart" sanctions which specifically affect the guilty parties, typically state leaders.[111] If a panoply of such smart sanctions is available, preventative actions will be far less problematic to undertake.

When a conflict has erupted in violent struggle (be that in the form of an international or a civil war), soft instruments will often be ineffective. There may, however, still remain some scope for mediation initiatives, just as sanctions may be imposed on one or both parties to an armed conflict, usually in the form of an arms embargo. Even though it will then be easier to justify some form of engagement (as the problem is now obvious), the costs of interference by military means will also have risen. In a civil war situation, it will often require the deployment of armed forces mandated to enforce a truce, which may frequently entail actual combat operations and may cost lives. In the case of non-vital interests such as civil wars in foreign countries, most countries (and not least democracies) have a very low tolerance for casualties.

The situation is somewhat different once a conflict has peaked, either because of war fatigue or simply because the stocks of ammunition have been depleted. Now a truce can often be negotiated (perhaps with the involvement of "third parties" in the role as mediators) and peacekeeping forces may be deployed to monitor its observance.[112] While this is fairly unproblematic in international wars and "traditional" civil wars between two well-organized parties, it is far more complicated in the wars of the third kind described above. Usually, not all parties sign the agreed truce, and there is rarely a generally accepted line of demarcation between the parties, which might be monitored and patrolled by peacekeeping forces.[113]

If the peace or truce is successfully kept, this breathing space may be exploited for actual conflict resolution initiatives (sometimes referred to as "post-conflict peace-building") in order to prevent the conflict from flaring up again upon the departure of the peacekeepers. A central element in such conflict resolution will be dealing with the underlying causes of the conflict, making conflict resolution almost identical with the aforementioned structural conflict prevention, yet with the significant difference that it takes place after a violent

conflict and therefore does not suffer from the same justification problems as prevention. Many different measures may recommend themselves for conflict resolution, including political reforms ensuring some power-sharing,[114] economic measures to reduce inequalities such as land reforms, etc.

CONCLUSION

We have thus seen that the application of the theories on global public goods to the issues of peace, security, and stability is more complicated than one might have thought. Not only are neither peace, security, nor stability indisputable goods; but they are also not always public in the normal sense of the term.

In most cases, however, both wars and the preparations for war, *inter alia* in the form of an arms build-up, create public bads or evils, implying that their absence could be considered a public good, both as such and in the shape of a so-called "peace dividend." The size of this dividend is, however, difficult to determine, just as "cashing it in" raises a number of problems. No less problematic is the production of the (partly) public good, which peace constitutes. Whereas it remains controversial whether, for instance, nuclear deterrence and military defence preparations should be seen as contributions to peace or as the exact opposite, there is general agreement on the usefulness of, for instance, conflict prevention and peacekeeping, both of which contribute to the production of peace as a public good. Unfortunately, however, this does not automatically make states contribute satisfactorily to these activities.

Most countries also agree that international rule of law contributes to the creation of peace as a public good, yet only if it actually impacts on state behaviour. This raises the question of how to ensure the enforcement of the law. Even though the UN, and especially the Security Council, were established with the main objective of creating and maintaining peace, their actual authority was undermined by the Cold War. After a short period of general agreement in the Security Council following the end of the Cold War, recent years have been characterized by growing disagreement and resorts to unilateral action. Some of these problems may be attributed to new challenges that were not foreseen when the system was created – not least conflicts within state borders, where states are protected by international law against interference in their domestic affairs, not only on the part of other states but also of the UN as such.

There is little doubt that public goods mainly benefit weak actors which are incapable of producing these goods themselves. This is also true internationally as small states such as Denmark have a far more urgent need

for global public goods than great nations or superpowers such as the United States – if only because they are incapable of ensuring, by their own devices, the regional and global peace on which they depend. Even though small states may, of course, be able to rely on the protection of a great power, this may well backfire, as it may entail risks of becoming parties to conflicts of which the state might otherwise stay aloof. Even though this may in some cases be the ethically right thing to do, in others small states risk simply to exacerbate conflicts by uncritically aligning themselves with great powers pursuing goals such as power maximization which are at odds with both world peace and the national security of the smaller actors. It is far less risky for small states, as well as more conducive to world peace, to strengthen international organizations such as the UN or the EU, as has (at least until recently) in fact been the guideline for the foreign policies of Denmark and the other Nordic countries.

NOTES

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7. Adam Smith: *The Wealth of Nations*, Book IV.2, quoted from www.adamsmith.org/smith/won-b4-c2.htm.
8. See, for instance, Suganami Hidemi: *The Domestic Analogy and World Order Proposals*

(Cambridge: Cambridge University Press, 1989); Chris Brown: "International Political Theory and the Idea of World Community", in Ken Booth and Steve Smith (eds.): *International Relations Theory Today* (Cambridge: Polity Press, 1995), pp. 90-109; Daniele Archibugi and David Held (eds.): *Cosmopolitan Democracy: an Agenda for a New World Order* (Cambridge: Polity Press, 1995); idem, idem and Martin Köhler (eds.): *Re-Imagining Political Community. Studies in Cosmopolitan Democracy* (Cambridge: Polity Press, 1998); Richard Falk: *Explorations at the Edge of Time. The Prospects for World Order* (Philadelphia: Temple University Press, 1992); J. A. Camilleri and Jim Falk: *The End of Sovereignty? The Politics of a Shrinking and Fragmenting World* (London: Edward Elgar, 1992); Saul H. Mendlowitz (ed.): *On the Creation of a Just World Order* (New York: Free Press, 1975); idem and R.B.J. Walker (eds.): *Towards a Just World Peace* (London: Butterworths, 1987).

9. Jean-Jacques Rousseau: *Extrait du projet de paix perpétuelle de monsieur l'abbé de Saint-Pierre*, at http://gallanar.net/rousseau/paixperpetuelle.htm.

10. This is described in Jean-Jacques Rousseau: *Discours sur l'origine et les fondements de l'inégalité parmi les hommes*, quoted from http://un2sg4.unige.ch/athena/rousseau/jjr_ineg.html#seconde partie: "Voilà comment les hommes purent insensiblement acquérir quelque idée grossière des engagements mutuels, et de l'avantage de les remplir, mais seulement autant que pouvait l'exiger l'intérêt présent et sensible; car la prévoyance n'était rien pour eux, et loin de s'occuper d'un avenir éloigné, ils ne songeaient pas même au lendemain. S'agissait-il de prendre un cerf, chacun sentait bien qu'il devait pour cela garder fidèlement son poste; mais si un lièvre venait à passer à la portée de l'un d'eux, il ne faut pas douter qu'il ne le poursuivît sans scrupule, et qu'ayant atteint sa proie il ne se souciât fort peu de faire manquer la leur à ses compagnons." See also Kenneth N. Waltz: *Man, the State and War. A Theoretical Analysis* (New York: Columbia University Press, 1959), pp. 167-169; and Doyle: *op. cit.* (note 7), s 137-160.

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International institutions for preserving peace and security

Erik André Andersen

INTRODUCTION

While war has been a permanent part of human history, our views of war have changed over time. This chapter examines the international institutions which have been established to regulate the conduct of war and, as much as possible, to preserve peace and security. In the context of this chapter, the term "international institutions" refers to the legal instruments which have been developed via international law, especially in the twentieth century. I will endeavour to take stock of the current status of international law as established with the UN Charter (1945). Further, I will then examine the challenges to present-day international law which have appeared in recent years. These challenges have been termed as "wars of the third kind" (civil wars or intra-state conflicts) and international terrorism.

The conceptual framework for coping with the new challenges includes terms such as "humanitarian intervention" and "pre-emptive" or even "preventive war". Can these new concepts be made compatible with present-day international law? Or does international law require a renewal, and if so, what kind? It goes without saying that exhaustive answers to these questions cannot be provided within the framework of this chapter. At present, no one is in possession of the correct answers. The goal here is simply to provide a brief overview of some of the problems, and point out some of the possible answers.

The conclusion of the chapter assesses whether and how the concept of "global public goods" could be applied in this context.

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 159-182
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

INTERNATIONAL LAW

International law consists of those legal rules which apply in relations between states. It includes both the peace law and the laws governing the conduct of war. While by far the greater part of international law regulates inter-state relations during peacetime (peace law), the laws of war concern armed conflicts.

A distinction is traditionally made between two categories of the laws of war. The first are the rules which apply to the right to initiate a war and resort to armed conflict (*jus ad bellum*) and which especially serve the purpose of preserving the peace. Today these are governed especially through the UN Charter. The second category are the rules which apply to the actual conduct of war and armed conflict (*jus in bello*). These rules are governed especially via the Hague Conventions from 1899 and 1907 (on the means and methods of war) and by the four Geneva Conventions from 1949 with the two Additional Protocols from 1977 (international humanitarian law).

International law includes both customary and treaty law. As such, international law evolves as a result of changing customs and by the adoption of new treaties. While treaty law applies only to those states who sign and ratify the treaties, customary law applies to all states. For example, treaty-signatory states are subject to the legal concept of *jus cogens*, by which certain norms are absolute; nor can these norms be circumvented by a treaty if contrary to these norms. "In reference to article 53 in the Convention on Treaty Law, a treaty is invalid if it conflicts with a compelling norm of international law. According to the Convention, this is understood to be a norm of international law which is accepted and recognized by the international community of states as a whole and from which no exception is permitted, and which can therefore only be divagated from if subsequently a new norm of the same character appears."[1] Frequently mentioned examples of *jus cogens* are the prohibitions on the unauthorized use of force, prohibitions on genocide, slavery and torture and on crimes against humanity.[2]

One of the points where international law distinguishes itself from national law is that within international law, a part from the use of force authorized or accepted by the UN Security Council (more on this later), there exists no executive power to enforce the law.[3] The strength of international law lies in the fact that a large number of states accept international law in practice. In disputes, for example, they subject themselves to the decisions of international courts. International law also has a strength that in practice, states find themselves forced to justify their actions in terms of international law. While there are many examples in international conflict situations where "might trumps right", international law nevertheless tends to impose some

limits on the arbitrary use of force.

Among the fathers of international law is the often mentioned Dutch universal genius Hugo Grotius (1583-1645), who via treatises on such topics as "The Freedom of the Seas" (1609) and "the Law of War and Peace" (1625) contributed to establishing the basis of an international legal order based on respect for states' sovereignty and signed agreements. Grotius' work on the law of war and peace appeared during the Thirty Years War (1618-1648), and the signing of the Peace of Westphalia in 1648 is often viewed as the start of the formation of the modern state system in Europe.

Up until the beginning of the 20th century, there was no prohibition against making war. Instead, efforts to maintain peace were conducted through constructing a balance of power, international alliance systems, diplomacy, etc. The founding of the League of Nations in the wake of the First World War (1919) did not establish a prohibition against war; this occurred only with the Briand-Kellog Pact of 1928.

THE UN CHARTER

The foundation of present-day international law for the maintenance of peace and security is the UN Charter of 1945.[4] *To maintain peace* is the very first point in the UN Charter (article 1, paragraph 1). The purpose of the United Nations is to maintain international peace and security, and to that end "to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

The *prohibition against the use of force* appears in article 2, paragraph 4: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

There are only *two exceptions* to this prohibition on the use of force: the right to individual or collective self-defence (article 51) and the authorization to use of force as granted by the UN Security Council (articles 39 and 42). The wording in these articles is as follows: Article 51: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the

Security Council has taken measures necessary to maintain international peace and security."

After thus having affirmed the right to self-defence, article 51 continues: "Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

As shown in the second part of article 51, the right to self-defence is not unconditional. It is up to the Security Council to accept an act as self-defence.

According to article 39: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42 (...)"

While article 41 authorizes the Security Council to take "measures not involving the use of armed force", article 42 states that "should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security (...)"

The Security Council makes its decisions with a qualified majority (9 out of 15 members). However, any of the five permanent members (the UK, France, China, Russia and the United States) can exercise its veto. The fact that the right of veto among the five permanent members could entail (and in practice also has entailed) limitations on the Security Council's ability to make decisions was an intended limitation. It reflected the relations of power following the Second World War as well as the view that it was better for the Security Council's powers to be exercised too seldom rather than too often, i.e., only in those cases where the permanent members of the Security Council could agree.

It has been emphasized that a decisive shortcoming of the collective security system described here is that the Security Council does not dispose of any armed forces of its own (a 'standing UN army') as originally envisioned in the UN Charter's article 43; the outbreak of the Cold War prevented the concluding of such agreements, and since then, no agreements could be reached. The same occurred for the establishment of a Military Staff Committee, mentioned in the UN Charter's article 47. However, one can assert that also a standing UN army would be subordinated to the political decision-making structure and thereby the limitations of realpolitik in the potential for action

by the Security Council. In contrast, a standing UN army would probably be more operational when the decisions were made, especially if it was supplied with the needed capacity to initiate operations. Nevertheless, this capacity to act depends on the political process of generating financial resources. Hence, the weakness of the UN security system can hardly be attributed to the absence of a permanent UN military force.

The UN Charter also operates with regional security systems – or alliances – that can initiate peace-building actions. However, article 53 of the UN Charter requires that force can be used by these regional systems only with the authorization of the UN Security Council.

In order to deal with the situation whereby the Security Council has been periodically unable to make decisions – especially during the Cold War the UN General Assembly has sought to assume subsidiary responsibility for international peace and security. This occurred during the Korean War, in 1950, with the General Assembly's enactment of Resolution 377A (V). This resolution, however, has never been able to form the basis for concrete proposals for the collective use of force. As concerns the authorization for the use of force, this does not have any basis in the UN Charter, and it has gradually lost its significance.[5]

THE INTERNATIONAL CRIMINAL COURT

As with any other kind of law, international law requires a judicial instance to decide legal disputes and issue judgments in cases where a breach of international law occurs. For adjudicating "normal" and peaceful legal disputes between states, the framework of the UN Charter (in relation to article 7) provides for an International Court of Justice, located in The Hague. This court has the competence to consider cases brought to it by and against states which have recognized the court's jurisdiction, and to issue advisory judgments at the request of the UN.[6]

As concerns legal prosecution of *international crimes*, there is now established an International Criminal Court, also located in The Hague, not to be mistaken for the International Court of Justice.[7] The establishment of the International Criminal Court was approved at an international conference of diplomats in Rome in July 1998 following the signing of an international law treaty (The Rome Statute of the International Criminal Court) which entered into force on 1 July 2002, after 60 countries had ratified the treaty. It should be remarked that the International Criminal Court is not part of the UN system. Among key countries who have not ratified the treaty are the United States

and Israel. The United States has attempted to establish bilateral agreements with the new EU and NATO member countries that under no circumstances should American citizens be extradited to the International Criminal Court. The EU has rejected such agreements.

As examples of international crimes are war crimes (which are always linked to an armed conflict), crimes against humanity, torture, terrorism, hostage-taking, hijacking of aircraft and ships, drug trafficking, enslavement, production, storage and use of biological and chemical weapons, illegal commerce in nuclear materials, etc. The International Criminal Court's jurisdiction does not apply to crimes committed in the past, but only to crimes committed after its establishment in July 2002; i.e. it has no retroactive powers. Moreover, it does not cover all the aforementioned crimes, but is limited to three crimes: genocide, crimes against humanity, and war crimes. In addition, it should be noted that aggression (following article 5, paragraph 2 in the Rome Statute) can also be prosecuted, but the Court's jurisdiction can be asserted only when agreement has been reached on a definition of aggression.[8] The problem here is that according to article 39 of the UN Charter, it is the Security Council that determines whether aggression has taken place in a specific case; hence, a conflict can appear between the International Criminal Court's and the Security Council's decisions on this question.

The historical precursors for the International Criminal Court are the Nuremberg and Tokyo trials in 1945-46 and 1946-48, respectively, and the tribunals on Yugoslavia and Rwanda, established, respectively, in 1993 and 1994. The Nuremberg and Tokyo trials were conducted as military tribunals established by the victorious powers after the Second World War (in Japan's case only by the United States), and they both had the authority to pass judgments concerning crimes against peace (aggression), war crimes and crimes against humanity.[9]

At the time of the Nuremberg and Tokyo trials, there was strong criticism against them for having established criminal law with retroactive force and for not dealing with the war crimes committed by the victorious Allies, e.g. the carpet bombings of Dresden and Hamburg and the atomic bombing of Hiroshima and Nagasaki (to which can be added the recently elucidated attacks by the Red Army against the German civilian population during their advance into regions such as East Prussia).[10] In retrospect, one can note that genocide against the Jews was not part of the indictment.

This critique was rejected on two grounds: (1) that the actions for which the German and Japanese political and military leaders were tried and convicted were already punishable as crimes before the war (among them by the basic principles of international law and by *jus cogens*), and (2) by the

argument that indicting only German and Japanese war criminals cannot in itself constitute an argument against the legality of the trials.[11]

In addition to the aforementioned international trials in Nuremberg and Tokyo, the victorious powers also established national courts which in the years following the war issued a large number of judgments.

Unlike the military courts established by the victorious allied powers after the Second World War, the tribunals for Yugoslavia (1993) and Rwanda (1994) were established on the basis of resolutions passed by the UN Security Council. According to Harhoff,

> "In contrast to the Nuremberg and Tokyo trials, the tribunal for Yugoslavia is based purely on international law and is entirely independent of the parties in the conflict. It therefore represents the first genuine international judicial organ which can pass judgment on individuals with a basis directly in international law."[12]

The jurisdiction in the case of Yugoslavia comprises war crimes, crimes against humanity and genocide, while the primary focus of the Rwanda tribunal is genocide. Both tribunals also have the purpose of establishing *ad hoc* jurisdiction concerning a specific conflict in a specific region during a specific period of time (after 1991 in the former Yugoslavia, during 1994 in Rwanda). The tribunals will be closed down when all those indicted are arrested and brought to trial.

The purpose of the International Criminal Court is precisely to prevent such crimes being committed in local areas, so that instead of establishing new *ad hoc* tribunals, there exists a permanent court which is in place when an armed conflict occurs. In this way, one can immediately begin collecting and registering evidence, which might otherwise be lost. In international crimes, there is also established universal jurisdiction, i.e., that states must either prosecute those international criminals who find themselves on their territory, or they must deliver them for trial to the International Criminal Court. This means that international criminals – ideally speaking – cannot hide out or seek protection in another state.

In practice, however, it will be difficult to bring to trial an American alleged war criminal who resides in the United States if the U.S. does not itself conduct a trial, in that the United States, as mentioned, has not ratified the treaty and has also decided to oppose it. While the United States is subjected to universal jurisdiction, i.e., it has the obligation to extradite war criminals which it does not itself prosecute, who will be able to enforce a demand for international legal prosecution?

There is hardly any doubt, however, that the International Criminal

Court will make life more difficult for international criminals in the future.

HUMANITARIAN INTERVENTION

The UN's collective security system is aimed especially at the prevention and management of conflicts between states, in so far as the UN system is a system consisting of states. With the end of the Cold War, this system has had to face up to new challenges. While armed conflicts have formerly tended to take place between states, there has since occurred a major expansion in the extent of intra-state conflicts, just as international terrorism has become more prominent in the public, a fact graphically revealed on September 11 2001.

In recent years, the UN system has developed a larger understanding of humanitarian intervention. As early as 1991, UN Secretary General Javier Pérez de Cuellar observed in his annual report that "It is now increasingly felt that the principle of non-interference within the essential domestic jurisdiction of states cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity."[13]

Humanitarian intervention, for example, as shown in a 1999 report on humanitarian intervention prepared by the Danish Institute of International Affairs (DUPI), can be defined as "coercive action by states involving the use of armed force in another state without the consent of its government, with or without the authorization from the United Nations Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law."[14]

With this instrument, the proponents of humanitarian intervention seek to protect the civilian population against humanitarian disasters caused by dictatorships which brutally repress human rights, or disasters caused by wars of "the third kind". With "wars of the third kind" is meant especially civil wars or revolutionary revolts which do not occur as acts of war between states, but internally within the countries.

In managing such conflicts which do not take place between states but within state boundaries, a balance must be struck, within the framework of the UN Charter (the current international law), between the international legal order (states' sovereignty) and the protection of human rights.

Both these are core points of the UN Charter. We have previously seen that the sovereignty of states is a fundamental precondition for the UN system, and that the application of force must occur only in self-defence or via the authorization of the UN Security Council. However, human rights is also a fundamental component of the UN system. This appears not only in the UN

Charter itself, but also through the passing of the Universal Declaration of Human Rights (1948). While it is true that the Declaration is not a legally binding document (a treaty), it has nevertheless won customary law status and has been codified through several successive UN Conventions in the post-war period.[15]

In the schism which can arise between respect for state sovereignty and respect for human rights, one can inquire as to the relative status of these two concepts. Here we can give no clear answer. In the discussion among experts in international law, opinions have been divided. Some experts view the concepts as equivalent, while others argue that the international legal order (the sovereignty of states) has priority over human rights. According to the previously cited DUPI report from 1999, this is typically the most accepted view among experts in international law.[16]

The problem is that as long as national sovereignty is seen as more important, it can protect the random exercise of power by dictators at the cost of respecting human rights.

On the basis of the UN Charter, humanitarian intervention can be authorized by the UN Security Council, inasmuch as the Security Council decides that an internal conflict poses a danger to international peace and security. Historically speaking, the Security Council has to an increasing degree chosen to interpret the threat to international security in a broader understanding than simply as the risk of an international armed conflict. As examples of what the Security Council increasingly views as a threat to international peace, we can mention the following:

- cross-border effects of domestic conflicts as well as large refugee flows over national borders or the risk of regional destabilization;
- civil wars and large-scale human suffering;
- grave and massive breaches of human rights and international humanitarian law;
- attacks on democracy.[17]

The UN Security Council's broader interpretation of the threat to peace and security can be viewed as a more "positive" view of peace, i.e., as the presence of positive factors rather than just the absence of negative factors, and as an acknowledgment that humanitarian intervention can be necessary should a crisis arise. It should be noted that one can argue, as did DUPI in its 1999 report on humanitarian intervention, that "protecting individuals, presumably,

provides better conditions for international peace and security in the long term", i.e. that the defence of individual rights over the long term will have conflict-preventive significance.[18]

States can also undertake humanitarian intervention. When there has been no authorization from the Security Council, this humanitarian intervention has occurred on their own responsibility, and it has often been justified in terms of preserving peace and security, but also self-defence. In the period after the Second World War, there has seldom been a case of humanitarian justification. Sometimes the intervention has been accepted internationally (via *ex post* acceptance by the Security Council or via the absence of condemnation). On other occasions, this was not the case.

As concerns developments in international law in the area of humanitarian intervention, it can be made clear that as long as humanitarian intervention takes place with reference to existing norms, it reaffirms existing international law. But if this occurs as a breach of the norms, it can, if accepted internationally, lead to changes in international law, first in customary law, and later on perhaps in treaty-based law. Up to now, the states' practice in the period after 1945 has not led to any customary rule which permits humanitarian intervention without the Security Council's authorization. This would assume agreement among a large majority of the world's states. In the view of DUPI, there seems to have occurred in the period since the end of the Cold War "a greater acceptance that humanitarian intervention without Security Council authorization may be morally justifiable in extreme cases." Up through the 1990s, this would have revealed itself insofar as "the amount of criticism from states seems less and there has been implicit support from the UN after the fact when the intervention was truly humanitarian."[19] But even though it is thus possible that such a right can be under formation in international law, it is still too early to assess whether this is indeed the case.

We can apparently conclude that *if* humanitarian intervention outside the authority of the Security Council is to be permitted, there is "probably on an abstract level … a general agreement among Western legal scholars on the basic conditions for legitimate humanitarian intervention."[20] Among these conditions are the following:

- there must be serious breaches of human rights or international humanitarian law;
- the Security Council finds itself unable to achieve agreement;
- there must only be necessary and proportional use of force;

- there must be an absence of partisan interest among the intervening states;

- there must preferably be a case of multilateral intervention.

It goes without saying that some of the criteria will be difficult to make more specific and assess in more detail. However, as Harhoff notes in the book on international law (*Folkeret,* 2002), it may be necessary at the same time to institute a procedure through which the conditions for its fulfilment can be controlled. In observing special procedural rules, this can be placed, for example, with the Security Council, with the International Court of Justice with the UN General Assembly, or with others.[21]

In their report on humanitarian intervention, DUPI presents *four possible legal policy strategies* concerning humanitarian intervention.[22] The four strategies can be briefly summarized as follows. The first consists simply in retaining the present system, i.e., humanitarian intervention can only occur after authorization from the Security Council. The second strategy (the ad hoc strategy) is also based on the present UN system, but operates with humanitarian intervention as an "emergency exit" from the norms of international law. Humanitarian intervention without the approval of the Security Council must be consistently forbidden, but in extreme cases one can ignore the fact that necessary humanitarian interventions are nevertheless executed without authority. The third strategy (the exception strategy) introduces a subsidiary right to humanitarian intervention. This can occur, for example, by asserting a rule of customary law, i.e., by asserting that a new law on intervention is being developed in international law under special conditions, and one can formulate criteria for its application, which we have seen above. The fourth strategy is the most wide-ranging, for it moves entirely outside the current UN system, in that a general right to humanitarian intervention is established. This can occur, for example, by changing the UN Charter.

The first three strategies lie to varying degrees within the existing UN system, in that variants two and three can be termed as "safety valves" which on the one hand seek to live up to the international legal order, but on the other hand take account of the fact that international law, in its existing form, cannot handle wars of the third kind. It is only variant four that breaks with the UN system, in that the authority of the Security Council, which was originally conceived as a guarantee for the international legal order, is eliminated with the dissolution of the prohibition against the use of force via the introduction of a general right to intervention. In this way, one would so to say be back to the situation prior to the Second World War.

In DUPI's sober analysis, it is concluded that strategy number two (the ad hoc strategy) is the best and most realistic. The international legal order is in any case a "good" which must be respected and enforced. As long as force is used, even though forbidden, the intervening states must justify and report to the Security Council as if authorization existed. In this way, it is argued, one avoids a situation where the right to intervene comes to operate as a cover for partisan interest. The conclusion thus expresses considerable scepticism regarding the possibilities for realistically formulating and controlling criteria for humanitarian intervention.

THE IRAQ CONFLICT

With the Iraq conflict, many of the present day dilemmas and different views concerning the application of present day international law for dealing with wars of the third kind and fighting international terrorism have become increasingly visible.

In the spring of 2003, the United States carried out a military intervention in Iraq. The war began on 20 March 2003 and was officially declared completed on May 1, when President George W. Bush announced 'an end to major combat operations'. The military intervention was decided upon in alliance with certain countries (via a so-called 'coalition of the willing'), which included, among others, the United Kingdom, Spain and Denmark. Vehement opponents of intervention on the existing basis included France, Russia and Germany.

The military intervention has resulted in a military occupation of Iraq. But it did not have the authorization of the Security Council, nor has it achieved the Security Council's acceptance.

The United States has presented varying justifications for its military intervention in Iraq. One of the justifications has been the defence against a threat in the form of weapons of mass destruction. Iraqi dictator Saddam Hussein has obviously utilized weapons of mass destruction in both domestic conflicts (against the Kurdish minority) and in the war against Iran (1980-1988). Thus, there were grounds to fear that the Iraqi regime would also use such weapons in the future. It is precisely the control over Iraq's possession and/or production of weapons of mass destruction that has formed the basis for repeated resolutions passed by the UN Security Council demanding that Iraq destroy such weapons. But in as much as Iraq – in the view of the United States - had not shown itself sufficiently cooperative in documenting that the destruction of these weapons had in fact taken place, the United States found

cause to undertake a military intervention.

In extension of the problem of controlling Iraqi weapons of mass destruction, the United States has also sought to establish a connection between Iraq and support for international terrorism. Iraq has been viewed as a state which could supply international terrorist organizations with weapons of mass destruction.

Yet another justification has been the outright removal of an evil dictator. This justification can be placed in the category "defence of human rights"; in this case, the defence of the Iraqi population's human rights. While the two foregoing examples (weapons of mass destruction and terrorism) can be said to express the concepts of "preservation of peace and security" and the "legitimate right to self-defence", the latter case must be seen as "humanitarian intervention in defence against grave violations of human rights".

Seen as humanitarian intervention for the defence of human rights, the Iraq intervention has also been linked together with a broader democracy agenda for the entire Middle East. The United States has argued that a democratic Iraq will have a positive effect on both the development of democracy as well as peace and security in the entire region. This can, legitimately be viewed as a crusade for democracy.[23]

All the official explanations on the part of the United States have been met with virulent criticism from many sides. The justification in international law (the U.S. reference to the Security Council's resolutions and subsequent "authorization" for the use of force) has been criticized as doubtful.[24] The majority of the Security Council's members wanted to await the final report of the UN weapons inspectors before any eventual authorization for military intervention could be given.

Additional criticism of the United States has been

- that the existence of weapons of mass destruction has not been documented;
- nor has an eventual connection to international terrorist organizations been documented;
- nor has the threat to peace and security in the region (or internationally) as a result of these been documented.

The critique has also pointed out that it is doubtful that democracy can be introduced via military intervention, and as a result, one must have more

reduced expectations regarding the influence of a democratic Iraq on democratic developments as well as peace and security in the entire region.

Added to the critique of the United States´ official justifications there are other motivations attributed to the United States' actions. In a more narrow sense, efforts have been made to demonstrate that the Iraq invasion can be explained by the United States' desire to achieve control over Iraq's significant oil reserves, and it has been established that leading circles in the United States' government have close connections to the American oil industry. In a broader perspective, efforts have been made to explain the United States' intervention in Iraq as an expression of desire for global dominance.[25]

Denmark's role in the Iraq conflict is relevant here, in that Denmark is a partner in the "coalition of the willing". Denmark is thus not just a participant in actions of war against a foreign power; it is also an occupying power in a Middle Eastern country. Despite the fact that Denmark, traditionally as a small state, has found that its interest could best be managed through participation in international organizations, notably the United Nations, and through the respect for the rules of international relations (international law), Denmark has in this case decided to enter into the "coalition of the willing".

The Danish decision to take part in the military intervention in Iraq has been justified on two grounds, as these were presented by the Danish Prime Minister Anders Fogh Rasmussen. The first and most important justification is that Denmark's security is first and foremost guaranteed by the United States, and therefore Demark, for strategic considerations, must always support the United States. This also applies – according to the prime minister's view – insofar as the United States - without authorization from the UN Security Council – has decided to invade Iraq.[26] The second justification is that Denmark, on the basis of a legal memorandum from the Foreign Ministry, finds the invasion to be in accordance with international law.[27] This justification in international law is provided via an interpretation of the UN's resolutions.[28]

A middle standpoint in the debate on the legality of Danish participation in the Iraq war is expressed by the expert in international law Ole Spiermann, who in an article in the journal *Juristen*, entitled "Iraq in the light of international law" (in Danish) concludes that "It is my assessment that there is no clear basis for concluding that the use of force in Iraq contravened international law, but the question is doubtful, the answer is unclear."[29]

THE CHALLENGES OF INTERNATIONAL LAW

With the American-led invasion of Iraq in 2003, a "line in the sand" was drawn not only against the Saddam Hussein regime, but perhaps in terms of existing international law based on the UN Charter's rules about the use of force. The United States has helped set a new standard, where "war is allowed, even though it is forbidden".

It has been asserted that the UN Security Council does not function in as much as it is not able to make any necessary decisions. This is both right and wrong. It is wrong in the sense that the Security Council in fact functions according to the rules. It is just that in the particular situation of Iraq, it was unable to achieve agreement about making a decision on the use of force. It is precisely an indication that the rules do function, and there have been many examples in the past where the Security Council was unable to make decisions. Hence, there is nothing new under the sun. On the other hand, the critique is correct in the sense that the Security Council could not achieve agreement regarding an attempt to solve precisely this particular problem.

As a result of this dilemma, the UN system has been criticized for being on the way toward losing its "significance". It is perhaps too drastic to draw such a conclusion at the current time. "When talk turns to the UN, it should be affirmed that it is not the time for obituaries", writes Martin Mennecke in an article in the journal *Udenrigs*, where he discusses international law after the Iraq war.[30] It is certainly true that the United States has established military superiority on the global scene, and this obviously provides the United States the possibility to use force regardless of what others believe. However, this does not mean that the U.S. is able to solve all the world's problems without cooperating with others. Nor is the United States, in its management of the Iraq conflict, gone entirely outside the United Nations; e.g., the United States was very active before the invasion in seeking a UN resolution which in explicit and up to date terms would empower the Security Council to authorize the use of force.

One can believe – in line with the Danish government, for example – that the ideal motives for the Iraq invasion (humanitarian intervention) combined with the view of a threat image (self-defence, preservation of peace and security) legitimated the use of force without authorization from the Security Council. The United States' idealistic motives cannot be rejected out of hand, and the immediate result of the U.S. actions (removal of the Iraqi dictator Saddam Hussein) can in itself be viewed as a positive result, about which nearly all observers are in agreement, both in Iraq and internationally. Here it should also be noted that the African Union, in its founding treaty from

2000, has added a paragraph on intervention in cases of war crimes, genocide and crimes against humanity, and that a decision to intervene can be made by a two-thirds majority (i.e., without the right of veto).[31] In this way, the African Union has established a regional authority to protect the populations in its member states against international crimes.

However, numerous issues remain to be solved, concerning the process prior to the application of force, the use of force to introduce democracy, and nation-building after the official cessation of hostilities. In addition, it is the case that regardless of whether the African Union accords itself the right to intervene, it is still, according to the UN Charter, the responsibility of the Security Council to authorize or accept military intervention.

Another issue is what could happen if the view gains acceptance that the use of force can be legitimately undertaken without being accountable to the Security Council or without the Security Council's authorization, thus creating the basis for new norms within international law. In such cases, there will continue to be formed either a subsidiary right or a general right to use force, as has been described above.

There is a general fear that setting aside the UN Security Council's overall responsibility will lead to an undermining of the international legal order. There is certainly a growing international understanding that the sovereignty of the nation-state is no longer an absolute concept, but the respect of the international legal order still has the high(est) priority among the majority of states.

One could follow this argument – that the international legal order *is not ensured by the current system under the UN Charter*, nor the defence against grave violations of human rights. In such cases, there can be grounds to support the view of establishing a subsidiary or general right to the use of military force.

This approach is far from problem-free, however. As Mennecke observes: "It is relatively easy to agree with the idea that sovereignty can no longer be understood in absolute terms. It is much more difficult, however, to formulate new, reliable rules."[32] This formulation accords with the already mentioned conclusion from DUPI's report on "humanitarian intervention", where the ad hoc strategy is recommended as the most realistic.

A softening of the prohibition on the use of force also has significance for what is called pre-emptive or preventive war. Such pre-emptive or preventive measures will to a greater degree be subjected to subjective judgments on the part of the individual states.

If the prohibition against the application of force is relaxed, it can be predicted that states others than those currently part of the U.S.-led "coalition

of the willing" can find cause for military intervention in other countries. "When Russia, India or China invoke some of the new rules, the United States and their allies will perhaps regret that they without any more ado decided to take the first step in "renewing international law" in the Spring of 2003," concludes Mennecke.[33]

As a supplement to both these new and traditional arguments against changing the UN Charter or otherwise asserting the right to use armed force, the concrete managing of the defence against international terrorism has led to an international law problem that the United States, in apprehending alleged terrorists from the Al-Qaeda network, has chosen to label these individuals as "illegal combatants". Here we are outside the sphere of the UN Charter, *jus ad bellum*, and over in the sphere of international humanitarian law – *jus in bello*. In terms of fighting terrorism versus the respect for international law, however, the example appears relevant. International humanitarian law distinguishes between war and peace, and the concept "illegal combatants" is not contained in international humanitarian law, which simply distinguishes between combatants and civilians.[34]

The United States' newly invented terminology is based on the fact that the combatants in the new forms of war (e.g., terrorism), cannot be distinguished from the civilian population, in that they hide among them. The combatants do not respect the laws of war by, for example, being clearly visible and subordinated to a military command; they appear like civilians, but are nevertheless combatants. Hence, the label "illegal combatants".

Seen from the combatants' view, it makes good sense not to respect the laws of war, for why should one fight a traditional war which one is doomed to lose under normal conditions against the overwhelming American military superiority? Conversely, one must ask: what does one do with combatants who do not respect the international conventions?

Critics of the term "illegal combatants" argue that it is nevertheless possible to treat captured combatants as either prisoners of war or civilian criminals. With reference to international humanitarian law, there are only these two possibilities, and legal procedures are prescribed in both cases. By not following the prescribed procedures, the United States (as with the invasion of Iraq) has chosen to place itself outside the rules of international humanitarian law.

More generally, one can raise the question of the United States' significance for the future of the world and of international law. If the United States chooses to act in the role as international policeman and sentry, one must ask, "who guards the guards?" (Mennecke).[35] And this forces us to ask whether the United States´ actions contravening international law will not

ultimately backfire on the United States. What will the United States do, for example, when American prisoners of war are subjected to a treatment which contravenes international law?

There are thus many unanswered questions within the topic of international law in connection with the use of armed force. This applies especially to the current inadequacy of international law in relation to regulating current conflicts of a new type (wars of the third kind; international terrorism; and defence against violations of human rights which takes place under the protection of the national state's sovereignty).

Perhaps we could give international law a respite and allow it time to adapt. As stated in the DUPI report, "The UN, the World and Denmark" (1999, in Danish), the new forms of conflict are best dealt with by intervening into the underlying *causes* behind such conflicts. "The history of conflict prevention in the last half century shows that a condition for creation of peace is an international community where economic development gives potential peace violators a larger interest in participating than in breaching the peace".[36] It is a general conclusion which, formulated in a general sense, might not appear constructive. But it is a conclusion which gives an answer to the long-term questions. The answer presumably lies in fundamental political, economic and social reforms.

INTERNATIONAL LAW AS A GLOBAL PUBLIC GOOD

In conclusion, one can ask, "how does a concept such as "global public goods" contribute to promoting the solution to the problems described in this chapter?" Apparently not much.

One can rightly label the UN Charter and more generally, international law as a global public good, and many can presumably agree that these institutions, in the form of international agreements and legal rules ought to be promoted. But when it comes to the *substance,* i.e., to treat the problems which these institutions were intended to deal with? Not much is won by such general observations. One quickly finds oneself stuck in familiar terrain.

All the problems are well-described in the professional literature and are continually being discussed, not only among professionals such as lawyers, political scientists and peace researchers, but also by politicians and by that segment of the population interested in such topics, e.g., in the media.

If we examine some of the most interesting present day problems in international law, the question of the limits of sovereignty of the nation state, including especially the possibility for international humanitarian intervention

for the defence of grave beaches of human rights, there is, as described in this chapter, a politically and legally well-developed discussion where the dilemma reveals itself clearly. It is a dilemma between the "international order" and its Realpolitik and the moral and human rights concept of "justice". This eternal dilemma can apparently not be solved with the help of an abstract concept such as "global public goods" if only because the concept can be applied on both sides: both international order and justice at the abstract level are, or ought to be, global public goods. Hence, we need to make a concrete assessment in each case, and this issue lies at the heart of the political and professional discussion.

There is evidence to argue that in recent years, national sovereignty has been declining and that "justice" (protection of human rights) has taken on increasing importance. The extent to which this is right or wrong, true or untrue, good or bad, is basically irrelevant in this context. The point, here again, is that the concept of "public good" does not make it easier to take a position on or to resolve such problems.

On the other hand, it makes good sense to apply the public goods concept to ask the "right" questions in connection with economic, political and social reforms, here seen in a conflict-prevention perspective and *with the goal of strengthening the powers of cohesion in the individual societies*. That democratic welfare states act peacefully, both in relation to their own inhabitants and in relation to other states is perhaps not proven in a statistical/scientifical sense (cf. Bjørn Møller's elsewhere in this book), but it nevertheless appears to be a relevant working hypothesis. The focus in such cases should lie with the national state public goods, supported, preferably by regional and global public goods. As concerns this type of reform processes, we are certainly over in a quite different ball park than that which was the original topic of this chapter. But it may very well be the way forward to resolve the dilemma described above. There will hardly be much need to undertake humanitarian intervention in democratic welfare states.

NOTES

1. See Ole Espersen, et al.: *Folkeret – De internationale retsforhold*, Christian Ejlers' Forlag, Copenhagen, 2003 p. 78 (my translation from the Danish).
2. Ibid.
3. Another point where international law can be said to distinguish from national law is the great significance of customary law within international law. However, this probably applies only in a comparison with modern national legal systems based on rules drafted and passed by a legislative assembly. It is hardly comparable with more traditional societies in the World. In general, one can discuss the extent to which international law should be called "law" at all, but I will not deal with this issue here. I will only add my voice of agreement to Ole Espersen's formulation that "general legal norms and the norms of international law however are so close to each other that joining is useful. " Further, I would support the statement "that there is today hardly anyone who contests the character of international law as law" (Espersen et al. 2003, p. 30, my translation from the Danish).
4. For a full text of the UN Charter see www.un.org.
5. The Danish Institute of International Affairs: *Humanitarian Intervention: Legal and Political Aspects*, DUPI, 1999b, p. 60-61. Since 2003 DUPI has been reorganized and is now part of the larger DCISM consisting of Institute for International Studies and Institute for Human Rights.
6. The Danish Institute for International Affairs, 1999a, pp. 206-208; Ole Spiermann: "Bilæggelse af stridigheder" in Espersen et al. 2003, p. 238-244.
7. For a general presentation of the International Criminal Court, see Frederik Harhoff: "Retsforfølgning af internationale forbrydelser", in Espersen et al. 2003, p. 318-329.
8. The UN General Assembly has defined "aggression" in Resolution 3314 (1974), which does not have treaty status. The defintion is: "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State", quoted from Yoram Dinstein: *War, Aggression and Self-Defence*, Grotius Publications, Cambridge University Press, Cambridge 1994, p. 127.
9. Gary Jonathan Bass: *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, Princeton University, Princeton and Oxford 2000; Heiko Ahlbrecht: *Geschichte der völkerrechtlichen Strafgerichtsbarkeit im 20. Jahrhundert*, Nomos Verlagsgesellschaft, Baden-Baden 1999.
10. Niklas Sennerteg: *Stalins hævn – Den Røde Hær i Tyskland 1944-45*, Schönberg, 2002.
11. Harhoff, 2003, p. 313-314
12. Harhoff, 2003, p. 316, my translation from the Danish.
13. DUPI, 1999b, p. 14.
14. DUPI, 1999b, p. 11.
15. Espersen, et al., 2003, p. 255 and p. 268-270.
16. DUPI, 1999a, p. 185-189; DUPI, 1999b, p. 82.
17. DUPI, 1999b, p. 68-69.

18. Ibid., p. 72.
19. Ibid., p. 95.
20. Ibid., p. 103-111 and p. 125-126. The quote is from p. 111.
21. Harhoff, 2003, p. 281.
22. DUPI, 1999b, p. 111-120 and p. 126-129.
23. On American foreign policy see for example David Frum and Richard Perle: *An End to Evil - How to Win the War on Terror*, Random House, 2003, and Lars Erslev Andersen: *Den amerikanske orden - USA og det moderne Mellemøsten*, Aschehoug 2003, and Thomas P.M. Barnett: *The Pentagon's New Map. War and Peace in the Twenty-first Century*. GP Putnam's Sons, New York 2004.
24. See for example the debates in the Danish daily *Politiken* – Tonny Brems Knudsen: "I strid med FN og folkeretten" (22 March 2003), Hjalte Rasmussen: "Retten til krig" (2 April 2003) and Tonny Brems Knudsen: "Mysteriet om det forsvundne mandat" (April 9 2003).
25. See for example the commentaries by Carl Pedersen: "Det amerikanske århundrede", Dagbladet *Information*, 24 January 2003; "Ondskabens tankstation", Dagbladet *Information*, August 16 2002; and "Det amerikanske imperium", *Politikens netavis*, October 11 2002.
26. Anders Fogh Rasmussen: "Hvad kan det nytte?", commentary in *Berlingske Tidende*, March 26 2003.
27. Danish Foreign Ministry (Udenrigsministeriet): *Det juridiske grundlag for ivværksættelse af militære forholdsregler mod Irak*, Memorandum of March 18 2003.
28. The conclusions of the memorandum are based especially on the interpretation of resolutions 678 (November 29 1990), 687 (April 3 1991) and 1441 (November 8 2002). According to Hjalte Rasmussen ("Retten til krig", in *Politiken*, April 2 2003), the precise marking – in a juridical sense – of the boundary for international law lies in the text of the UN's Security Council resolutions and the interpreation of these.
29. Ole Spiermann: "Irak i folkerettens lys – Folkeretlige spørgsmål om magtanvendelsens lovlighed," *Juristen*, 1, 2004; p. 3-15, my translation from the Danish. On the differing views of the legality of the Iraq intervention, see also presentations to the Danish Parliamentary hearing on Iraq, held on March 24 2004, e.g., Chistopher Greenwood: "International Legal Aspects of the Iraq Situation", and Jens Elo Rytter, "Irak-krigen, folkeretten og fremtiden".
30. Martin Mennecke: "Nye regler og gamle trusler – folkeretten efter Irak-krigen," *Udenrigs*, 2003, p. 6-18, my translation from the Danish.
31. African Union: *Constitutive Act* (11 July 2000), (www.au2002.gov.za/docs/key_oau/au_act)
32. Mennecke, 2003, p. 15, my translation from the Danish.
33. Ibid., p. 18.
34. Harhoff, 2003, pp. 291-292.
35. Mennecke, 2003, p. 18.
36. DUPI, 1999a, p. 190.

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The law of war

Rikke Ishøy

INTRODUCTION

Measures to regulate armed conflict are as old as the conflicts themselves, but were codified in conventions in the 19th and 20th centuries.[1] In extension of the other chapters on peace and stability and the institutions of international law, this chapter reviews the basic principles underlying the law of war, also called international humanitarian law, and looks more closely at some of the areas where this public good has recently come under pressure.[2]

International humanitarian law is part of public international law. It seeks, for humanitarian purposes, to limit the consequences of armed conflict and to protect persons who do not or do no longer take part in the armed conflict, and to restrict the means and methods of warfare.

Within international law, a sharp distinction exists between *jus ad bellum*, i.e., the rules regulating the right to use armed force against another state and which are found primarily in the UN Charter, and *jus in bello*, the rules for how an armed conflict should be fought. It is the latter which is the focus of international humanitarian law. Whether State A has legitimately attacked State B is irrelevant for the application and interpretation of international humanitarian law. International humanitarian law binds all the parties to the armed conflict on an equal footing.

The primary instruments within international humanitarian law are the four Geneva Conventions from 1949 and the two Additional Protocols from 1977.[3] Even though the conventions contain hundreds of articles, the principles on which they are built can be summarized in a few lines:

- The parties to the armed conflict must at all times distinguish between the civilian population and combatants and between civilian property

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 183-198
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

and military targets so as to protect civilians and civilian property to the greatest extent possible. Civilians and civilian property may under no circumstances be made the object of attack. The protection that civilians are entitled to is only lost if and for so long as they directly participate in hostilities. Attacks must be directed only against legitimate military targets.

- Persons who are not – or are no longer – participating in hostilities must be protected and treated humanely. They are entitled to respect for their life and physical and mental integrity without any form of discrimination.

- The right of the parties to the conflict to choose means and methods of warfare is not unlimited. Means and methods which may cause the enemy superfluous injury or unnecessary suffering, or which make impossible a distinction between civilian objects and military targets are not permitted.

- The sick and wounded must be cared for by the party to the armed conflict who has them in its power. Medical personnel and medical facilities, equipment and vehicles must be protected and respected. The Red Cross and Red Crescent Emblem signal that these persons or property are protected.

- Detained combatants and other persons whose freedom has been restricted must be treated humanely. They must be respected and protected against all acts of violence and especially against torture. If they are brought before a court, the fundamental guarantees for a fair trial must be respected.

INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

The areas of international law which lie closest to international humanitarian law are human rights law and refugee law. They all share the same objective: to protect the individual against violations.

However, the three areas of law have different origins and different approaches to the problem they attempt to solve. International humanitarian law is applicable only during armed conflict and attempts to balance humanitarian considerations and military necessity - especially those aspects which concern

means and methods of warfare give wide consideration to military necessity. Human rights law takes its point of departure in rights and is applicable in peacetime as well as during armed conflict. However, human rights law allows for derogation "in time of war or other public emergency threatening the life of the nation".[4] No such derogations are permitted for international humanitarian law as military considerations are already a part of the law.

In an armed conflict, the basic human rights such as the right to life and freedom must be interpreted in accordance with international humanitarian law as *lex specialis*. In its decision "Detainees in Guantanamo Bay, Cuba. Request for Precautionary Measures" the Inter-American Human Rights Commission made the following observation:

> "Further, in situations of armed conflict, the protections under international human rights and humanitarian law may complement and reinforce one another, sharing as they do a common nucleus of non-derogable rights and a common purpose of promoting human life and dignity. In certain circumstances, however, the test for evaluating the observance of a particular right, such as the right to liberty, in a situation of armed conflict may be distinct from that applicable in time of peace. In such situations, international law, including the jurisprudence of this Commission, dictates that it may be necessary to deduce the applicable standard by reference to international humanitarian law as the applicable *lex specialis*."

For example, in connection with a military operation, the right to life must be interpreted in accordance with the rules concerning precautions in attack, and must be viewed in terms of whether the armed forces have taken sufficient measures to protect the civilian population.[5]

This occurred in the European Court of Human Rights' decision in the case of *Ergi vs. Turkey.*[6] The case concerned the death of a Kurdish woman in connection with a military operation in eastern Turkey. Even though the Court did not find it proven that the Turkish security forces had killed the woman, Turkey was nevertheless found guilty of violating article 2 (the right to life) of the European Convention on Human Rights. The Court found that the Turkish military forces had taken inadequate precautions to protect the civilian population. In its decision, the European Court of Human Rights uses terminology familiar from international humanitarian law.[7]

Human rights law regulates the relations between the individual and the state and hence, binds states and their actors. International humanitarian law, in contrast, is binding on all parties to a conflict, including non-state actors. This is central in relation to present day conflicts, which are largely of non-international character, and where at least one of the parties to the conflict is a non-state actor.

Several Danish organizations work in one or another form with civil society and with the protection of the civilian population in countries experiencing armed conflict. In such a context, international humanitarian law is *the relevant branch of international law to discuss*, especially in relation to non-state actors.[8]

As a foundation for dialogue, international humanitarian law is often regarded as less political than human rights law. An essential principle within international humanitarian law is the principle of distinction: the obligation to distinguish between those who take active part in the armed conflict, and those who do not, such as civilians, the sick, wounded or detained, and to direct attacks only against those taking part in the conflict. While this principle, regrettably, is often not respected, its propriety or justification is seldom questioned.

ILLEGAL COMBATANTS

The legal situation of so-called illegal combatants has been the object of intensive debate since the American-led coalition forces' war in Afghanistan and it has been argued that illegal combatants were not protected by international humanitarian law. It can therefore be useful to review some of the basic principles of international humanitarian law applicable to the protection of persons in the hands of an enemy power.[9] The following does not take a position on the extent to which these persons are protected by human rights law or by other legislation.

The concept of *illegal* combatants is not a part of international humanitarian treaty law, but has been used over a long period in the legal literature, in military manuals and in court decisions. In the following, the term "illegal combatants" will be used to refer to persons who take part in hostilities without being authorized to do so, and who are not entitled to prisoner of war status if they fall into enemy hands.

Unlike illegal combatants, the concepts of combatant, prisoner of war and civilian are defined by international humanitarian law: combatants are authorized to participate in the armed conflict. They can therefore not be held responsible for actions carried out in accordance with international humanitarian law, even though such actions would constitute a crime if carried out in peacetime.[10] In contrast, they can always be held responsible for violations of international humanitarian law. Combatants are legitimate military targets. If they are taken prisoner, they have the right to protection as prisoners of war according to Geneva Convention III, and from article 4 of

the Convention, it can be deduced that combatants are generally all members of the armed forces and members of militias and voluntary forces when they fulfil certain requirements.[11] If doubt arises as to whether a captured person is entitled to prisoner of war status, his or her status must be determined by a competent tribunal. Until the tribunal has spoken, the prisoner shall receive the benefit of the doubt, and the individual shall enjoy the rights of a prisoner of war.[12]

The question of illegal combatants is only relevant in international conflicts as defined in Geneva Convention I-IV and Additional Protocol I. In non-international conflicts, where article 3 common to Geneva Convention I-IV, and Additional Protocol II are applicable, combatants are not defined and the notion itself is not used in applicable treaty law.[13]

A civilian is any person who is not a combatant.[14] The major part of Geneva Convention IV concerns the protection of civilians in the hands of an enemy power.

According to article 4 of the Convention, protected persons are "those who, at a given moment and in any manner whatsoever, find themselves, in case of conflict or occupation, in the hands of a party to the conflict or occupying power, of which they are not nationals." Excepted, however, are:

- Anyone covered by Geneva Convention I-III, which means primarily sick and wounded combatants and prisoners of war;

- Nationals of a neutral state who find themselves in the territory of a belligerent state, and nationals of a co-belligerent state as long as these persons' own state has normal diplomatic representation in the state in whose hands they are.[15]

That a person has illegally participated in hostilities is thus not a criterion which entails exclusion from the protection of the Convention. On the contrary, Geneva Convention IV, article 5, applies the term "protected persons" to persons who are detained due to espionage, sabotage activity or suspicion of activities hostile to the security of the state in whose hands these persons find themselves. Article 5 permits, under specifically defined circumstances, derogation from some of the Fourth Convention's rights and thus concerns specifically persons not covered by the Geneva Convention I-III, but who have taken part in hostilities.

In the Delalic case, the International Criminal Tribunal for the Former Yugoslavia also found that:

> "It is important, however, to note that this finding is predicated on the view that there is no gap between the Third and the Fourth Geneva Conventions. If an individual is not entitled to the protection of the Third Convention as a prisoner of war (or of the First or Second Conventions) he or she necessarily falls within the ambit of Convention IV, provided that its article 4 requirements are satisfied."[16]

Geneva Convention IV contains rules about the protection of civilians against physical and mental abuse, guarantees of due process and fair trial and treatment during deprivation of liberty.

Furthermore, Additional Protocol I, article 75, which is assumed to have customary law character supplements the protection accorded under Geneva Convention IV. Article 75 protects persons who are in the power of a party to the conflict and who do not benefit from more favourable treatment under the Geneva Conventions or under Additional Protocol I. Article 75 describes the minimum protection to which every person is entitled, including in situations covered by Geneva Convention IV, article 5, and regardless of whether or not the individual fulfils the nationality requirements of Geneva Convention IV.

In the Conventions, therefore, there is no basis for excluding persons detained by an enemy power from the protection of international humanitarian law because they have taken part in hostilities. International humanitarian law poses no obstacle to the legal prosecution of civilians for participation in hostilities or war crimes. Nor does it stand in the way of legal prosecution of combatants for war crimes.

TERROR AS A WAR CRIME

Terror is explicitly forbidden under international humanitarian law.[17] In the Galic judgment from 5 December 2003, the International Criminal Tribunal for the former Yugoslavia examined terror as a war crime.[18]

The judgment concerned General Stanislav Galic, who was responsible for Sarajevo's Romanija Corps from September 1992 to August 1994. The Tribunal treated terror as a special prohibition within the general prohibition on attacks against civilians, declaring that terror as a war crime contains the following components:

> "1. Acts of violence directed against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population.
>
> 2. The offender wilfully made the civilian population or individual civilians not taking direct part in hostilities the object of those acts of violence.

> 3. The above offence was committed with the primary purpose of spreading terror among the civilian population."[19]

The essential element of the definition is the intent: terror is *a specific-intent crime*. The violent action must have been conducted with the intent to spread terror, which the Tribunal interpreted as "extreme fear". The Tribunal only took a position on terror as a war crime, i.e., in the context of an armed conflict, and not on the political variants of terror.[20] Several international attempts have been made to define terror, and common is that the definitions include reference to the purpose of promoting a political cause or forcing one or more persons to change their behaviour. This motivational aspect is not part of the definition of terror as a war crime.

A large part of the terror attacks which have taken place during the last two to three years have occurred during peacetime, where international humanitarian law by definition does not apply. Naturally, this does not make such actions legal, as they remain covered by national legislation and/or international criminal law.[21] One may thus wonder why it is international humanitarian law which has come under pressure and has been termed inadequate in the so-called war on terror. Part of the answer may lie in the fact that classifying a situation as covered by international humanitarian law opens up for the application of force not legitimate in human rights law or international criminal law in general, and which some parties wished to include in the "war on terror".

THE CONTRIBUTION OF INTERNATIONAL HUMANITARIAN LAW TO ENSURE PEACE AND STABILITY

Experience has shown that the road back to peace and stability in a conflict is relatively easier when the parties have accorded at least some degree of respect to international humanitarian law.

In order for international humanitarian law to be respected in wartime, it is absolutely essential that knowledge about it be disseminated to the widest possible extent in peacetime. States have also obligated themselves to this task, just as they must teach and train especially military personnel in the content of the conventions.

The states are also obligated to ensure that military commanders have legal advisors available to provide guidance about their obligations according to international humanitarian law whenever necessary. The International Committee of the Red Cross (ICRC) and the national Red Cross and Red Crescent societies have longstanding experience in disseminating international

humanitarian law both at the highest level to the decision-makers and military officers and at the grass-roots level.[22]

International humanitarian law stipulates that individuals can and must be held responsible for war crimes.[23] From the mid-1990s we have seen several examples of international or internationally-supported tribunals and courts, such as the two international tribunals for ex-Yugoslavia and Rwanda, the UN-supported special tribunal for Sierra Leone and the International Criminal Court. All have the purpose of prosecuting persons suspected of the most serious international crimes.[24]

While the tribunals have greatly contributed to developing international humanitarian law, their most important impact has been to reinforce the idea that no one - not even those in power - can expect to go free if they have been involved in grave breaches of international law.[25] It can be argued that the "end of impunity" has had and will continue to have a preventive and thereby stabilizing effect.

Responsibility for prosecuting persons suspected of grave breaches of international law, however, is first and foremost national. The Pinochet case brought into focus the national courts' application of the principle of international jurisdiction.[26] International jurisdiction is directly expressed in the Geneva Conventions, which obligate the states to ensure that the necessary legislation exists so that war criminals can be brought to justice. States are obligated to search for and bring to justice persons suspected of war crimes or extradite them to prosecution in another state willing to do so, provided that the state has made out a prima facie case.[27]

Doubts have been raised as to whether Danish courts in all cases have the necessary jurisdictional basis to conduct criminal cases against persons suspected of serious international crimes. As a consequence, the Ministry of Justice has formed a committee which will review Danish jurisdictional regulations.[28]

INTERNATIONAL HUMANITARIAN LAW: A GLOBAL PUBLIC GOOD?

Everyone can derive benefit from the protection afforded by international humanitarian law, and its enjoyment by one person does not preclude its enjoyment by another. The protection of human dignity offered by international humanitarian law can thus be seen as a global public good.[29] The Red Cross, since it's founding in 1863, has worked in wars and conflicts to bring aid and comfort to thousands of displaced, wounded and abandoned persons. From

this perspective, there is no doubt that rules protecting the victims of armed conflicts and restrictions on the means and methods of war are part of "the good". From this perspective, any discussion of whether war is necessarily "a public evil" appears theoretical.[30]

That certain individuals derive financial benefits or that war can render a geopolitical advantage to one country or another does not change the fact that war is not a good for the general public. Similarly, clean environment is defined as a public good, even though it is not necessarily a good for certain private firms.[31] "Just war" is for one person a necessity, while for another it is aggression, and even those wars which we may view as unavoidable lead to extreme suffering: the bombings of Dresden and Hamburg, the nuclear bombs on Hiroshima and Nagasaki are examples.

All conventions are expressions of compromises, but international humanitarian law maybe more so than others, reflecting as it does three occasionally conflicting considerations: military, political and humanitarian. International humanitarian law touches on the very core of a state's existence, its possibility to defend itself. Because international humanitarian law finds application in cases of extreme violence, it will always be difficult to ensure implementation: the protection it seeks to provide is an exclusive good. There are innumerable examples of violations committed in armed conflicts, and up through the twentieth century, an increasing number of victims of armed conflicts have been civilians.

The balancing considerations contained in international humanitarian law were stressed in the International Court of Justice's advisory opinion on nuclear weapons.[32] The Court underlined that the use of or threat of use of nuclear weapons must be in accordance with international humanitarian law and relevant treaties concerning nuclear weapons, and went further, with seven votes against seven, with the President's vote as casting, to observe that:

> "It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law; However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;"[33]

The Court's statement was en expression of a balancing assessment of humanitarian considerations, peace and stability and state sovereignty.

The Geneva Conventions are among the most widely recognized conventions, having been ratified by 191 countries. The states have thus signalled that the values which the Conventions protect are of fundamental

character. Without applying a global public goods notion, the Court, in its statement on nuclear weapons, emphasized the unavoidability and humanitarian character of international humanitarian law; the principles upon which international humanitarian law is based are an expression of *jus cogens* and thereby a good which everyone should be able to make use of, without exception:

> "It is undoubtedly because a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and "elementary considerations of humanity" as the Court puts it in its Judgment of 9 April 1949 in the *Corfu Channel* case *(I.C.J. Reports 1949*, p. 22), that the Hague and Geneva Conventions have enjoyed a broad accession. Further, these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law."[34]

The International Criminal Tribunal for the Former Yugoslavia, in the Tadic judgment, subjected the Geneva Conventions to a dynamic interpretation on the basis of the principles of humanity and effectiveness.[35]

Dusko Tadic was the first person to be convicted by the Tribunal, and the judgment established precedence for the Tribunal's further work. Tadic was from the former Yugoslavia and resident in Bosnia and Herzegovina at the time of the events for which he was later convicted. He was accused of 31 crimes, among them grave breaches of the Geneva Conventions. In the Trial Chamber, Tadic was found not guilty on several of these counts, as a majority of the judges found that it was a case of non-international armed conflict, and that the victims of the offence were not protected persons under article 4 of the Geneva Convention IV.[36] The verdict was appealed, however.

The Appeals Chamber initially concluded that the conflict on Bosnia and Herzegovina's territory, also after 19 May 2002, when the Yugoslav People's Army formally withdrew, was an international armed conflict, cf. article 2, which is common to Geneva Convention I-IV. According to the Appeals Chamber, the Bosnian Serb forces were both *de facto* and *de jure* an organ of the regime of the neighbouring ex-Yugoslavia. In this way, the entire regime of *grave breaches* could be applied.[37]

The Appeals Chamber then had to examine the victims' status as protected persons. Geneva Convention IV uses the expression "protected persons" about persons in the hands of an enemy power defined on the basis of nationality criteria, cf. article 4. However, the persons whom Tadic had held in his custody were of the same nationality as him; they were also from Bosnia and Herzegovina. Nevertheless, the Appeals Chamber concluded that these persons were still protected by the Geneva Convention IV:

> "As the Appeals Chamber has stated above, Article 4 of Geneva Convention IV, if interpreted in the light of its object and purpose, is directed to the protection of civilians to the maximum extent possible. It therefore does not make its applicability dependent on formal bonds and purely legal relations. Its primary purpose is to ensure the safeguards afforded by the Convention to those civilians who do not enjoy the diplomatic protection, and correlatively are not subject to the allegiance and control, of the State in whose hands they may find themselves. In granting its protection, Article 4 intends to look to the substance of relations, not to their legal characterization as such."[38]

In the Tadic decision, the Criminal Tribunal thus gave expression to the view that the public good which the Conventions protect in certain cases goes further than the principle of sovereignty, which among other things was the basis for the wording of article 4 in Geneva Convention IV.

NOTES

1. As early as 3000 years B.C. examples are found of rules which protected certain categories of victims of armed conflicts. A prohibition on poisoning wells, for example, was part of traditional African law and has later been codified in treaties.
2. This chapter is based on a handbook on international humanitarian law published by the Danish Red Cross in 2004.
3. Geneva Convention I and II concern the protection of the sick and wounded in international armed conflicts fought, respectively, on land and at sea. Geneva Convention III concerns the protection of prisoners of war in international armed conflicts, and Convention IV concerns protection of civilians in international armed conflicts. The two Additional Protocols develop and reinforce the Conventions' protection during international and non-international armed conflicts respectively. Beyond Additional Protocol II, common article 3 applies in non-international conflicts. An international armed conflict is defined as 'all cases of declared war or of any armed conflict which may arise between two or more of the High Contracting Parties, (article 2 common to the Geneva Conventions). A non-international conflict is a conflict without the involvement of two States.
4. The European Convention on Human Rights, article 15. See also the Covenant on Civil and Political Rights, article 4. However, there are certain basic human rights which cannot be derogated, including the right to life and the prohibition against torture.
5. Additional Protocol I, article 57.
6. Case of Ergi vs. Turkey (66/1997/850/1057).
7. Compare, for example the court's par. 79 with article 57 of Additional Protocol I. Additional Protocol I is applicable only in cases of international armed conflicts, but a similar obligation concerning "precautions in attack" is part of customary law applicable in non-international armed conflicts.
8. It would be relevant, for example, for Danish-supported human rights commissions or ombudsman institutions to explicitly cite international humanitarian law in their mandates.
9. For a detailed review of the question of illegal combatants, see Knut Dörmann, "The Legal Situation of Unlawful/Unprivileged Combatants", *The International Review of the Red Cross*, no. 849, March 2003. www.icrc.org. The article is available on www.icrc.org under "information resources".
10. See Additional Protocol I, article 43, § 2. See also "Report on Terrorism and Human Rights", Inter-American Commission of Human Rights, October 22 2002.
11. Compare with the Hague Regulations Respecting the Laws and Customs of War on Land, October 18 1907, article 1.
12. Geneva Convention III, article 5.
13. Detained persons, regardless of whether or not they bear weapons, are covered by common article 3, Additional Protocol II articles 4-6, and by relevant customary rules and must be treated humanely.
14. Additional Protocol I article 50, § 1: "A civilian is any person who does not belong to one of the catego-ries of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol." The principle in article 50 is unquestionably applicable as customary law. Questions have been raised about

the customary law character of Additional Protocol I, article 43, which provides that combatants under certain circumstances retain their combatant status even where they do not distinguish themselves from the civilian population. It should be mentioned that neither the United States nor Afghanistan has ratified Additional Protocol I.

15. Geneva Convention IV, article 4.

16. The Prosecutor vs. Delalic et al., IT-96-21-T, November 16 1998, par. 271.

17. Geneva Convention IV, article 33; Additional Protocol I, article 51; and Additional Protocol II, article 13.

18. The Prosecution vs. Galic, IT-98-29, "Sarajevo", December 5 2003, par. 591.

19. Ibid. 133.

20. See the judgment's notes 150 and 222.

21. Possibly as a crime against humanity, if the requirements for this are fulfilled. For an overview of the various measures for criminalizing terrorist acts, see note 150 of the Galic judgment.

22. International humanitarian law and the Red Cross (and Red Crescent) are inseparably linked. The ICRC has been given a special mandate in the Geneva Conventions to monitor the states' observance of the Conventions, promote knowledge and respect for them and work with the development of international humanitarian law. The Conventions especially highlight the role of the national Red Cross and Red Crescent societies.

23. See Geneva Convention I-IV, respectively, articles 50, 51, 130, 147, and Additional Protocol I, article 85. As concerns human rights, it is only states which can be made responsible for violations.

24. The International Criminal Court, which is permanent and has its seat in The Hague, the Netherlands, can prosecute individuals for war crimes, crimes against humanity and genocide committed after the entry into force of the Court's statutes on 1 July 2002. The Court has not yet heard its first case. See more on www.icc-cpi.int. See also the Crimes of War Project's Magazine "The International Criminal Court: An End to Impunity?" in www.crimesofwar.org/icc_magazine/index.html.

25. An example of an area where international humanitarian law has undergone an evolution is war crimes committed in a non-international armed conflict. Common article 3 and Additional Protocol II do not contain provisions regarding war crimes, and there is no treaty obligation to prosecute crimes carried out in non-international conflicts. However, the statutes and court practice from the two Tribunals for ex-Yugoslavia and Rwanda and the statutes for the International Criminal Court provides for prosecution also for crimes carried out in non-international conflicts. It is thus recognized that grave breaches committed in non-international conflicts are also war crimes and a violation of customary law.

26. The case concerned the extradition of former Chilean president Augusto Pinochet from Britain to prosecution in Spain. Pinochet had originally been indicted on charges of genocide, terrorism and torture by a Spanish court, but as the case proceeded, because of differences in Spanish and British law, it came to concern mainly torture. See more on the Pinochet case and its consequences for the prosecution of international crimes on the Crimes of War Project's home page www.crimesofwar.org.

27. Geneva Convention I-IV, articles 49, 50, 129, 146.

28. In the case of possible initiation of criminal proceedings in connection with the extradition of Chile's former president Augusto Pinochet for prosecution in Denmark, the prosecution found that there would not be Danish jurisdiction, inasmuch as Denmark, under the UN's Convention on Torture, was not obligated to prosecute. Hence, Denmark could not indict Pinochet for violations of the Convention on Torture. Similar questions regarding jurisdiction can be raised about Denmark's possibility to prosecute persons of non-Danish nationality for war crimes committed in non-international conflicts and for violations of customary law, including crimes against humanity and genocide. The jurisdiction committee's terms of reference, etc. can be found at the home page of the Danish Ministry of Justice www.jm.dk.
29. See the definition of global public goods in the GPG glossary: "A public good is a service or a product which everyone consumes; consumption by one person does not exclude consumption by another."
30. Peace as a public good is discussed pp. 115-158 in this volume in Bjørn Møller's chapter "Peace and Stability as Global Public Goods".
31. For example, in Erik André Andersen and Birgit Lindsnæs' chapter, "Public Goods - Concept, Definition and Method" pp. 29-52 in this volume.
32. International Court of Justice, "Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons", July 8 1996.
33. Par. 105.
34. Par. 79.
35. IT-94-1 "Prijedor", Appeals Chamber judgment, July 15 1999.
36. For a review of article 4's nationality requirements, see above.
37. The system of war crimes is more developed in treaty law applicable in international armed conflicts than in non-international armed conflicts. See note 25.
38. Par. 168.

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International Court of Justice: Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 8 July 1996

The case of Bosnia and Herzegovina

Erik André Andersen

> "Bosnia is a shining example of how things should not be done. How do you create a state without a common police force, but with three separate intelligence services and armies, with three ethnic parties which are allowed to rule each within their respective spheres of interest year in and year out? "
>
> Danish journalist Jens Holsøe on nation building.[1]

INTRODUCTION

As an example of a specific conflict, I have selected Bosnia and Herzegovina, where a bloody civil war took place between 1992 and 1995. The conflict was one of the elements in the dissolution of Yugoslavia in the 1990s, and I will therefore start by briefly describing part of the background. In addition, the conflict took place within a broader regional (European) context, and I will examine how the international community intervened or failed to intervene, and what was subsequently done to rebuild the peace. Finally, I will discuss the Bosnian conflict from a public goods perspective, focusing on how the elements which were present before, during and after the conflict can be viewed in relation to public goods at the global, regional and national levels.

BACKGROUND

The background for the dissolution of Yugoslavia should be sought both in "deep" historical roots and in more current developments. Without making too much out of the historical background, one can ask the basic question: whether Yugoslavia at any time since its formation in 1918 has been a cohesive state. And it is perhaps here that we see the seed of its dissolution. Among the more current developments, focus has been on the following:

1. Yugoslavia's charismatic president and acknowledged guarantor of the state's cohesion after the Second World War, Josif Broz Tito, died

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 199-214
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

in 1980. The significance of Tito's death has been more generally expressed with the thesis that historically speaking, peace has existed in Bosnia and Herzegovina only by virtue of a strong external or internal authority.[2]

2. A strongly worsening economic crisis throughout Yugoslavia up through the 1980s. While an effective, though short-lived economic stabilization policy was implemented in 1990, it was unable to prevent:

3. The growing nationalism among the Yugoslav republics, known mostly through the former President Slobodan Milosevic's "Greater Serbia" speech in Kosovo on June 28 1989. But nationalism also had fertile ground in many other places, especially Croatia.

4. The fall of the Berlin Wall in 1989, symbolizing the conclusion of the Cold War and after a short time the end of the "East-West" conflict. The subsequent elimination of Yugoslavia's status on the international scene as leader of the non-aligned movement contributed to eliminating the state's security policy *raison d'être*.

In addition, there was a lacking understanding among the Western powers for the potential seriousness of the conflict and a lacking ability and will to intervene before it was too late. Time wise, this occurred during the developments in Eastern Europe and the Soviet Union (1989-1991), where there were many other problems to deal with, most notably the reunification of Germany (1990), as well as the situation created by Iraq's invasion of Kuwait and the UN-sanctioned and U.S.-led military response to Iraq's invasion (1990-1991).

The EU's contribution to the solution of Yugoslavia's problems until the end of 1991 was to attempt to keep Yugoslavia together. When this effort appeared to be failing, the EU took the opposite step and began to recognize the various secessionist republics as they declared themselves independent, at the invitation of the EU.[3] Germany led the way in this policy, recognizing Slovenia and Croatia as independent states in late 1991, with the remainder of the EU following suit in January 1992.

The emergence of the new independent republics created at least two new problems. First, the recognition policy had a decisive effect in tipping the fragile political and ethnic balance in Yugoslavia, in that ex-Yugoslavia after the exit of Slovenia and especially Croatia would become Serbian-dominated, and many non-Serbs felt themselves insecure with this new development, to put it mildly. This was especially true for the Bosnian Croats and Muslims, who

now had to face the choice of seeking recognition for Bosnia and Herzegovina or remaining in a Serbian-dominated Yugoslavia.

The second issue was that of state boundaries. Beforehand, it was by no means certain that the boundaries of the existing Yugoslav republics should also remain as the boundaries of the newly independent states. The drawing of boundaries left large Serb minorities in Croatia and a large Albanian minority in Serbia (Kosovo). The dilemma was that the border revisions would create a dangerous precedent in the rest of Eastern Europe and possibly spawn new territorial and ethnic conflicts. The only permanent boundaries which the EU could regard as a valid object for diplomatic recognition in 1991-1992 were the republican boundaries.

The degree to which a negotiated solution (on preserving Yugoslavia or the state's gradual transformation, and possibly its peaceful dissolution) was at all possible in 1990-1991 is certainly doubtful considering the predominant war psychosis and fear which had made itself felt at that time, and the question can hardly be answered definitively. It is certain, however, that the EU's policy of diplomatic recognition contributed to tipping the balance, and that several of the subsequent efforts at peace failed (the Cutilheiro plan, the Vance-Owen plan, etc.).

THE CONFLICT

When the EU recognized Bosnia and Herzegovina's independence in April 1992, there was no shortage of warnings of an impending bloody conflict.[4] The warnings came not only from experts in security policy but also from the Bosnian Serb political leadership, who openly declared that they would resort to armed force to oppose living in a Bosnian state.[5] In addition, it was obvious that drawing clear boundary lines between the ethnic groups would be nearly impossible in Bosnia and Herzegovina, which constituted an ethnic patchwork with its Muslim, Croatian and Serbian populations (plus many other minorities), mixed together with each other.[6] As the war would demonstrate, the redrawing of ethnic boundaries instead occurred with military operations and ethnic cleansing.

From the West, an arms embargo was imposed upon Bosnia and Herzegovina in an effort to remain neutral and avoid escalating the conflict. In practice, this worked to the advantage of the Bosnian Serbs, who obtained access to weapons' arsenals and troops as a result of the demobilization of parts of the Yugoslav federal army. The demobilized units entered the Bosnian Serb army. At the same time, the weapons embargo was broken by the Arab

countries, which supported the Bosnian (Muslim) government army, while the Bosnian Croat forces were supported by Croatia, which began an unofficial military cooperation with the United States.

That the war evolved with systematic mass murder and expulsions of large numbers of civilian population groups (ethnic cleansing) came as a surprise to the West. The EU's common foreign and security policy, enabled by the Maastricht Treaty, had its first serious test and failed miserably. It should be said, however, that this was no easy test to pass. It was not a case of a classic conflict between two parties. On the contrary, there were at least three parties, who entered into shifting alliances, supplemented by a number of uncontrolled militia groups and bandits.

From the UN, peacekeeping troops were deployed, while the EU contributed humanitarian assistance to the besieged and victimized areas. The UN forces, UNPROFOR, not only had a limited mandate, but they also had limited military forces to enforce their mission. An uncounted number of cease-fires were broken, and the helplessness of the UN forces was brutally revealed when two of the UN's declared "safe havens" were overrun by Bosnian Serb forces with subsequent mass murder of the civilian population, among them the massacre at Srebrenica.

While the Bosnian Serbs made advances in the war's first phase, a decisive turning point occurred in 1995, when NATO, after strong pressure from the United States and with the approval of the UN, intervened in the war and began bombardments of Bosnian Serb positions, leading to the Dayton peace agreement in the end of 1995. This agreement resulted in the diplomatic recognition of Bosnia and Herzegovina as an independent state divided into two "entities", the Croat-Muslim Federation and the Republika Srpska. The peace agreement also entailed the installation of a "High Representative" to administer the country during a transition period. The High Representative's authority was guaranteed by the G-8 countries (the U.S., Russia and several EU countries) plus Turkey, while military security was guaranteed by a sufficient number of UN forces in the form of the Implementation Force (IFOR) with 60,000 troops, and subsequently the 20,000 strong SFOR (Stabilization Force**),** which on December 2 2004 was replaced by the EU's follow-on, EUFOR, with 7,000 troops.

WHAT COULD HAVE BEEN DONE?

In the following, some examples will be cited of what the international community (especially the UN and the EU) could have done in order to prevent

or intervene in the conflict, and what could be done today to reconstruct the destroyed societies and rebuild the peace.

Before the war, one could have observed strong symptoms of crisis which evolved up through the 1980s. This invokes the significance of an "early warning system". But not only such a system. Equally important is the significance of listening to the early warnings. The warnings came from the security policy experts and specialists on Yugoslavia, but the warnings were marginalized in relation to the general security policy agenda, and as we have seen, there was an unfortunate overlap between the Yugoslav crisis and the major political events which unfolded at the same time (Eastern Europe, Soviet Union, Germany, Iraq).

Nevertheless, one must pay attention to the fact that the very absence of an unfortunate coincidence between a local crisis and major events would not necessarily have had major importance. Hence, there was undoubtedly a strong element of underassessment of the potential danger for a serious and bloody conflict in Yugoslavia. In addition there are many other examples of warnings of impending conflict which remained unnoticed. Rwanda (1994) is one example. Kosovo up through the 1990s is another. If there is one case where a violent conflict could have been predicted, and was predicted, it is certainly Kosovo. Nevertheless, the potential for a Kosovo conflict was allowed to evolve, leading to the subsequent NATO intervention and establishment of the UN protectorate in Kosovo in 1999.[7]

The difficult aspects of preventing such conflicts thus consist in taking them seriously at an early stage and being willing to intervene with a broad spectrum of preventive measures and with military force in emergency situations. According to a statement from the Bosnian Serb leader Radovan Karadzic, even a smaller UN force of 10,000 soldiers would have prevented his own advance in the war's early phase (Spring 1992). This could presumably have occurred by placing 5000 soldiers in the key strategic towns of Brcko and Zvornik.[8] Such an effort would have been well placed when one thinks about what subsequently occurred. But it would also have been a very precise and concentrated effort, and inasmuch as it requires detailed military strategic knowledge of the area, which perhaps was not present, it could enter into considerations about the capacity needed for future early warning systems. In this sense, military expertise would have an equal footing with other forms for early warning in terms of a potentially precise and targeted effort.

A preventive measure in larger scale could have been to open the door slightly for Yugoslavia's membership in the EU already in the 1980s. For many reasons, this was probably an impossible idea at the time, but one could consider it in retrospect. The former Southern European dictatorships such

as Spain, Portugal and Greece became EC members already in the 1980s and in the same period there were new winds of reform coming from the entire Eastern bloc. The perspective of EC membership could have contributed to preventing the Yugoslav conflicts, inasmuch as a constructive process could have been started. It is exactly this EU perspective that has since shown itself to be an important conflict-preventing mechanism in the East European countries during the 1990s.

It has been asserted from many sides that military intervention from an international peacekeeping force of sufficient strength was required not only with a preventive eye, before war broke out, but also during the hostilities. The more effort before, the better and cheaper it would have been, measured in both human and economic costs. When an effective military effort was finally executed in the form of the NATO bombardments in 1995, it showed itself to be effective and stopped the war in a short time. In this connection, the United States has been praised for its initiative compared with the indecisive EU countries. However, it should not be forgotten that the United States, too, was very hesitant in the war's early phase, both under president George Bush and the early years of president Bill Clinton's administration (until 1994). Contributing to this was also the United States' unfortunate experiences in Somalia (1993). Another lesson to be drawn, shown in the tragedy of the "safe havens", is that there must be some kind of correspondence between the mandate of the UN forces and their capacity to fulfil this mandate.

Nevertheless, one must not be blind to the fact that as long as it becomes customary to have foreign military intervention in local conflicts, this intervention can itself contribute to worsening and extending the conflict. The one part in a local conflict, in expectation of foreign intervention, can be motivated to continue the struggle in the hope of achieving a better result. According to some sources, this partially explains why Bosnian president Alia Izetbegovic rejected the Cutilheiro peace plan in 1992.[9]

In addition, the mechanism of sanctions should be taken up for reconsideration. Hence, the UN, according to the Millennium Goals (2015), will work for "smarter" sanctions, i.e., more specific sanctions which strike at the guilty regime rather than the suffering civilian population.[10] The experiences from Yugoslavia indicate that economic and cultural sanctions strengthened the authoritarian regime rather than weakening it. The sanctions not only enabled the authoritarian regime to legitimate its own position because of the "external enemy"; crime and corruption could also be exploited by a narrow circle in and around the regime. Long before the fall of Milosevic, human rights organizations in Serbia asserted that enhanced foreign cooperation

with civil society and greater openness instead of isolation would weaken the foundations of the regime.

WHAT IS BEING DONE TODAY?

One of the most noticeable cases of overcapacity of "hard security" in a peace-building process is the extent of military forces in Bosnia and Herzegovina. Here we are not only thinking of the international peacekeeping force of about 20,000 soldiers (in December 2004 reduced to 7,000), whose presence is certainly necessary, but of the country's own military capacity. Marc Remillard observes that Bosnia's military forces are "still oversized in both personnel and equipment, and are – here six years after the end of the war – still terribly expensive for a country with great economic problems".[11] The country has "three separate armies, three ministers of defence, three chiefs of general staff, and all the rest who go along with such ministries and defence headquarters".[12] The professional armed forces comprise around 34,000 men, of which about two thirds are professional soldiers, while the remainder are conscripts. The defence expenditures officially constitute 3-4 per cent of GNP, which in itself is a high number. If one adds to this the costs of procurement, maintenance, pensions and payments to veterans, Bosnia's defence expenditures reach 7-8 per cent of GNP, which is a very high amount.

The fact that this situation exists long after the Dayton agreements is due to a mixture of mutual fear and distrust between ethnic groups and the resulting lack of will and capacity to cooperate, the Bosnian fear of the surrounding states, general inertia in the political and administrative system, plus the fact that "the transparency in the state expenditure items is minimal if not nonexistent, and overconsumption is terribly widespread".[13] In addition, the international community, represented, for example, by the Peace Implementation Council, could not agree upon imposing the necessary reductions in the military expenses, which according to Remillard should consist of a 50-60 per cent reduction in the number of total armed forces.

Reduction of the overcapacity in the military sphere must be seen in a regional context; not only Bosnia and Herzegovina but also Croatia and the Union of Serbia and Montenegro must undertake similar reductions. This could eventually occur within the framework of the Stability Pact for South Eastern Europe, and in order to counteract the mutual fear among the countries it could be accompanied by international security guarantees. It is most likely that neither NATO nor the EU would be able to issue genuine security guarantees. However, Remillard argues that:

> "this does not mean that a common regional security agreement supported by NATO, Russia and the EU cannot fill this vacuum. With democratically elected governments in both Croatia and Yugoslavia [Union of Serbia and Montenegro] and forthcoming prospective agreements for these countries with, respectively, NATO and the Partnership for Peace, there is a real possibility for cooperation between Bosnia and Herzegovina and its neighbours, which can function as a basic principle for the common security agreement."[14]

The countries could further begin to establish confidence-building and security-enhancing measures in the form of partially demilitarized boundary zones, limitations on mobilization, expansion of the regime of inspections, exchange visits, common training exercises, etc. Consideration could be given to establishing a regional peacekeeping brigade to contribute to the collective security. Finally, it can be pointed out, that efforts to restrict the intelligence services' more or less anti-state and criminal activities could contribute as an important element in the construction of democracy and collective security.

Several of the examples described above reflect the transition from "hard security" to "soft security" in the military sphere. In addition, it can be argued that the achievement of peace and security in a more fundamental sense consists of the conflict-prevention effort to create democratic welfare societies. As Bjørn Møller shows in his chapter on "Peace as a global public good", (elsewhere in this book), the theory of "democratic peace" can be difficult to support empirically because there do not exist so many modern stable democracies and because states can have many other reasons not to go to war with each other. Nevertheless, one can operate on the hypothesis that the presence of democratic welfare states in themselves will contribute to preventing conflicts in, for example, the Balkans.

Already here, however, one might ask whether early democratic elections (in a transition society) are as appropriate as is normally assumed. Experiences from Bosnia and Herzegovina, where several elections at canton, entity and confederation levels were held in rapid succession, has shown that voters have given little support to cooperation-oriented parties, preferring instead to back the nationalist-oriented parties, representing each of the three ethnic main groups. In this process, the nationalist parties have obtained democratic legitimacy.

The EU's general approach to the peacemaking process in the Balkans has been to hold up the possibility of EU membership. This did not occur automatically, in that the EU initially saw its main interest in stabilizing the region and achieving good neighbourly relations via various support arrangements, special access to the EU's markets, etc. After the Kosovo conflict (1998-1999), it was recognized that the Balkans had to be seen as a

part of Europe and not only as a difficult and unstable neighbouring region. The overall strategy of giving the Balkan countries a real horizon of membership of the EU was formulated, a strategy which also entailed a long-term effort in the region rather than the usual effort of trying to "put out fires".[15]

Kenneth Schmidt Hansen has formulated this dilemma thusly: "the EU's view of peace reflects the EU's own experiences. Integration and a steadily closer cooperation between the member states are thus essential elements."[16] Hansen sees the EU as the negotiating magnet, where it is not just the EU's power of attraction which is considered, but the negotiating process itself as the embodiment of peace. "The negotiations obtain a life in themselves, they are both the means and end, where the process does not lead to peace, but *is* peace."[17] Bosnia and Herzegovina is far from being at the top of the list of new EU members, but has since 1999 participated in the Stability Pact for South Eastern Europe and in the same year entered into a Stabilization and Association Agreement with the EU, an agreement which entailed the promise of the possibility of membership.[18]

Other important elements in the peace-building process are the expansion of the civil component, especially economic and legal reforms and the strengthening of civil society organizations.

One of the outstanding political questions is an eventual renegotiation of the 1995 Dayton Peace Agreement; this renegotiation does not concern the peace agreement itself but the agreement's Annex 4, which contains the constitution of Bosnia and Herzegovina. It can be argued (and this view has in fact been promoted since 1995)[19] that the constitution's division of Bosnia and Herzegovina into two entities on an ethnic basis and with a very weak confederation superstructure is a straitjacket on the very idea of a unitary state, i.e., the idea of a multiethnic state consisting of Serbs, Croats and Bosniaks (Muslims) and other ethnic groups. According to this view, the division into entities should be dissolved and the effort made to actively form a unitary state. A modified variant of this view argues that the unitary state can also be formed within the framework of the Dayton agreement. Conversely, however, it can also be asserted that the contradictions between the ethnic groups are so great and will never be able to be contained within a single state, that one can just as well take the full step and divide the state along ethnic lines. How a consistent division of the state along ethnic lines can take place without new hostilities is not fully clear, but it could be negotiated on the basis of the existing division into entities. The long-term consequence of this viewpoint could be that the Republika Srpska joins Serbia, while parts of the Croat-Muslim Federation join Croatia.

A proposal for the cantonization of all of Bosnia and Herzegovina

along Swiss lines, i.e., a unitary state without the two presently autonomous entities, has been negotiated under the European Stability Initiative together with Bosnian politicians and was publicized in January 2004.[20] This can possibly be the introduction to a process which can lead the country out of the constitutional blind alley.

Yet another outstanding question is completing the work of the International Criminal Tribunal for the Former Yugoslavia. As mentioned in the chapter on "International institutions for preserving peace and security" (elsewhere in this book), the tribunal's work consists of bringing the main actors accused of war crimes etc. committed in the former Yugoslavia after 1991 to trial and possible conviction. As concerns Bosnia and Herzegovina, it has become a source of growing puzzlement that the two most important accused war criminals – former Bosnian Serb president Radovan Karadzic and the former head of the Bosnian Serb military forces Ratko Mladic - have not yet been brought before the court. For the sense of justice in Bosnia and Herzegovina, and this applies to both victims and the perpetrators, it would be of great importance that these two principal suspects be brought before the court. As long as that does not happen, there will remain doubts about the state of law in Bosnia and Herzegovina.

THE CONFLICT SEEN FROM A PUBLIC GOODS PERSPECTIVE

On the background of the conflict in Bosnia and Herzegovina, public goods can be conceived at global, regional and national levels, just as one can utilize a temporal perspective, i.e., before, during and after the conflict. This is attempted in the following diagram, which lists the examples cited in this chapter.

	Before	**During**	**After**
Global	Early warning	UN mandate NATO intervention Prosecution	Prosecution
Regional	EU Early warning		EU Military cooperation
National	Early warning		EU Constitution Economic and political reforms Prosecution

Figure 1: Public goods and the Bosnia and Herzegovina conflict as seen at a global, regional and national level in a temporal perspective.

As shown in the diagram, an advantage could have been gained by establishing an early warning system, and such a system could in fact have been deployed at all three levels and eventually form part of a coherent or cooperating network. At that time, many warning signs of an impending bloody conflict were articulated, but the signs were ignored partly because of a very complicated international situation in 1990-1991. In addition, an early warning system would have suffered under the difficulties outlined by Bjørn Møller (see his chapter elsewhere in this book). The lesson from this example of conflict is that military expertise ought to be part of such a system, cf. deployment of international peacekeeping forces in the critical points of Brcko and Zvornik.

In a pre-conflict situation, the perspective of EU membership can be emphasized, a perspective which certainly was rather unthinkable in the 1980s because of the Yugoslav social model, but which nevertheless showed itself to be effective in relation to other southern European ex-dictatorship states such as Spain and Portugal. An EU membership perspective could possibly have *structured the reform processes* in the former Yugoslavia in the same direction later seen in other East European reform countries. At the time (1980s), Yugoslavia would still have had the advantage relative to the other Eastern European countries of not being totally anchored in the Soviet sphere. Instead of the current situation where, because of the 1990s wars, it lags far behind the rest of Eastern Europe, Yugoslavia could perhaps have achieved a head start. Of course, it is easy to undertake this kind of retrospective thinking, but it is certainly legitimate to try to extract a lesson from history. And this is precisely what the EU has sought to do in the Balkans.

It can be concluded that during the conflict in 1992-1995, the UN mandate to the international peacekeeping forces did not stand in reasonable proportion to the actual effort of troops and materiel. As a result, this public good failed until the Security Council lived up to its task of preserving peace and security by approving NATO's military effort, which brought an end to the armed conflict in 1995.

Already during and later on after the conflict, legal efforts were undertaken to prosecute those considered responsible for the war via the establishment of the International Criminal Tribunal for the Former Yugoslavia, and even though the court's work has been criticized, there is hardly any doubt that prosecution of those responsible must be regarded as a public good with effects at global, regional and national levels. In the diagram, the prosecution is placed at the global level (UN). Similarly, prosecution can take place at the national level, where local courts, after the cessation of the armed conflict, could conduct cases against other accused persons aside from those with main responsibility. However, this has taken place only to a limited extent.

At the regional level, in relation to Europe, the EU membership perspective must be emphasized. After the conflict, European integration is now being pursued for most of the Balkan region, the present exception being the Union of Serbia and Montenegro. Furthermore, we can mention regional efforts in the Balkans in the direction of confidence-building measures in the military sphere, and for Bosnia and Herzegovina a major reduction of its military overcapacity. In addition, there is at the national level a need to expand the civilian component via economic and legal reforms and the strengthening of civil society organizations.

Finally, we have seen an increasing need for a constitutional revision, as the Dayton Agreement's division of Bosnia and Herzegovina into ethnically-based entities is not sustainable over the long term. It is possible that the proposal for cantonization, which the European Stability Initiative negotiated with the Bosnian politicians and made public in January 2004, can create the basis for a constructive process in the direction of a new constitution. In this case, we can conclude that the realization of this public good has been promoted with the help of an international NGO which has worked with determination in the region over several years.

NOTES

1. Jens Holsøe, "Krigens veje og vildveje", Danish daily *Politiken*, May 14 2004 (my translation from Danish).
2. Wiberg observes: "If we can learn anything from history, it is that [Serbs, Croats and Muslims in Bosnia and Herzegovina] could always live in peace as long as the mutual fear was limited by two conditions being fulfilled simultaneously. The one condition is a strong external state power which can guarantee everyone's security, and the other is that this strong state power is not itself so repressive, partisan or genocidal that one or more groups see it as a deadly threat". Håkan Wiberg, "Krisernes dynamik", in Erik André Andersen and Håkan Wiberg (eds.): *Storm over Balkan – fra oldtidshistorie til stormagtsspil*, C.A. Reitzel, Copenhagen, 1994, pp. 22-41, quotation pp. 32-33.
3. For simplification purposes, we use the abbreviation "EU", although the correct label prior to the entry into force of the Maastricht Treaty (November 1 1993) is "EC". An important criterion for EU's recognition of the republics' independence was that the demand for independence be confirmed by referenda at the republic level. The result of the referenda was a majority for independence in Slovenia, Croatia and Macedonia. In Bosnia and Herzegovina, as well, there was a popular majority for independence, but the referendum was boycotted by the Bosnian Serbs and thereby lost much of its legitimacy, in that less than half the population supported independence. In Serbia and Montenegro, there was a majority for a union of these two republics (The Federal Republic of Yugoslavia, renamed the Union of Serbia and Montenegro in 2003).The declarations of independence of the Kosovo Albanians, the Croatian Serbs and the Bosnian Serbs concerning parts of Serbia, Croatia and Bosnia did not obtain international recognition.
4. Even the date for the EU's recognition, the 6th of April, was attributed symbolic significance, not least from the Serb side. It was on this date that Nazi Germany commenced their attack on Yugoslavia with a massive bombardment of Belgrade. During the war (1941-1945), the Serbs in Croatia were exposed to what approaches genocide by the Nazi-installed puppet government (the fascist Ustasha movement, led by Ante Pavelic).
5. See Laura Silber and Allan Little, *The Death of Yugoslavia*, Penguin Books, BBC Books, London 1996, p. 215.
6. A coloured map of the ethnic composition is rendered in Andersen og Wiberg (eds.) 1994, p. 253.
7. It has been asserted that precisely the years 1996-1997 were the right time to intervene preventively from abroad in the Kosovo conflict. At that time, the Dayton Peace Agreement had been signed, and there was to a certain degree peace in the entire Balkans. However, Serbia, with international law in hand, could invoke this as a case of 'internal affairs' and that there could be no talk of "foreign intervention". In 1997, an Albanian rebel movement was established, in that some of the Kosovo Albanians saw it as purposeless to continue the path of negotiations with Belgrade. The conflict then escalated.
8. This is shown in the BBC documentary *The Death of Yugoslavia*, in five parts, 1995.
9. Silber and Little 1996, p. 219-220.
10. www.un.org.millennium

11. See Marc Remillard, "Politiske, militære og økonomiske udfordringer for sikkerheden i Bosnien-Hercegovina", p. 74 in Kenneth Schmidt Hansen (ed.): *Stabilitet på Balkan?*, 2002.
12. Ibid., p. 76.
13. Ibid., p. 74.
14. Ibid., p. 83
15. See Kenneth Schmidt Hansen, "EU's udfordring i Sydøsteuropa", p. 34 in Hansen (ed.), 2002.
16. Ibid. p. 26.
17. Ibid., p. 29.
18. Ibid., p. 30
19. Zoran Pajic: "A Critical Appraisal of the Dayton Constitution of Bosnia and Herzegovina", pp. 33-43 in Wolfgang Benedek (ed.): *Human Rights in Bosnia and Herzegovina after Dayton,* Martinus Nijhoff Publishers, London, 1999.
20. "Making Federalism Work – A Radical Proposal for Practical Reform", *European Stability Initiative*, Berlin, January 8 2004.

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3

STATE AND CITIZEN

Is good governance a global public good?

Hans-Otto Sano

INTRODUCTION

One of the advantages of a new concept such as *global* public goods is that the attempts to conceptualize and define the new phenomenon allow us to reflect on how existing concepts and ideas relate to the "new" concept.[1] Good governance is one of these new conceptual phenomena. How does good governance relate to the idea of public goods or more importantly, to the notion of global public goods? Is good governance such a good? Under what conditions is this the case, and what creates a global public good?

In the effort to understand how to apply a concept of global public goods, it was therefore relevant to reflect on how to classify "good governance". This can lead to further reflections regarding the utility of a concept such as "global public goods".

Let me therefore begin by immediately answering the questions posed above. If we define *public goods as services or products which everyone can consume, and that the consumption by one individual does not preclude the other*, good governance can be seen as a global public good. This conclusion is moderated by my use of the words "can be". One purpose of this chapter will be to explain why this degree of moderation is necessary, and to explain why it is interesting to discuss. Linked to this discussion will be a discussion of the consequences of determining that good governance can indeed be seen as a global public good. This chapter will not delve very much into a discussion of the substance of good governance, however, not totally excluding this perspective. The main purpose, rather, will be to view good governance in light of the ongoing discussion of public goods.

Another significant qualification must immediately be raised in connection with our conclusion that good governance can be a public good;

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 217-236
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this also leads to a possible point: you can ask whether it is sufficiently precise to characterize public goods as "services and products". This part of the definition gives the impression that public goods are something which can be consumed. Such an understanding might well be adequate in a situation where questions are raised about the effectiveness and resource utilization, but the question is whether it is generally satisfactory. My argument will be that especially when we speak of *global public goods*, it will be essential to be aware that a precondition for being able to establish global service provision is that institutional frameworks and cooperation are established with the intention of creating or administering these services. A debate on the administration of global public goods must unavoidably lead to a debate on global institutional mechanisms; but here the analysis also moves from one theoretical complex to another: from theories of goods and resource utilization to stakeholder and actor analyses, or from economically inspired theories to theories inspired by political science.[2]

It is precisely the juxtaposition between good governance and global public goods that permits us to discuss these questions, for good governance is not a service in a narrow sense, nor is it a product. Good governance is a state of affairs; it is a standard which is maintained by a series of norms, rules and procedures. Good governance is an institutional regime, a standard which is brought into use in relation to institutions. And this conclusion is relevant for the understanding of what exactly are *global* public goods. Such public goods can be services, such as for example the UN's peacekeeping actions, but they are first and foremost political or organizational efforts which find their expression in a form of institutional development. The institutional air traffic cooperation or the organization of world trade in the WTO are examples of such initiatives with institutional implications. These institutions provide services, but it is normally not the specific service which is the core field of the institution, but rather the institutional cooperation and decision-making around a set of rules and services. It is hardly possible to imagine global public goods without such institutional frameworks.

As concerns global public evils, in contrast, the case is somewhat different: the breakdown of the ozone layer does not necessarily have its source in a specific institutional structure; nor do the negative consequences of the existence of several states with a political culture characterized by violations of human rights and poor governance have their sources in a specific organization or institution.[3] Central to this argument is that global public evils are fought against using institutional initiatives. A consequence of this view is that public goods, and especially global public goods, are more dependent on political stakeholders than on consumer stakeholders. I will return to this

point below.

On this background, the purpose of this chapter is to analyze good governance as a global public good, to consider the degree to which good governance is a global club good, and to point out that the discussion of global public goods is often a discussion of strengthening international organizations and institutions vis-à-vis state actors. It is the argument of this chapter that it first becomes meaningful to analyze a public good as global at the moment when it is possible to establish global (regional) formalized decision-making processes around it. As such, global public goods therefore emerge, partly as a result of the desire to combat global public evils such as HIV/AIDS, and partly as a result of a rational desire to cooperate internationally, such as for example, around air traffic safety.

The chapter begins with a focus on good governance. The challenge here is that good governance is normally not classified as anything else but a concept. Good governance does not belong to any category: it is not a right; some would possibly agree that good governance is a norm or an entitlement such that peoples in democratic societies could be expected to hold their governments or officials accountable. There exist innumerable definitions of good governance as substance; but good governance is normally not specified as a category, as is the case with a public good, for example.

The chapter then discusses global public goods in relation to good governance. Under what conditions does a public good become a global public good? Can good governance, in accordance with such criteria, be characterized as a global public good? Finally, the chapter discusses the grounds to be concerned with phenomena such as good governance as a global public good and the consequences of this engagement.

GOOD GOVERNANCE

Good governance can be defined as a standard for democratic administrative practice and the exercise of power, where criteria such as openness, accountability, participation and efficiency are key concepts. At times, good governance is connected with respect for human rights and in a broader sense, principles of rule of law. Table 1 provides examples of definitions of governance

	Definition
The World Bank 1994	The manner in which power is exercised in the management of a country's economic and social resources for development
The Commission on Global Governance	Governance is the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken.
International Institute of Administrative Sciences, 1996	Governance refers to the process whereby elements in society wield power and authority, and influence and enact policies and decisions concerning public life, and economic and social development. Governance is a broader notion than government. Governance involves interaction between these formal institutions and those of civil society.
The UNDP 1997	The exercise of economic, political and administrative authority to manage a country's affairs at all levels
The European Union 2001	Governance means rules, processes and behaviour that affect the way in which powers are exercised, particularly as regards openness, participation, accountability, effectiveness and coherence
Department for International Development (DFID), UK, 2001	We use governance to mean how the institutions, rules and systems of the state – the executive, legislature, judiciary and military – operate at central and local level and how the state relates to individual citizens, civil society and the private sector.

Table 1. Definitions of governance

An integral component of these definitions is that governance concerns the administration of power and authority, either as concerns economic or social development or as concerns certain substantive characteristics, such as openness, participation, accountability and effectiveness.

Good governance is most often related to *governments'* exercise of power, but elements of these norms for the exercise of power can to a high degree also be brought to bear in relations to municipal authorities or private firms and NGOs, as shown in some of the definitions.[4] An often applied evaluation practice when capacity building and institutional development are assessed in relation to NGOs in the Third World is precisely their governance, understood as the openness and efficiency which characterize the given organizations' internal administration. Hence, good governance need not be applied only to governments and states, although it is nevertheless the small

states that are central in the discussion of good governance.[5]

There are two general, but different purposes which, taken together, can be said to characterize good governance. One is an effective administration, i.e., a *management* aspect, and the other is the enhancing of citizens' access to and control over (central) administration, i.e., an *empowerment* aspect. Both these elements are present in the definitions above, e.g., in the emphasis on the states' interaction with civil society in some of the definitions or in the relative emphasis placed on management in the first two definitions.

Good governance is often connected to the struggle against corruption. It is a popular goal, insofar as corruption is viewed as a global evil connected to the public sector. But good governance also goes further, being concerned with establishing norms which in today's debate are linked to the expectations for a democratic regime. Good governance, however, can also take place in non-democracies. John Rawls describes "illiberal societies", whose institutions are based on certain minimum conditions for justice and political participation.[6] Such societies must contain institutions which allow for consultative mechanisms between the people and the power holders, and there must be legal institutions which ensure a legitimate state of law.

Good governance is not a human right, even though Article 25 of the Covenant on Civil and Political Rights stipulates the right "to take part in the conduct of public affairs, directly or through freely chosen representatives"; there is thus an overlap between good governance and human rights, but good governance, rather, describes norms which must be validated in relation to institutions (in the public sector) rather than individual rights. The background for establishing and adopting norms for good governance is thereby to combat public evils rather than to specify individual rights.

GOOD GOVERNANCE IN PRACTICE

The background for the World Bank's revival of the concept of good governance in 1989 was especially the African states' poor administration of their resources in the 1970s and 1980s.[7] After about a decade with structural adjustment, it had become clear to the Bank that there was a need for an effort aimed at administration and policy beyond the purely economic programmes which had focused on price structures and export incentives. The World Bank's mandate, however, did not allow intervention or programmes in connection with political systems. "Governance" became the term which, when coupled together with administration and politics reform, was acceptable in terms of the mandate.[8]

The Governance programmes rapidly became popular among the bilateral donors, partly because the label "good governance" was often seen as more relevant and less politically burdensome than the label "democratization" or for that matter, "democracy". In some cases, good governance also became a means of implementing human rights programmes, and conditions for establishing rule of law and respecting human rights came to be regarded as key elements in some governance programmes. Several donors often label their democracy and human rights programmes under a broader "good governance" rubric. An unfortunate tendency here, however, is to mix together governance, democracy and human rights in such a way that observers find it difficult to identify which specific purposes are being referred to under the label "good governance".

Good governance has thus emerged within the world of development assistance and is more often being used to describe a policy which is initiated with reference to improving the administrations of other states and governments than one's own. Multilateral and bilateral donors are the primary bearers of promotion of governance programmes. International NGOs such as Transparency International function as spokesman and deliver documentation in relation to fighting corruption. In the developed world, the management dimension in the good governance package has especially been promoted via the OECD.[9]

In the South countries, both the Asian Development Bank and the African Development Bank have concentrated a part of their efforts on good governance. In the poorer countries generally, including countries in Eastern Europe, the World Bank has promoted public sector and civil service reforms, including an effort to modernize the public sector and make it more efficient, in accordance with management standards for budgetary control; in recent years these efforts have also included a stress on "policy agility", the necessity to adapt the implemented policy implementation to the demands of the market and of the political stakeholders.[10] In 2000, the Bank published a strategy for institutional reforms in the public sector including the strengthening of good governance.[11] In the presentation of the strategy, it is emphasized that

> "Based upon a stock-taking of the Bank's experience with public sector reform, this strategy envisions significant changes in the Bank's approach to governance and public sector work. The strategy recognizes that changing the internal rules of government is not enough. To be effective, we must work with our partners to understand and address the broad range of incentives and pressures - both inside and outside of government - that affect public sector performance. A broad framework for action is thus required, one that addresses competition and "voice" and partnerships, in addition to internal rules and restraints."

As shown in the quotation, the tendency has been to combine a management-oriented internal focus on the public sector with a broader, externally-oriented effort around the distribution of power, cooperation and consultative practice.

In the developed world, the assumption has been that developed societies already enjoy a form of good governance. There is no policy concerning good governance in Denmark, but even though the concept of good governance is seldom used when referring to Danish institutions, the individual standards nevertheless play a role in relation to the public sector. The objectives of open and accessible institutions which work on the basis of principles of subsidiarity, right to hearing and public control are often openly articulated or underlying agendas in the discussion of the public sector.

At the same time, it is clear that good governance is practiced differently in Western countries. The lack of openness which is discussed in relation to the EU's institutions shows with all clarity which differences make themselves felt. I will come back to some of these below.

GOOD GOVERNANCE AS A PUBLIC GOOD

My purpose in describing good governance in such detail is related to the fact that the demands and incentives to respect standards of good governance reveal how a global public good can emerge.

Good governance has not emerged as a result of a direct demand from the citizens. It is not the citizens, neither in South nor in the North, who have conducted campaigns to adopt good governance, although there are popular and political movements which have struggled against corruption. Good governance has been "invented" in a development sense by a larger institutional actor, and other development actors, both multilateral and bilateral, have taken it up.

Good governance has without doubt met with sympathy among political actors and in the civil societies in South and North, but these civil societies do not necessarily have ownership of this public good. There is certainly a general acceptance on the part of civil society that good governance is a good and not an evil, especially in the broader sense, where good governance not only concerns management (and layoffs in the public sector) but also increased access to and control over those in power. There have been few systematic protests which have sought to de-legitimate good governance.

The question of ownership and demand is important because it is associated with an analysis of the contexts which create the basis for the

extent of this good and for its further development. We can say that good governance as a public good has been promoted by institutional actors who, because of their overview and global interests, have deemed it necessary to establish such a good. It can be further stated that there has not been a marked popular resistance, but in specific cases a positive support toward establishing this good. The situation, in other words, is that there exists an unspecified consumption of the good, which is rather characterized by a satisfaction with the absence of certain evils such as corruption than a genuine positive demand for the good. The good is also sufficiently accommodating to contain several components centered around a management policy and a broader policy of openness, accountable control and popular participation.

It can be further argued that the consumption of the good is not directed toward very specific services, but is rather characterized by the existence of a certain administrative practice and political culture. To the extent that it is a case of services, these are not specified: combating corruption can take on several different forms, openness can be defined in several ways. The conclusion which we can make concerning good governance as a global public good is therefore:

1. Good governance is a public good, but good governance as a standard for consultative practice and popular participation exists only by virtue of the stakeholders whose primary area of intervention is the poorer countries of the world. It is typically the NGO-based stakeholders and to a lesser degree bilateral and multilateral donors who stand behind such standards. Good governance understood as a management practice has a broader circle of stakeholders, in that multilateral and bilateral donors and to a certain degree other actors such as international and national NGOs contribute to promote good administrative practice. Finally, good governance as a tool to combat corruption has a broad group of stakeholders.

2. There is, therefore, uncertainty as to what kind of "good" we are speaking of when good governance is brought in as a good. Consequently, there is uncertainty about both the consumption (consumption of good governance can be most easily discussed abstractly or in relation to very specific services such as combating corruption) and stakeholders. There is nothing unusual about this situation, in that a good can only be described in terms of abstract consumption – this applies to a topic such as culture - but precisely in relation to new goods and their diffusion, it

will be interesting to be attentive to which stakeholders and interests lie behind it. This becomes especially important in a global context.

IS GOOD GOVERNANCE A GLOBAL PUBLIC GOOD?

Good governance is enforced in states to varying degrees and with varying engagement. In 2002, The World Bank Research Institute published *Governance Matters*, which sought to document that improved governance has a positive influence on income levels per inhabitant.[12] This publication measured governance on six different dimensions, each with their own sub-indicators. The dimensions were:

1. "Voice" and accountability,[13] including political and civil rights, voting processes and media freedom.

2. Political stability, including perceptual measurements of risks for coup, terrorism, constitutional irregularities or political violence.

3. Efficiency of the administrative apparatus, including the perception of quality of public services, competence of the bureaucracy, its independence from political pressure and the government's credibility.

4. Management quality, including market-hostile policies, such as price controls or other unnecessary controls.

5. Rule of law principles, including levels for violent and non-violent crime, independence and efficacy of the courts and respect for contractual obligations.

6. Level of corruption and control, including views as to the level of corruption, and the various types of corruption from petty corruption to systemic corruption.[14]

It would be going too far here to present how the individual states place themselves in this analysis of good governance, especially as the credibility of the measurements expressed, e.g., by confidence intervals or standard deviations is not high in all cases. Nevertheless, there are certain general tendencies in the total picture as to how various countries are placed on the scale which can be of interest, including also the general distribution between those states exhibiting positive tendencies to good governance and states with pronounced negative tendencies. The scale which the study measures goes

from – 2.5 to 2.5, i.e., a scale where the 0 point expresses an average "good" governance with a standard deviation of maximum 1.

There is a certain consistency regarding those countries consistently occupying the bottom of the scale, those that lie in the middle and those at the top of the index. Appendix 1 provides indications of these placements as concerns, respectively, participation and accountability, rule of law principles and control over corruption. In order to provide an impression of the general placements, Appendix 1 shows the six states with the most "dense" placements around the bottom of the scale, six states placed around the cut-off point for the first quartile, six states placed around the median point, and finally, the six states with the highest governance scores.

The general picture, first, is that there are more states with bad governance than with good, in that the median observations are negative, i.e., they lie under the zero midpoint of the scale. The world is therefore characterized by more bad governance than good, if we look at the number of states which have generally low values in relation to this scale for good governance. This is certainly not surprising, but it means that it will be more correct to say that poor governance is a global evil rather than saying that good governance is a global good. The "governance cup" is best viewed as being half-empty rather than half-full, and this also applies if the calculation is carried out on the basis of the number of people (rather than the number of states) suffering from bad governance.

Second, the placement indicates that states at the bottom of the scale have generally negative reputations in terms of rule of law and democratic principles or are states in which there is or has been civil war. There are a few repeaters among these states in each of the measured categories: Afghanistan, Congo (Zaire), Myanmar and Somalia.

The group of low-income states tends to be positioned between the bottom and the average group. The average for the African states south of the Sahara thus lies at – 0.51 as concerns the dimension "voice and accountability" (the median observation is -0.05 in relation to this dimension). It is therefore not surprising that the middle income states dominate the median group, but that individual low-income countries also find themselves in this group, such as Honduras, Tanzania, Nepal, Lesotho, Ghana and Ethiopia. It is further hardly surprising on the basis of a general notion of governance in these states that countries such as Haiti, Kazakhstan, Azerbaijan, Colombia, North Korea, Armenia, Pakistan and Yemen are found in the bottom quartile of the governance scale.

The group of states between the first quartile and around the median observations include several middle-income countries, mostly countries of the

South, as well as Central Asian states and a few low-income countries.

Among the states at the top of the scale are several repeaters in the three dimensions measured in the appendix: the Nordic countries and Switzerland, The Netherlands and Canada. On the basis of these repeating states, the characteristic picture is that it is the OECD countries which generally score over 1.0 on the scale.[15]

From this analysis, we can conclude, firstly, that there is a certain association between the income level and good governance, but that it is not uniform. More importantly, good governance is up to now limited to the populations in some states, typically those at a higher income level. It will therefore be more correct to say that good governance is a "global club good" rather than a global good as such. It is a good reserved for the economically dominant and powerful states. However, it is not a good which these states themselves seriously use as a tool for their internal development; the club is, so to say, not established.

In 2001, an EU White Paper on European Governance[16] analyzed how the Union could contribute to a less "top-down" hierarchically dominated process in the European countries' interaction with their own citizens. The key focus on the report was openness, participation and accountability. This report contributes to institutionalizing governance as a common standard for all states. Such an initiative is an example of how good governance can become a global public good. It contributes implicitly with two essential criteria for the reduction of good governance as a global club good.

- A common understanding of what good governance is, i.e., a definition of the good;
- An understanding that this standard applies not only to "the others" but that it is a case of a common good which can be used as a point of departure for political changes. In this way the club is "established".

A third criterion in such a reduction of good governance as a global club good will naturally be:

- A real reduction of the dominant tendencies for poor governance.

Kaul and Mendoza distinguish between three types of global public goods:

- Global natural commons;
- Global human made commons;
- Global public outcomes or conditions[17]

The first category relates to e.g., the atmosphere or oceans. The second category can be such goods as global networks, international norms or regimes, or knowledge. The third category concerns the Millennium Goals,[18] peace or financial stability. Common to these three categories is that the goods that could become global public evils, e.g., the breakdown of the ozone layer in the atmosphere, require a form of international regulation and decision-making.

Three hypotheses can be presented in this connection, which can explain why poor governance has not been made the object of international regulation:

1. The global effects (externalities) of poor governance are relatively small seen in relation to the national effects, thus making good governance only a public good rather than a *global* public good.

2. The states' enforcement of their sovereignty continues to make it very difficult to regulate governance despite the fact that bad governance has external effects.[19]

3. The club around good governance, i.e., the OECD states, is affected to only a limited degree by the bad governance found in the rest of the world.

All these hypotheses probably contain some element of truth; it is not possible, however, to confirm or refute them. But they each point to some mechanisms which help create global public goods; it is on the one hand the effects of certain evils, and on the other hand it is the conflicts between national and international interests, and it is, finally, interests in the economic and politically powerful states which determine when global public goods become established.

It is thus possible to conclude that good governance must provisionally be characterized as a global public club good, whose share of stakeholders is limited to relatively few actors. It is also clear that there exists considerable inequality between the state actors who actively use good governance as an instrument for policy implementation and the state actors who "ought" to improve their governance, but who do not do so, as it can contribute to undermining their own power. Hence, there is no really convincing climate for the establishment of a global public good centered around good governance.

CONCLUSION

In this chapter I have sought to elucidate good governance as, respectively, a public and a global public good. Four general conclusions can be presented:

- In several cases, public goods relates themselves to institutions and institutional culture rather than to concrete services or products. Especially when the discussion concerns global public goods, such a perspective will be relevant. The form of appearance for a global public good will therefore often be an institutional initiative in the form of new institutional structures, new norms or new rules and procedures. These institutions are typically established in situations where global public evils become threatening conditions in the dominant political interpretation.

- Public goods exist and thereby survive often by virtue of the actions of political stakeholders rather than on the basis of consumer initiatives. This applies especially in relation to global public goods. It will generally be difficult to define consumer interest around global public goods, for they are seldom expressed in a form which is accessible in any measurable category.

- Good governance is a public good in some economically dominant and powerful states, but bad governance is closer to being a global evil than good governance is a global good. Global good governance therefore appears as a global club good, but is otherwise not clearly defined as a political institutional initiative neither internally in the rich states nor externally in relation to the countries of the South.

- It is debatable as to which theoretical complex is applicable in relation to the analysis of global public goods. In this chapter, the necessity of incorporating and analyzing political dimensions, especially political stakeholders, has been underlined. This points to the theory dimensions, which are oriented in a political science and sociological direction rather than in the economic direction otherwise dominant in the analysis of public goods. It is political stakeholders rather than consumer preferences which determine whether global public goods become established.

Finally, as pointed out above, global public goods raise the question of state sovereignty. It can be argued, as has been done by Held and McGrew,[20] that the

debate around global public goods revolves partly around the need for global policy, i.e., the need to respond to the needs for the formation of political communities across borders, needs which have appeared both as a result of the new global political constellations (the end of the Cold War) and by a growing global economic integration. Global public goods and institutions must therefore not necessarily be seen as an attack on the world order based on state sovereignty, but as a necessary element in the reorganization of global politics. Nevertheless, global negotiations on institutional development will continue to be characterized by conflicts based on the sovereignty of states.

The chapter has used good governance as a point of departure for discussing the character of global public goods. It has focused on actors and motives in relation to globalizing governance as a control mechanism.

It has been pointed out above that the *actors* are political actors and stakeholders rather than consumers; but who are the political stakeholders? To what extent is it a case of civil society movements or groups outside the political elite? What *democratic* potential lies in such global management mechanisms? The discussion on good governance shows that these groups should be seen as reactive rather than proactive. It is the formalized organs which contribute to creating new global public goods and institutions rather than informal ones. The democratic potential thereby lies in the prospect for advocacy around already established global public institutions rather than in affecting the process that creates them.

The chapter has discussed the possible *motives* which lie behind the establishment of global public goods and institutions. A significant motive has been to combat public evils with effects which extend beyond the individual nation-state. In relation to the question of the *consequences* of promoting global public goods, there is hardly any doubt that the states' sovereignty can be undermined. It is, as David Held emphasizes, a part of the process toward *global governance*, i.e., of a stronger cosmopolitan world order. These initiatives will be strengthened to the extent that citizen groups or civil society organizations go along with them, and in this connection, it cannot be excluded that horizontal alliances will be established between civil society groups across states.

But these are perspectives which can be discussed for a long time, and which find their impact with varying strength. This chapter has concerned itself to a concrete field, namely good governance. What remains undisputed is that good governance is not a good which the majority of the world's population can be said to enjoy, and that the prospects of combating bad governance as part of an institutional development which extends farther than development assistance is not especially probable over the short or the medium term.

Bottom placements, N=6	**1st quartile, N=6**	**Median-placement, N=6**	**Highest placement, N=6**
'Voice and Accountability' Afghanistan -1.64 (0.39) Congo, Dem Rep -1.70 (0.27) North Korea -1.82 (0.28) Myanmar -1.93 (0.24) Pakistan -1.43 (0.24) Somalia -1.45 (0.27)	Cambodia -0.77 (0.39) Cameroon -0.82 (0.24) Haiti -0.80 (0.27) Kazakhstan -0.80 (0.16) Maldives -0.81 (0.39) Uganda -0.79 (0.24)	Georgia -0.07 (0.19) Honduras -0.04 (0.24) Nepal -0.06 (0.36) Nicaragua -0.06 (0.24) Papua New Guinea -0.03 Tanzania -0.07 (024)	Australia 1.70 (0.24) Denmark 1.60 (0.23) The Netherlands 1.61 (0.23) Norway 1.58 (0.24) Sweden 1.65 (0.23) Switzerland 1.73 (0.23)
'Rule of law' Afghanistan -2.17 (0.37) Angola -1.49(0.24) Guinea-B -1.50 (0.37) Haiti -1.45 (0.34) Iraq -1.64 (0.24) Congo, Dem Rep -2.09 (0.27)	Azerbaijan -0.78 (0.19) Bangladesh -0.76 (0.24) Bosnia-H -0.75 (0.26) Colombia -0.77 (0.18) Ecuador -0.76 (0.19) N. Korea -0.74 (0.37)	Brazil -0.26 (0.18) Ethiopia -0.24 (0.34) Lesotho -0.19 (0.52) Papua New Guinea 0.28 (0.24) Senegal -0.13 (0.29) Turkey -0.16 (0.18) South Africa -0.05 (0.18)	Austria 1.86 (0.19) Finland 1.83 (0.18) Iceland 1.77 (0.26) Luxemburg 1.86 (0.33) Singapore 1.85 (0.16) Switzerland 1.91 (0.18)
'Control of corruption' Afghanistan -1.47 (0.47) Myanmar -1.18 (0.25) Papua N Guinea -1.21 (0.25) Somalia -1.16 (0.39) Sudan -1.24 (0.25) Congo, Dem Rep. -1.24 (0.32)	Armenia -0.80 (0.23) Bolivia -0.72 (0.21) Ivory Coast -0.71 (0.26) Pakistan -0.79 (0.24) Vietnam -0.76 (0.19) Yemen -0.70 (0.29)	China -0.30 (0.16) El Salvador -0.33 (0.21) Ghana -0.28 (0.25) Laos -0.31 (0.44) Mexico -0.28 (0.17) Nepal 0.31 (0.44)	Canada 2.05 (0.19) Denmark 2.09 (0.20) The Netherlands 2.09 (0.20) New Zealand 2.09 (0.21) Sweden 2.21 (0.19) Switzerland 1.91 (0.20)

Appendix 1. Governance indicators according to the World Bank Research Institute

Source: Daniel Kaufmann, Aart Kraay and Pablo Zoido-Lobatón. 2002. *Governance Matters I.* Policy Research Working Paper 2772, The World Bank.

Note: Numbers in parenthesis are the standard deviation. It should be noted that in some cases there are quite large deviations. The scale which is used goes from - 2,5 to + 2,5 with median-observations around - 0,05 for "Voice and accountability", around - 0,2 for "Rule of law" and around - 0,3 for "Control of corruption".

NOTES

1. See also the following chapters in this book: Erik André Andersn and Birgit Lindsnæs: "Public goods. Concept, definition and method"; Christian Friis Bach: "The international trade system" and Appendix 2.
2. See also David Held and Anthony McGrew: "Political Globalization: Trends and Choices" in Inge Kaul, Pedro Conceicão, Katell le Gouven and Ronald U. Mendoza: *Providing Global Public Goods: Managing Globalization*, UNDP, Oxford University Press, 2003.
3. See also Inge Kaul, Pedro Conceicão, Katell le Gouven and Ronald U. Mendoza: *Providing Global Public Goods: Managing Globalization*, UNDP, Oxford University Press, 2003, p. 95 ff.
4. See Table 1 with reference to various actors' definition of good governance. See also Hans-Otto Sano and Gumundur Alfredsson (eds.): *Human Rights and Good Governance: Building Bridges*. The Raoul Wallenberg Institute of Human Rights Library. Martinus Nijhoff Publishers, Lund, 2002.
5. In the final section of the chapter on "Good Governance, Accountability and Human Rights" in Sano and Alfredsson (2002), I discuss the extent to which it will be relevant to use good governance as a standard for international or supranational organizations.
6. John Rawls: *The Law of Peoples with the Idea of "Public Reason Revisited"*, Harvard University Press, 1999, p. 4 and part 2.
7. The World Bank relaunched this concept in their report *Sub-Saharan Africa: From Crisis to Sustainable Growth - A Long Term Perspective Study* (The World Bank, 1989). It had formerly been used by Philip Selznick in 1969 in a book on justice and the industrial sector. On this point see also Mette Kjær and Klavs Kinnerup: "Good Governance: How Does it Relate to Human Rights?" in Sano and Alfredsson, 2002, p. 2.
8. World Bank: *Sub-Saharan Africa: From Crisis to Sustainable Growth -- A Long Term Perspective Study*. The World Bank, 1989. World Bank: *Governance: The World Bank's Experience*. The World Bank, 1994.
9. See for example, OECD: *From Red Tape to Smart Tape*, OECD, June 2003.
10. Navin Girishankar et al.: *Civil Service Reform: A Review of World Bank Assistance*, The World Bank, Operations Evaluation Department Report (No. 19599), 1999. The evaluation covers 33 countries and 124 loans.
11. World Bank: *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy*, The World Bank, 2000.
12. Daniel Kaufmann, Aart Kraay and Pablo Zoido-Lobatón: *Governance Matters I*. Policy Research Working Paper 2772, the World Bank, 2002.
13. In Hirschman's original formulation of "voice" there lies a broader concept than simply freedom of expression, even though this is also important; there also exists a participatory element.
14. The data used by the World Bank in the analysis of these dimensions is based largely on various perception measurements, i.e., the view among certain more precisely defined user groups and stakeholders of the existence of a specific phenomenon, e.g., corruption. In some cases, permanent panels are used as the point of departure for the perception measurements. These measurements are neither representative nor based

on a large number of measurements. They are thereby burdened with considerable statistical uncertainty, which the World Bank itself points out in the above mentioned publication.

15. Thirty-eight states score 1 or higher to the "voice and accountability" criteria; of these, ten were not members of OECD. Twenty-six score 1 or higher on "control of corruption", of which seven were not members of OECD.

16. Commission of the European Communities: *European Governance. A White Paper*. Brussels, COM 2001, 428 Final, 2001.

17. See Inge Kaul and Ronald U. Mendoza: "Advancing the Concept of Public Goods" in Inge Kaul, Pedro Conceição, Katell le Gouven and Ronald U. Mendoza, 2003, p. 100.

18. The "Millennium Goals" were established by the UN General Assembly in 2000; they included, for example, access to primary school for all by the year 2015.

19. However, there exists no scientifically based assessment of the external effects of bad governance.

20. Held and McGrew, 2003, p. 186 ff. See also Inge Kaul, Pedro Conceição, Katell le Gouven and Ronald U. Mendoza: "Why Do Public Goods Matter Today?" in Inge Kaul, Pedro Conceição, Katell le Gouven and Ronald U. Mendoza, 2003.

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Legal protection and the rule of law as a global public good

Hans Henrik Brydensholt and Kristine Yigen

> "The legal system today is more insecure than under the Taleban. Even though the Taleban represented a dark era in our Nation's history, particularly for our women, at least the law was spelt out clearly. Today no one knows what laws apply."
>
> Kabir Ranjbar, President of the Afghan Lawyers Association (*Politiken*, February 15, 2004)

INTRODUCTION

Each individual's legal protection is the fundamental pillar of human rights since an individual's protection in relationship to the state constitutes the point of departure and the basis of these rights. A number of international conventions affirm certain rights in order to make this protection of the individual universal and global in scope. In ratifying these conventions, the international community has defined legal protection for the individual as a purely global public good. However, the fact still remains that some states encroach on their populations, or that such infringements take place without the state wishing, or being able, to step in. Some states are weak and lack the resources to maintain the rule of law.[1] In other instances, political or ideological currents may sway states to side step or seek to limit the enjoyment of the individual of the rule of law. Thus at this point in time, the rule of law cannot realistically be characterized as a pure global public good; rather it should be termed an exclusive club good. But it remains important to keep in mind that the international community, through these conventions, has defined human rights as a global public good.

In this chapter, we will define and discuss the rights concerning the protection of the rule of law that are mentioned in the Universal Declaration of Human Rights from 1948 and in the International Covenant on Civil and Political Rights from 1966.

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 237-254
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

The concept of rule of law is part and parcel of the type of governance known as a constitutional state. Thus, in order to describe rule of law you need to analyze, not only what the concept in itself entails, but also the surrounding societal context. You also need to discuss the extent to which the concept of rule of law as it has evolved in the Western tradition of governance can be applied in third world countries. Are there fundamental values in developing societies that will be neglected if rule of law as we understand it is introduced?

RULE OF LAW IN INTERNATIONAL HUMAN RIGHTS CONVENTIONS

As mentioned, rule of law is protected by, *inter alia*, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The concepts "legal subject" and "presumption of innocence" are important elements in legal protection. If an individual is a legal subject it means that this person can be entitled or obligated in legal matters; the presumption of innocence entails the right to legal defence for anyone accused of an offence.

The Universal Declaration of Human Rights has established that "Everyone has the right to recognition everywhere as a person before the law" (Article 6) and a similar wording can be found in the International Covenant on Civil and Political Rights (Article 16), in the American Convention on Human Rights (Article 3), and in the African Charter on Human and Peoples' Rights (Article 5). These articles mean that every individual has the right to be recognized as a person with legal obligations and rights;[2] stated differently, legal persons have the right to enter into all legal activities as equal participants.[3] The idea behind this provision is that every individual must be allowed to enter into every day contracts concerning leases, employment, custody, marriage, etc. What is special about this provision is that it includes "everybody"; thus it also protects women, children and people with mental disabilities, although the latter categories may be restricted in their actions by national legislation without this being in conflict with Article 6.[4] Historically, there have been many examples of Article 6 violations; for instance, women in many states – including Denmark – have been denied legal autonomy or legal personality if unwed.[5] Black people in South Africa were more recently also denied legal personality on a number of issues; among others, they were denied court appeal when forcefully moved.[6] Denying foreigners seeking asylum the right to marry will also be a violation of Article 6.[7]

The Universal Declaration of Human Rights affirms the principle of equality before the law as follows: ”All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”(Article 7). A similar provision is found in the International Covenant on Civil and Political Rights (Article 26). Both are important provisions in discussing the individual right to legal protection.

These articles prohibit discrimination in any area regulated by public authorities. Equality before the law does not mean that everybody should be treated identically; it simply states that there can be no differential treatment for persons in completely similar circumstances. The importance of this principle has been emphasized by Isi Foighel: “This is really the essence of the conception of justice we all aspire to. And only if a society is built on justice can we speak of a state governed by law.”[8] In its decisions responding to complaints from citizens, the Human Rights Committee under the International Covenant on Civil and Political Rights has emphasized that the state must not give differential treatment, but that equal treatment does not signify uniform treatment; for example, bestowing certain rights on a country’s citizens that non-citizens do not have is not contrary to the article in question.[9]

One very controversial act that was in violation of the Universal Declaration of Human Rights was the Danish “Tvind Act,” as it became popularly known.[10] “Tvind” is a Danish society of schools adhering to certain left-wing beliefs. This so-called Tvind Act determined who could receive state funding to run the special Danish folk high schools and which requirements had to be met in order to receive such funding. The problem was that the act stipulated that it did not apply to schools that cooperated with Tvind. In 1991, the Danish Supreme Court handed down a ruling that this act was unconstitutional, declaring that it violated the Danish constitution’s separation of powers. The Supreme Court declared that the legislative power had in reality settled a legal dispute between the Tvind Schools and the Ministry of Education by Statute, and that such a resolution comes within the sphere of the judicial power, not the legislative power, thus guaranteeing citizens due process.[11]

Other provisions safeguarding individuals’ legal protection in international conventions are found in Article 9 of the International Covenant on Civil and Political Rights (similar statements are found in Article 6 of the African Charter on Human and Peoples’ Rights; Article 5 in the European Convention on Human Rights; and Article 7 in the American Convention on Human Rights). These provisions protect individuals from arbitrary arrest,

detention, and exile; and furthermore, the International Covenant on Civil and Political Rights lays down rules governing arrests (the right to know charges against you, the right to be put before an impartial judge). These are crucial rights when it comes to the relationship between the individual and the state; they protect individuals against arbitrary arrests during, say, demonstrations, and citizens against being expelled by their own state. But in the question of expulsion, a foreseeable clash is looming between human rights and developments involving the battle against cross-border crime, e.g. trafficking in drugs and women, corruption and terrorism. As has been mentioned in the chapter on curbing corruption, some states can expel its citizens for criminal prosecution (cf. EU rules governing the European Arrest Warrant.) This is a definite challenge to human rights.

Finally, the right to a fair trial and to be presumed innocent until proven guilty is protected in Articles 10 and 11 in the Universal Declaration on Human Rights, and in Article 14 in the International Covenant on Civil and Political Rights (as well as in Article 6 of the European Convention on Human Rights; in Article 8 of the American Convention on Human Rights; and in Article 7 of the African Charter on Human and Peoples' Rights). A fair trial means that the trial must be public and that court officers must be impartial and independent (though the public component may sometimes be restricted, particularly if ongoing criminal investigations necessitate this.) This also means that a detainee must be arraigned within a limited time span.

In civil cases, it is customary to limit court access, e.g., by charging a fee; although perhaps fundamentally not in accordance with the provisions mentioned this can be alleviated by legal aid for plaintiffs of limited means.

A fair trial also implies the right to a legal counsel who must have access to all information regarding the charges.

In 1989, the European Court of Human Rights ruled against Denmark in a case where, time and again, the very same judge, who later presided on the trial, had ruled that there was sufficient supportive evidence to decide that the defendant was to remain in custody. The European Court of Human Rights ruled it was insufficient that the Danish judge had in fact been impartial in his judgements; outwardly, legal proceedings should also be conducted in a manner that "justice appears to be done".[12]

The same goes for the right to be presumed innocent until proved guilty (Article 11 in The Universal Declaration of Human Rights – this is one of the main pillars of due process, making it up to the prosecution to prove the guilt of the defendant, not the onus of the defendant to prove his innocence. Defendants must always be granted the benefit of the doubt and have the right to remain silent; any unfavourable verdict has to be based on sufficient direct

or circumstantial evidence firmly establishing guilt.[13]

In the following, we will seek to demonstrate how due process and the rule of law have developed through the ages and what challenges we are currently facing regarding the operationalization of these concepts and rights, especially with a view to the developing countries.

DUE PROCESS AND THE RULE OF LAW

The constitutional state was a product of the American and French revolutions more than two centuries ago. It came as a result of the bourgeoisie revolting against absolute monarchy – yet it was also a revolt of the legal profession. They stood as a vanguard and their thoughts on fundamental freedoms and legal protection bore down on the new constitutions. Protection of private ownership became a crucial civic right on a par with, say, the inviolability of the home and individual freedom of speech and religion – and of course, individual protection against extrajudicial deprivation of liberty. But the original constitutional state did not imply any idea of distributing private ownership or the standard of your home, i.e. of social justice.

It would be a century before such ideas permeated the conception of state obligations under what came to be known as the social state. It is worth noting that the idea of the social state evolved in Prussia and the idea that the state was obliged to safeguard certain minimum living standard for the badly situated was based on a consideration for societal stability, not humanitarian or human rights considerations.

However, after World War II, the social state evolved into the *welfare state* and the role of the state became far more extensive. Now the state, through the public planning system, got responsibility for the uninterrupted material prosperity blossoming under full employment. And the planners were thoroughly convinced that they could fully control developments. A mere 30 to 35 years ago, the welfare states were believed to be immune to an economic world crisis and endemic unemployment.

As is well known, planners were unable to sustain the uninterrupted line of progress. But apart from this, the welfare state showed other unfortunate side effects. Notably a rampant bureaucracy alienating ordinary users to public agencies.

As a result, there was a widespread reaction against the welfare state's mammoth institutions and the proliferation of planning. The reaction went in two directions. One direction – gathering most attention – is *market orientation* according to which the market is supposed to divine the demands

of the population and conduits towards fulfilling these needs most effectively. However, it is not only the free market economy, which has been seen as replacing the socially guided welfare state. In legal sociology another model is discussed: the *reflexive* or *responsive* state. That is a society where the state – as opposed to on the one side the welfare state establishing a fine-meshed harness of rules regulating the way people behave and the distribution of entitlements and on the other side the liberalistic market-oriented state - limits itself to a broadly stroked regulation of the overall guiding rules for citizens as they themselves determine the rules they want to play by. Here, the important thing is to arrange societal discourse in a way that not only permits the powerful, but all interested parties to have their say. As opposed to the representative model of society where citizens can have their say through elections, but aren't directly involved in making decisions.

Because of the welfare state's supply-side view of entitlements, they were determined either by politicians or by specialists who granted these entitlements with approval of politicians. The free market state as well as the reflexive state are characterized by a displacement of power giving citizens a decisive influence on the shape and form of entitlements – through individual consumer choices under the free market state, through collective decisions under the reflexive society.

Although, from a legal sociology point of view, you can see this as different steps in societal development, it is important to keep in mind that we are dealing with an evolution, continually developing the previous stages. Thus the "social state" did not forfeit the constitutional state's protection of each individual against government infringements. Nor does the welfare state or the market-oriented or reflexive state models give up protecting the legally or socially weak. Again, they are building on earlier achievements.

LEGAL PROTECTION AND THE RULE OF LAW

The concept of law and order is used in two different meanings. It is used to signify the state's obligation to ensure that each citizen can go about his or her business peacefully. This is about the state maintaining and enforcing law and order, i.e. fighting crime. But "rule of law" is also used to indicate that each citizen should be protected against the state, i.e. a constitutional state or a state governed by law. The introduction to this chapter uses "rule of law" in the latter sense, as does the following.

The demand for rule of law can be applied to the legislative, the executive, and the judicial powers, but fundamentally it calls for the same

basic principles.

The rule of law can be viewed materially, or as *the certainty and predictability of the law*. The aim is to eradicate any possibility of arbitrary administrative displays of force. The roots of this ideal can be traced back to the liberal tradition and the Enlightenment struggle against absolute monarchy. The ideal reflects an innate fear of state encroachments if citizens are not given a clear-cut legal status.

Other views, however, are predominant in modern-day Denmark when legal status vs. discretionary power is discussed. One example: The discussion that preceded the reform of our social legislation in the 1970s. Here, the discretionary principle or – as it is defined – the professional's comprehensive evaluation and decision on the client's need gained significant ground. This is basically due to the confidence that public officials, or experts, when called upon to make a professional assessment regarding their clients' total predicament without the constraints of having to deal with pre-defined scenarios would achieve better results, i.e. greater efficiency – which was assumed to be in the client's best interest as well. Subsequently, a reaction to this development set in. After all, when government experts are given more freedom in decision making they are also granted greater discretionary powers *vis-à-vis* their clientele. Since social work is to a great extent about giving people with low self-esteem increased faith in their own ability to handle life's adversities it is, from a professional point of view, questionable to build a system that leaves decisions to an expert.

Where defined legal positions, defendable through adjudication, were earlier seen as a protection against official abuse of power, nowadays protection against giving experts discretionary power to decide in accordance with their expertise over the fate of the client, and thereby making the client powerless in his own life, is seen as equally important.

Alongside the principle of certainty and predictability of the law discussions now focus on the aspect of *procedural protection* not only in court trials but also in administrative law. Here the concern is that cases should be dealt with impartially and based on all the relevant information. This demand is now based on the laws on administration, dealing with conflicts of interest, access to information, "contradiction" i.e. a procedure where the complainant has the right to confront the administration, reasoned decision and the right of recourse. For the judiciary, detailed procedural rules are laid down in more than one thousand sections of the Administration of Justice Act.

This, however, is not the only way administrative legislation has attempted to determine the concept of the rule of law. For instance, former Ombudsman, late professor Lars Nordskov Nielsen tried to achieve greater transparency in

the definition by offering the following conceptual subdivision:[14]

- The goal oriented rule of law concept according to which citizens enjoy legal protection to the extent that they actually receive the rights and entitlements they formally have according to legislation and are not imposed duties beyond statutory terms (just as all are imposed their lawful duties such as the payment of taxes.) Other types of ascertaining the rule of law can be seen as tools needed to effectuate goal oriented rule of law.

- Material rule of law. This demand implies some minimum requirements to the state: human rights, the principle of legality and administrative law principles of abuse of power for not authorized purposes ("detournement de pouvoire") and of equality.

- Certainty and predictability of the law, which implies that it should be fairly easy for citizens to foresee the legal consequences of specific situations and dispositions. This aspect of equality in the rule of law involves legal requirements both to the extent and form of administrative decisions (safeguards against arbitrariness) as well as the extent and form that citizens are informed of the state of the law in a given area.

- Procedural protection is a term embracing all the rules on case handling aiming at making adjudications legal and fair (i.e. the bulk of the administrative legislation including some supplementary legal doctrines). Most important among these are rules concerning decisions made at the first administrative instance, but the access to appeal and the extent and intensity of second instance trying of the case adjudication are also important.

However you may choose to subdivide measures to safeguard the rule of law it is always important to emphasize that these legal concepts are closely related to the administrative practice known as exertion of authority, meaning binding legal decisions about permissions, prohibitions, etc.; the so-called administrative acts. The term *rule of law* and its subdivisions are non-related to the administrative practice consisting of far more numerous "practical acts" (like public service delivery.)

However, instead of putting specific demands on administrative procedures encompassing only a minor part of public affairs, it may be expedient to shift the legal focus to the larger service sectors where non-specific decisions are made based on a comprehensive professional assessment – such

as, say, schools, where teachers are granted freedom in the choice of teaching methods and in hospital health care.[15]

The question is whether or not it is possible to change the way public affairs are dealt with so that the individual citizen's legal position *vis-à-vis* public service is strengthened further along the lines stipulated by the rule of law standards. In other words, can we pinpoint potential improvements in the citizen's legal position in relation to public service delivery now directed by general professional assessments? And, if so, can this be achieved without falling afoul of quality and efficiency requirements? These are the issues to be discussed below.

WORKING CONDITIONS FOR PUBLIC SERVANTS

In his dissertation *Street Level Bureaucracy*, Michael Lipsky stressed that nearly all public service affairs involve civil servants/public employees acting in relation to users with whom they are in direct contact.[16] This is true of employees in social agencies, the educational system, hospitals, and similar fields, and for all experience shows:

- No matter how many resources – mainly meaning staffers – you have at your disposal, they will always be perceived as insufficient.
- In all of public life there is a fundamental insecurity regarding the goals of the enterprise in question and the optimum means to achieve these vaguely set goals.
- Employees experience a conflict between loyalty to clients or patients on the one hand and to the public system they are part of on the other.

These common work conditions lead to uniform reactions:

- When resources are perceived as being too scant there are ways of limiting demand for that particular type of public service; e.g. curtailing opening hours, requiring personal application at offices located far from where people usually congregate; or you may simply let the backlog grow longer.
- Lack of clarity regarding intended goals can lead to the institution aiming at something that can be measured; i.e. how many users are processed under a given procedure, irrespective of the end-results. Incidentally, in practical terms, it shows up that "correct procedure" is

determined less by whatever written guidelines may be in place than by how respected colleagues act under similar circumstances. Another parameter that may be easily measured is the physical framework of an institution. Thus, interest is focused on being able to offer satisfying physical surroundings.

- It is claimed that people who become public servants motivated by an enthusiasm for hands-on work with users show a certain propensity for developing a more standoffish attitude towards their clientele over time, as frustration due to insecure results sets in.

CIVIL RIGHTS *VIS-À-VIS* PUBLIC SERVICES

In the early 1990's, in order to obviate difficulties like the ones mentioned by Lipsky, the British government produced a document entitled *The Citizens Charter – Raising the Standard.*[17] This programme centred on empowering the individual citizen. It expressed a belief that citizens were entitled to being properly informed and choosing for themselves, as the expression went; the need to create a public sector where services were created based on the wishes of users; yet the document stressed that although the ultimate goal was listening to citizens when benchmarking public services, the ultimate power of decision had to rest with the authorities.

The fundamental idea was this: The individual citizen would hold a strong suit facing public institutions if provided with detailed information as to what to expect from a public service or entitlement. The precondition would be complete openness regarding the goings-on in the public sector. Public services had to be easily obtained. The focus was on opening hours, the physical location of institutions in relation to users, and phone service. But the actual innovation in this arrangement was that it provided the recipient with a kind of legal position. A recipient was entitled to a reaction from the government agency in question if the entitlement did not measure up to established levels. There was a built in guarantee that public managers would be held accountable for living up to established standards.

However, the idea that citizens should enjoy some sort of legal position in relation to public services hardly became the success that the British Government had expected. Critics accentuated that the expression "Civil Rights" might be associated with Civil Participation as well as individual rights and corollary legal compensations. These critics found it difficult to see how, in the long run, the idea of Civil Rights could be limited to goods benefiting the individual citizen as opposed to more universal goods such as environmental

concerns and public security. Also, there was difficulty in making a long-term differentiation between on the one hand determining the level a service or entitlement should have – which is to a significant extent contingent upon the available resources and thus expresses a clear political decision – and the way these services are placed at the public's disposal. The rationale behind "Civil Rights" was that the individual citizen had a right to grievance against the provider of public service if the "product" did not live up to the expectations the "label" might inspire. The public service provider then had to react to this complaint; and, in the event that the citizen was right, he or she at the very least had to be told so, and receive an apology. Critics of this system pointed out that any attempt to give a claimant regarding public-services a legal status would necessarily give rise to acute political debate regarding the actual level of entitlements. It was held that the civil rights model would be meaningless if this right was not accompanied with a bona fide mechanism for enforcement. For example, receiving an apology for irregular train service, or whatever the case might be, would hardly be satisfactory for citizens in the long run.

Generally speaking, there was criticism that the focus on individual rights constituted a fundamentally selfish view of citizenship. This idea would supposedly strengthen those already able to express themselves and gain influence while the system, on the other hand, would further marginalize minority groups. The system implies that government bodies would seek advice from individual users when shaping public services while expressly avoiding representative forums as these can potentially lobby as pressure groups. In this context, critics mentioned that a typical way for minority groups to gain influence lies precisely in joining together.

SYSTEM WORLD – LIFE WORLD

As is the case in many areas, developments within the legal universe can also be seen as evolving on two levels. First, there is a linear development where we continually get more of the same. We have thousands of acts and orders, not to mention the many, many thousands of circulars with appropriate rules of guidance. At the same time, we get an increasing number of legal dissertations and articles – meaning that at this level of development we need ever more sophisticated information systems. Technologification, specialization and an increasing demand for lawyers are the natural consequence.

At another level we raise the more fundamental questions regarding where the linear development is leading us – and whether or not this is where we really want to go. This is the discussion we meet in the deliberations

concerning Reflexive Law or self-management. A philosopher like Jürgen Habermas distinguishes between what he calls the System World and the Life World.[18] The System World is the sphere governed by economic, technical and administrative concerns. Contrariwise, the Life World is the sphere were people find the meaning behind their existence and society is maintained as a coherent social unit. In the System World, things revolve around power and money; in the Life World, they revolve around communication and emotions. Traditional law, including the human civil rights, belongs in the system world. This is also true in the instances where the law lays down the rules for a market based society. Things are different, however, if you look at what is called Reflexive Law or self-management.[19]

- In the welfare state, the form of government is oriented towards central planning and rule by statutes. In self-management there merely exists a framework for decisions that are ultimately made by those involved.
- The type of decision prevalent in the welfare state is the professionally correct disposition. In self-management, the decisions are what those involved can agree upon.
- The product delivered by the welfare state is publicly produced, uniform services. In self-management, a variegated supply of public and private services is offered.
- In the welfare state, the financial model is tax financed "free entitlements," in self-management, the model is "block grants" enabling the citizens to decide on various offers.
- Welfare state politicians are focused on administrative case-handling. In self-management they are focused on values since they are mainly there to lay down the overall framework for development options.
- In the welfare state, public employees are mostly there as specialists; in self-management, their role is more that of the consultant.
- In the welfare state, citizens are mostly beneficiaries (clients); contrariwise, in self-management, they become the de facto decision-makers.

Self-management is based on the power that can be wielded by those directly involved when they are able to negotiate an agreement amongst themselves. One instance that comes to mind is, say, school boards. Here, what is important is not legal positions, but results achieved by mutual discussion.

HUMAN RIGHTS – LEGALIZE OR HUMANIZE?

In several countries, e.g. in Uganda, Danida supports a programme for the improvement of the courts. By courts what is usually meant is the judiciary with Magistrate Courts, High Courts, Courts of Appeal and the Supreme Court. In Uganda, judges in the higher courts are lawyers with long careers as judges. This is also true of the Chief Magistrates in the Magistrate Courts and those Magistrates that are university educated and thus can later be promoted to higher office. But most of the Magistrates – about three quarters of them – are so-called Lay Magistrates whose legal education consists of a nine month course at a Law Development Centre. But these low-paid Lay Magistrates are as mentioned part of the formal judicial system with all the problems this entails.

And yet the bigwig judges at the higher courts were not primarily concerned with the Lay Magistrates when Danida started the programme about ten years ago. Nor were they plagued by the thousands of dormant cases pending in the system. What really bothered them were the undignified court buildings and justice residences and the ramshackle cars they had to use when holding court sessions around the country. Although the judges were also very concerned about the local courts that are now known as Local Committee Courts (LC Courts). This term covers the locally elected councils that are also vested with the power to resolve disputes. According to the legislation regulating these local councils they may only hand down rulings in civil, not criminal cases. But this does not prevent them from actually ruling in all sorts of conflicts which, in the formal judicial system, would constitute criminal cases. In the reality of the Local Council Courts, these cases are transformed into civil disputes. Cases involving assault and violence become compensation cases for pain and injury; theft becomes cases of indemnity or replacement of stolen goods. In general, villagers are more interested in benefiting from the case themselves than in the culprit being punished by the state.

In the LC Courts, cases are treated according to Traditional Law. But since this is an unwritten law it cannot be static. Actually, the law develops along with the local society. It should be mentioned that a number of the Councillors in the local court are required to be women.

The LC Courts have the power to hand down verdicts, but rarely do so; normally they function as mediators. And it is significant that these rural courts do not have any powers to execute their rulings. This, however, is not sorely missed since the entire village will witness the treatment of the case and the judgement is regarded as highly legitimate making social pressure adequate to ensure enforcement of the verdict.

The Judges as already mentioned wanted to abolish this type of conflict solving, citing that the local council had a very limited knowledge of the law and human rights. The local Councillors, so they said, were hardly able to write the Court Records and certainly not in English – the official language.

The LC courts, however, were not abolished. Danida funded a study of how conflicts are actually resolved in Uganda. The study showed that, in actual fact, the LC Courts are by far the most important conflict-solving institutions in the country. The study indicates that roughly 60,000 cases are resolved this way weekly. When surveyed, it turns out people have far more confidence in the LC Courts than in the distant, formal courts notorious for their corruption.

Maintaining and supporting these LC courts has now become a crucial element in the development strategy for Uganda's court system. This point of view is now also endorsed by the professional judges, but the system is not without complications. There is a possibility of appeal from the LC courts to the formal judicial system. Although rarely invoked, it is important to uphold this right of appeal. The question remains, however, how the professional judges can and should handle appeals in cases that have been tried according to local legal tradition since there is no common legal ground. The answer to this dilemma is that the formal appeals system resorts to the English concept of "natural justice". As a consequence, in order to form the basis of verdicts, the traditional law cannot be in contravention of fundamental legal principles.

Tradition-based law will by definition be predictable for people living in the area. And the level of information is high; everybody is present as the ruling is handed down. Elementary rules of legal procedure are observed. The LC Courts also demand that both parties have an equal right to be heard and call witnesses, etc. Members of these courts also have to be impartial and as has been mentioned, there must always be women among them. All this is well in tune with what we normally understand by proper rule of law.

Incidentally, cases before the LC Courts must be brought forth simply and "without technicalities"; none of the parties may be represented by counsel.

Obviously, from a human rights point of view as it is seen by the European Court of Human Rights, objections can be raised to such a legal system. But – after what we have seen – it is a legal system which those directly involved prefer to a distant, expensive, formalist system using a foreign language.

It could perhaps be said that this is proper due process as it is conducted not in the System World but in the Life World.

THE GLOBAL PERSPECTIVE

In a globalized world, a traditional legal system as the one described here cannot stand alone. Trade, financial transactions across borders, and international intercourse in general demand that court systems everywhere must be created fulfilling the fundamental requirements concerning independence, professionalism and freedom of corruption. If investors cannot be sure of due process when conducting their transactions they will either choose to avoid the countries concerned or demand prohibitive profits matching the elevated level of risk. This is reflected in the very high interest rates in many African countries despite modest levels of inflation.

In Uganda, efforts are made on two levels: first, fulfilling elementary demands for due process among the general population; second, mounting a judicial system that will also be able to make the country a full-fledged participant in global developments.

Both systems – the LC Courts and the "real," formal courts – are necessary. It is impossible to develop one and not the other. Fulfilling a wish of strengthening the formal system at the expense of the alternative system would have had very negative consequences from the point of view of due process – the very point of view that needed emphasis, also from a human rights perspective.

CONCLUSION

One conclusion, then, would be that Danida's legal-sector projects and programmes are right in choosing a solution that doesn't focus solely on the formal court system and the formalized human rights. On the contrary, you need to take as your point of departure the existing, traditional systems for solving conflicts; finding out how these systems can function alongside a formal court system after the Western model. So, while you can speak of legal protection and the rule of law as a global public good using the international human rights conventions as a guideline, the most important thing remains to start any discussion of legal protection from the bottom, finding out whether there are day-to-day systems for solving conflicts that traditionally are used by the population.

> "Our legal system is beginning to resemble the remains of a putrid carcass that no one benefits from. (…) It is a deeply fundamentalist system. Many

judges are incompetent and often corrupt; the lack of progress is due to their unwillingness."

Zuhoor Afghan, Editor-in-Chief of Afghanistan's only independent newspaper (*Politiken,* February 15, 2004)

NOTES

1. Lack of resources should be understood as a dependence upon external factors or the international political system for financing, security or political instablity and a paralyzation and polarization in the political system between leaders and parties. This is what characterizes Cohen's use of the concept "weak states." His view is that these often suffer from dysfunctional legal systems where corruption and organized crime are rampant; as well as problems concerning poverty and wide gaps in income and educational levels in society. Cohen: *Embracing Democracy: Weak States and Institution-Building in "Balkan Europ"*, Conference Paper, Ottawa 23-24 January 2003.
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3. Ditte Goldsmith: *Frie & Lige… menneskets rettigheder*, Pædagogisk Psykologisk Forlag, Roskilde 1998.
4. Michael Bodgan and Birgitte Kofod Olsen: "Article 6", in Gudmundur Alfredsson and Asbjørn Eide (eds.): *The Universal Declaration of Human Rights – A Common Standard of Achievement*, Kluwer Law International, The Netherlands, 1999.
5. Foighel, 1999.
6. Natives (Prohibition of Interdicts) Act, Act No 64 of 1956.
7. Foighel, 1999
8. Foighel, 1999, p. 29.
9. Goldschmidt, 1998
10. Foighel, 1999.
11. Ruling by The Danish Supreme Court, Feburary 19 1999; case no. 1295/1998: Den Selvejende Institution Friskolen i Veddinge Bakker mod Undervisningsministeriet.
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13. Raimo Lathi: "Article 11", in: Alfredsson and Eide (eds.), 1999, p. 245.
14. Lars Nordskov Nielsen: *Markedsorienteret forvaltning – nogle retlige og retspolitiske synsvinkler*; p. 137 ff.; in: Henrik Brydensholt (red.): *Brugeren viser vej*, Dafolo Forlag, 1993.
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16. Michael Lipsky: *Street Level Bureaucracy*, Russel Sage Foundation, New York, 1980.
17. British Government: *The Citizens Charter – Raising the standard*, HMSO Publication, London 1991.
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19. Hans Henrik Brydensholt: "Et brugerorienteret retssystem – brydningen mellem normer og frihed"; in: Brydensholt (ed.): *Brugeren viser vej*, Dafolo Forlag, Frederikshavn, 1993.

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Curbing corruption: A global public good

The potential of international cooperation.

Kristine Yigen

Corruption in the public and the private sector has a negative impact on fighting poverty, closing the gap between rich and poor, good governance, confidence in the public sector, foreign investment, economic growth and political stability. This is well-known and has been highlighted by several sources.[1] Several reports indicate that corruption is a growing problem not only in developing countries but also in the developed part of the World, e.g. in an EU context. Countries "in transition" are particularly exposed. Countries in transition from one social order to another (for example from socialism to capitalism) and where the economy is liberalized without initiating any reform of the state are particularly vulnerable to the misuse of public property and funds.[2] In these countries, corruption can have a major impact on redistribution policy, which most often afflicts the poorest of the poor.

Corruption also has consequences for the respect for basic human rights and often involves direct or indirect breaches of human rights, like violating the right to equality before the law and non discrimination, the right to self determination and the right to freedom of expression.[3] Corruption can also obstruct the access to full realization of social and economic rights, as it very often absorbs resources meant for projects to fight poverty.[4] Corruption – defined as "the misuse of entrusted power for private benefit"[5] – can take on many dimensions and occur at different levels (micro, macro, behavioural, systemic etc.); it occurs across borders and often takes place in interaction between the State and other players.

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 255-274
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

CORRUPTION AS A GLOBAL EVIL – CURBING CORRUPTION AS A GLOBAL GOOD

Corruption is a global public evil having a direct or indirect impact on all of us and although we may not in Denmark perceive corruption as a major problem in our daily lives, we often meet it in our interaction with the international society, in our contacts with foreign public authorities (e.g. customs, border or traffic police), in our business transactions or in our administration of development assistance.

Corruption is crucial in the discussion about global public goods as it can have a major impact on other global public goods. One example is the assumption that the diversity of the oceans constitutes a global public good. This global public good is maintained through international agreements, which are vulnerable to corruption. This kind of corruption, observed in connection with fishing quotas or whaling, where negotiations on international agreements with the purpose of regulating the catches to protect against overexploitation, has been performed by individual actors (States) attempting to buy influence, votes or support from other States to avoid too restrictive regulation in these areas.[6]

Corruption is widespread in both international and national business transactions and trade. A society free of corruption is thus a public good and the public fight against corruption (be it international, regional or national or directed against public or private funds) will contribute to minimizing transaction costs. This is because corruption entails costs, as it increases the price on goods and services and often lowers the quality of the same. In an environment free of corruption, decisions would be taken on the basis of "the best offer" – a comprehensive assessment of price and quality – whereas corruption leads to the inclusion of other and often unclear and inappropriate criteria.[7]

> When corruption can not be brought under control it will threaten the viability of democratic institutions and market economies. In corrupt environments resources are often used in non-productive areas such as overspending on police, military forces and security at state level and for unnecessary or unsuitable technology at the corporate level.[8]

When perceived as a global public good, the public fight against corruption can be considered as non-exclusive, as everyone will benefit from this fight, also when not contributing to it. All citizens will benefit when there is no

risk that they will be asked to pay money under the table in their contacts with the public sector – a risk which is minimized by control measures and transparency. Public measures are also non-competitive, as the advantage of company A of them does not affect or influence the access or possibility of company B to benefit from this good. Obviously, since the fight against corruption is influenced by the financial aspect, the scope of public measures will only amount to whatever the state is willing to finance. Once measures have been established it will in principle be available to everyone (just as the police are available to everyone, although the efficiency of policing can depend on resource allocations).

However, there is a risk of free-riders in this process. The entire business community – except those using corruption – will benefit from a system that ensures that they are not blackmailed, irrespective of whether they actually contribute economically or politically to the process of establishing anti-corruption legislation or other measures.

At the moment, we can not consider the fights against corruption as a pure global public good, but rather corruption as a global public evil. At this point in time, measures against corruption can better be perceived as a club good, as it is not accessible to everyone (like the populations of Mozambique and Bangladesh). Measures are only available to those individuals and organizations operating in the societies less affected by corruption such as Finland, Denmark, New Zealand or Singapore, where legislation, structures and institutions ensure the criminalization and prevention of corruption.

However, with increased globalization and cross border trade there are indications that the fight against corruption will be more efficient if control mechanisms are established at a global level. Since the terror attack on the USA on September 11, 2001, the question of money laundering and cross border transfers of illegal means has attracted renewed attention. The lack of control measures against these transactions has proven to have grave consequences, especially when these means are used to finance terror and arms. The tie to the issue of security, another global public good, has become obvious since September 11, 2001.

INTERNATIONAL INSTRUMENTS TO INTRODUCE CONTROL MEASURES

In 1997, in an attempt to curb corruption on an international level, and recognizing that corruption is widespread in international business transactions and investment as well as undermining good governance and economic

development, the OECD countries together with five non-members (Argentina, Brazil, Bulgaria, Chile and Slovakia) in 1997 adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which has been ratified by 35 states.[9] The UN has adopted a Convention against Corruption at the end of 2003.[10] The Convention consists of 71 articles and is more detailed and comprehensive than the OECD convention containing 17 articles.[11]

The recognition of the undermining effect of corruption on economic growth in itself constitutes a change of attitude, as the earlier perception of corruption was that it was a necessary evil. This official accept in many states was reflected in a tax policy where companies that could document expenses for corruption could deduct these expenses. In 1997, the OECD also addressed the issue of tax deductions, deciding that signatory states should forthwith pass legislation banning deductions for bribery for civil servants abroad.

The UN has also included this aspect, as states "shall disallow the tax deductibility of expenses that constitute bribes" (art. 12.4).

OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions commits states that have ratified the convention to criminalizing the bribery of *foreign* public officials (art. 1 and 2). Foreign public officials are defined as "any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organization;" (art. 1.4). Still, formally only the active corruption (i.e. the person bribing) is included in the OECD Convention, and only when dealing with foreign public officials and not the public official of your own state. This might, however, not have actual implications, in as far as all countries are believed already to have adopted legislation criminalizing corruption of their own public officials.[12]

The UN Convention commits states to criminalizing the active and the passive bribery of *national* public officials (art. 15) and has a wide definition of public officials including also temporary and voluntary staff (art. 2 (a)). The UN Convention also criminalizes *foreign and international* public officials. In the draft before the final version of the convention, this group also included military personnel, but this is not the case in the adopted convention. According to the Danish Ministry of Justice's memorandum there was a great majority in favor of making the provision on active bribery of foreign public officials binding, whereas this was not the case for the passive bribery within the same group of persons.[13] It is therefore notable that both the active and passive bribery of foreign public officials have been criminalized (art.16).

None of the conventions comprise persons who have been bribed in the expectation that he/she will become a public official in the future. It is thus not certain whether political corruption – where e.g. a candidate running for parliament, but not yet elected, receives a payment for an expected wrongful service – will be covered by the conventions.

Bribery of representatives from the private sector is not comprised by the OECD Convention, but they are covered in the UN Convention – both in connection with active and passive bribery. This provision in the Convention is, however, not binding, i.e. states shall consider adopting legislation criminalizing corruption (art. 21). In accordance with Danish law such count would be punishable under art. 299.2 of the Criminal Code.

The OECD Convention does not comprise payment to political parties or party officials, but can be applied in the case of trade related bribery for foreign public officials, taking place e.g. through political parties or their members. Earlier drafts of the UN Convention contained provisions concerning the financing of political parties and committed states to adopting relevant procedures to avoid conflicts of interest; e.g. by prohibiting the use of (financial) means obtained illegally or in a corrupt manner for the financing of political parties. Furthermore, it contained provisions incorporating principles of transparency for donations to political parties by demanding declarations concerning donations exceeding a certain amount. However, these provisions are not part of the final convention. This is in accordance with Danish law, according to which it is not illegal to support a political party financially.

The question about contributions to political parties has been controversial, not least because contributions to political parties in practice very often constitute bribery. In countries where corruption scandals have focussed on payments to political parties, e.g. the Bofors case in India, the Agusta and Dessault case in Belgium,[14] the Kohl case in Germany or some of the later cases against Berlusconi and other politicians in Italy, a tendency of disgust and distrust with politicians has been observed. On the other hand, the many different types of political systems existing to day make it very difficult to find a legal definition that would be acceptable to the majority of states. And finally it will be difficult to prove when an ordinary private donation to a party has been given with the purpose of achieving a particular political outcome.

Another aspect of the UN Convention is the provision concerning civil society's participation in both preventive work and the fight against corruption. This provision contains an obligation to involve civil society, to inform the public about decision making procedures in public administration, to inform about the existence and consequences of corruption and to ensure access to information, however at the same time being subject to certain restrictions

protecting the reputation of the individual, national security, public health and morals.[15] The Convention also contains a provision on the protection of persons appearing as witnesses in corruption cases (art. 32) and the state shall, according to the convention, consider to protect persons reporting corruption (art. 33). In Denmark, employees are protected against unjustified dismissal, whereas there is no special legislation concerning persons reporting corruption.

According to the OECD Convention, offences shall be punishable and the national range of penalties applicable to the bribery of public officials shall also be comparable to that applicable to the bribery of foreign public officials. Furthermore, the penalty shall include sufficient deprivation of liberty to enable extradition (art. 3.1).

According to the OECD Convention, art. 3.2, monetary sanctions can be applied in the event that the national legal system does not include criminal responsibility for legal persons. The UN Convention, art. 26.1 and 2, imposes liability of legal persons for participation in the offences described in the convention, and this liability can be either criminal, civil (e.g. liability to pay compensation), or administrative. This allows for German companies to be fined in accordance with administrative legislation, but not to be subjected to criminal responsibility. Another example is Japan, where bribery is regulated by civil legislation.[16] This raises the problem that states ratifying the Convention will not have a uniform national implementation of the Convention, and thus not be bound in the same way by the Convention, as an offence in some states will lead to a liability to pay compensation, whereas in other states it will lead to criminal prosecution. It is probably not of major consequence that control measures are not globally uniform as long as the processes take place in public. An issue of resources may however occur, as criminal prosecution is mainly financed by public funds, whereas civil cases are "financed" by the parties involved, which may prevent individuals and institutions from bringing the cases to court.

The question of extraterritorial *jurisdiction* is treated in the OECD Convention art. 4. The state is obliged to legislate against bribery committed within its own borders, and states that already have implemented national legislation on the prosecution of its own citizens for crime committed abroad (e.g. Denmark) are committed also to apply this principle to cases of bribery.

As far as jurisdiction is concerned, according to the UN Convention, states should take measures when the offence occurs within its borders, on board a ship or an airplane registered in the respective state at the time of the offence and in case of corruption committed against or by one of its citizens or a stateless individual residing in the country. States are also committed to

prosecute corruption cases if the accused is within the territory of the state and in case this individual can not be extradited because of his citizenship or any other reason. Both conventions prescribe that the offences described shall be part of extradition agreements already signed, and both conventions can be the legal basis for such extradition.

Consequently, international legislation against corruption can be considered a global public good, as it sets up the framework for combating a global evil – corruption.

The OECD Convention has been criticized on a number of accounts, among them the fact that it has been signed under the aegis of the OECD at all, rather than under the aegis of WTO, where it would cover more states (WTO has 146 member states and OECD has 30). One could also argue that it is not well balanced to try to fight a global public evil with a non-global instrument. There is a disparity between the scope of the problem to be solved (i.e. a global corruption problem) and the limited target group (the OECD states) being addressed. With the UN Convention as a global instrument this problem is solved.

Likewise, the Australian Chamber of Commerce has among other things criticized the narrow focus on bribery and the lack of a stand on blackmail in the OECD Convention.[17] One could also criticize the lack of provisions for the protection of public officials or others who report or expose bribery ("whistleblowers"). This important issue has been included in the UN Convention art. 8.4.

The UN Convention contains provisions on preventive measures against corruption and commits the ratifying states to adopt and implement anti-corruption policies, establish anti-corruption agencies and introduce a number of preventive procedures for the public sector (ethical codes for public officials, procurement and financial management procedures, public reporting and right of access to documents), ethical codes for the justice sector, rules concerning money laundering and procedures for involving civil society in preventive work. In this way, the UN Convention covers several of the holes in the OECD Convention as this does not include provisions on the preventive aspects of the fight against corruption. The importance of preventive measures has been highlighted through a number of investigations by Transparency International, which bases its concept on national systems of integrity on "prevent[ing] corruption from occurring in the first place, rather than relying on penalties after the event".[18] The principle of prevention rather than fighting the consequences afterwards is also the basis for UNDP's analysis of global public goods.

As far as penalties are concerned, the UN Convention is comprehensive

including provisions on: (a) trading in influence, (b) embezzlement, (c) misappropriation of public property, (d) concealment of transfers, (e) abuse of functions, (f) illicit enrichment, (g) misuse of classified/confidential information, (h) improper benefits, (i) offences concerning accounting, (j) the role of specialized agencies, (k) prosecution and its decisions (e.g. limitation of public officials' immunity in corruption cases), (l) confiscation, (m) bank secrecy, (n) protection of witnesses and reporting persons, (o) compensation for pain and suffering, (p) strengthening of cooperation with law enforcement authorities and between national authorities and the private sector and (q) criminal record.

These issues are not covered in the OECD Convention, and they are both useful when defining corruption and when providing guidelines in a number of important areas such as bank secrecy, protection of witnesses, confiscation and the question of immunity.

The UN Convention also intends to strengthen international cooperation concerning extradition, transfer of sentenced persons, legal assistance in corruption cases, transfer of criminal proceedings, law enforcement cooperation, the establishment of joint investigative bodies, exchange of information and special investigative techniques, confiscation and recovery of property, cooperation concerning transfers to financial institutions and compensation.

Finally, the UN Convention includes technical assistance, capacity building and analytical work as areas for cooperation.

As far as monitoring of the actual implementation of the UN Convention is concerned, the model chosen is the creation of a "conference of the states parties to the convention" under the aegis of the UN General Secretary. The conference is to adopt rules of procedure governing the functioning of activities, and will also constitute the forum for discussing and reviewing the convention and its actual implementation on an on-going basis. A secretariat will also be established. Earlier negotiations contained a proposal for the establishment of a fund within the convention; however, this proposal was deleted from the final draft.

Earlier drafts of the UN Convention contained several proposals for the evaluation process, e.g. a regional approach, but these aspects were not included in the final draft and the entire question of evaluation and monitoring of the implementation of the Convention is formulated in a very weak manner in the final UN Convention. A Conference of States has been given the mandate to develop these mechanisms.

It has been recommended to include representatives from civil society and the private sector in the monitoring process, and there are good examples

that it can be useful to make use of "shadow reporting" in the monitoring of conventions in order to get a more independent view, in this case, on the situation concerning corruption in a certain country. This is one of the shortcomings in the OECD process, which Transparency International has criticized for its lack of transparency. Monitoring through civil society can ensure a more balanced view on the situation and the progress made, and at the same time it is also important that other basic human rights such as the right to a fair trial, the right to privacy, and the right to access to information are not being undermined in the state's fight against corruption.

The OECD monitoring process consists of so called "peer group reviews" taking place in two phases: the first phase evaluates whether national legislation lives up to the standards of the OECD Convention and the second phase concerns the actual implementation, including implementation of specific recommendations. The evaluations are based on a detailed questionnaire developed by the OECD Secretariat, which the states must use in their reporting, and the peer group consists of three experts from the OECD Secretariat and two member states respectively.

A comparison between the two conventions shows some similarities between them such as the provisions concerning sanctions against foreign public officials and businesses and extradition, but as already mentioned the UN Convention also comprises national public officials (concerning both active and passive corruption). It is obvious that the UN Convention it not just a repetition of the OECD Convention, as it contains a number of preventive measures, not to be found in the OECD Convention, which emphasizes sanctions. The provisions concerning the public sector and the participation of civil society are especially important and progressive, but also the provisions concerning contributions to political parties and corruption in the private sector can develop into standard provisions. On the other hand, monitoring in the OECD Convention is much more precise as of now, and precisely monitoring of the implementation of the UN Convention will ultimately be decisive for the success of fighting corruption at a global level.

SINGAPORE AS A ROLE MODEL

Singapore is ranking 5th (together with Sweden), in Transparency International's Corruption Perceptions Index 2002, and many observers in this area consider Singapore as an example of, how to win the battle against corruption. Considering that the country has experienced a remarkable economic development after independence, makes Singapore an even more

interesting example.

Recognizing that preventing corruption would have strategic influence on the country's development and also constitute a comparative advantage concerning investment, the Government of Singapore adopted an anti-corruption policy. Historically, the country, which was a British colony until 1959, has experienced major problems with various kinds of corruption like bribery of public officials to get access to public services and in connection with trade (export and import). The Prevention of Corruption Act was adopted in 1960, and a so called Corrupt Practices Investigation Bureau was established – an anti-corruption bureau with the authority to investigate corruption cases and institutionally referring directly to the Prime Minister. This institutional position of the bureau has made it powerful and sent an unequivocal message that the top political leadership stands firmly behind the bureau's work.

The law defines a number of offences, and how to investigate and prosecute them. It covers citizens having committed offences both within and outside the country.

Subsequently, the law has been strengthened and the staff of the bureau now has the authority to undertake police investigations as well as a number of special powers. The bureau has achieved considerable success – not least through the efficient complaints handling available to the citizens.[19]

Furthermore the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act was first adopted in 1989 and later amended several times. The law authorizes court orders for confiscation of funds obtained through corruption. When the accused has been sentenced for corruption, a court order for confiscation of whatever has been obtained through corruption shall be issued, and the confiscation is taken into consideration when deciding the fine (art. 4.1-3).

The policy of blacklisting businesses has been employed with great success in Singapore, and subsequently the World Bank has also used this policy by making names of blacklisted companies and individuals public on their website.[20]

Also, a number of administrative and preventive measures have been implemented in the public sector. Salaries of public officials are continuously adjusted in order to better match salaries in the private sector. Public contracts put out to tender contain clauses on the consequences of corruption (termination of the contract and blacklisting for five years).[21] Finally, a set of guidelines provides instructions for the conduct of public officials, e.g. prohibiting public officials from borrowing money from clients, and obliging them to inform about their assets when employed and then continuously (once a year). Public officials also need permission from their place of employment

for any involvement in trade and self-employment, and they receive training in corruption legislation.

Several sources from Singapore point out that the harsh penalties for corruption have contributed to diminishing corruption in the country.[22] Penalties for corruption consist of fines up to USD 100.000 and five years' imprisonment, which in case of offences relating to a public contract, a member of parliament or another public agency can be increased to seven years. Likewise, a public employee can lose his/her job and pension and be blacklisted for continued public employment. Each public authority is responsible for improving work methods and processes in order to avoid corruption.[23]

As far as human rights are concerned, Singapore has often been criticized for the lack of freedom of the press in the country. However, as Transparency International indicates, this lack of freedom of the press concerning corruption may be compensated through the establishment of an efficient anti-corruption bureau.[24]

The fight against corruption in Singapore has resulted in a decrease in corruption and increased economic investment, and public confidence in the authorities has clearly increased, as can be seen from Singapore's ranking in the Transparency International Index. The authority and work of the anti-corruption bureau, the legal framework and the backing of the political leadership seem to be among the most important aspects of the fight against corruption and its success in Singapore.

TRANSPARENCY INTERNATIONAL'S INTEGRITY SYSTEMS AND PACTS: METHODS TO PREVENT CORRUPTION.

Transparency International is one of the most well-known international anti-corruption NGOs and has developed a number of useful and operational methods to support states in their fight against corruption, all based on experiences from anti-corruption work. One of these methods is the "national integrity systems and integrity pacts" concept.[25]

The basic assumption behind the national integrity system is that sustainable prevention of corruption requires a reform process, in which the states should develop from hierarchical government to horizontal responsibility (powers being dispersed, no monopolies, and each unit is separately accountable). A system to prevent corruption requires a free press, independent courts, a parliament, etc. – offices that are all accountable to another office, and each party is both a monitor and is monitored.

Horizontal accountability has been defined as "a system of agencies of restraint and watchdogs designed to check abuses of power by other agencies and branches of government".[26] These bodies are typically the courts, independent electoral tribunals, auditors-general, central banks, professional organizations, Parliament, and the free press. A well functioning system is characterized by so-called "checks and balances", which minimizes interest conflicts in the public sector, decentralizes power and involves accountability, transparency, prevention, and punishment. The system is based on a number of reforms of the public sector through different processes (ethical codes for management, organizational changes, legal reforms, and reforms of bureaucracy). The reform processes mentioned require participation from the private sector, the media, professionals, churches, and NGOs and should adopt a holistic approach including coordination of efforts. For example, it is not useful to initiate reforms of the Bench without initiatives concerning barristers, lawyers, police, bureaucracy, etc.

Transparency International has developed guidelines on how to establish such a system and how to initialize and implement the process. The approach is well-known and based on recognized strategic planning processes already used by a number of international donor organizations (including UNDP, Danida and the Danish Institute for Human Rights) where the strategy simply consists of identification of the problems, defining a vision and agreeing on an action plan for the process to follow. The key concepts for the process are local ownership, active and accountable local leadership, broad local participation of civil society as well as the participation of an external mentor to facilitate the process and promote exchange of experience.

The integrity pact is an instrument to assist government, the private sector and civil society in the fight against corruption and is specifically directed at public contracts with private companies. An integrity pact is a contract including anti-corruption clauses, where the parties commit themselves not to use corruption or blackmail and where the participating company is obliged to make all expenses relating to the contract public. The managing director of the private company is responsible for the contract and the contract contains a request that the company establishes a code of conduct against corruption internally in the company and an anti-corruption programme. The integrity pact also includes punishment/sanctions in the event that corruption in relation to the contract in question should be revealed. Civil society can be involved either by publishing all information – selection criteria, bidders and their prices, evaluation of bids etc. – on the Internet, or in a forum where the process is described and discussed. Civil society can also be involved in the bidding process by attending as observers.

DANIDA'S NEW ACTION PLAN TO FIGHT CORRUPTION

In July 2003, Danida published an action plan, its main goal being to contribute to fighting corruption, first and foremost within the Danish aid delivery system and in the use of development aid provided by Denmark, but also in the countries receiving Danish aid.[27]

The action plan contains three components. The first component concerns corruption within the system, i.e. all the persons and companies paid by Danida to handle different aspects of the development assistance. This comprises Danida's own staff, staff at representations, advisers, consultants and consulting companies or organizations contracted by Danida for the purpose of project implementation.

The objective of this component is to implement a code of professional ethics for all Danish and local staff at headquarters and representations, as well as to include anti-corruption clauses in contracts entered into with various external staff. In this connection, all project contracts (procurement contracts, contracts with foreign staff, etc.) shall be revisited in order to ensure that anti-corruption is part of the procedures and rules applied. Furthermore the code of ethical conduct has to be distributed and the staff trained in the use of these rules. Finally, sanctions for violations of the code of ethical conduct shall be developed together with an easily applied reporting system for any suspicion of corruption.

The objective of the second component is to combat corruption in the use of Danish development aid. This will happen by ensuring access to information for the press, civil society and others in the partner countries relating to the disbursement of Danish aid funds to national organizations in the country. Danida will appoint a "focal point" at each representation (embassy), who will ensure that the issue of corruption is integrated into the development of programme assistance and its implementation. The representations will produce annual anti-corruption action plans and annual corruption reports, both of which are to be included in management's reporting to the Ministry. NGOs under Danida contracts shall be required to adopt anti-corruption policies and codes of ethics, and likewise, the issue of corruption shall be included in the annual dialogue with multilateral organizations. Within Danida, financial management systems and capacity shall be improved and Danida shall conclude agreements with Danish NGOs on training concerning corruption both internally in the Danish organizations and in the local NGOs implementing Danida projects. Sanctions shall be more explicit and auditing shall take place more systematically including procurement and value-for-

money audits. Finally, agreements shall be concluded with Danida-supported NGOs concerning reporting on corruption.

In relation to the discussion of global public goods, the last component of the action plan is the most relevant. It concerns support towards fighting corruption in the receiving countries. Danida shall integrate corruption in country strategies and in multilateral programmes and projects. Furthermore, Danida shall support national anti-corruption initiatives and improvements in both central and local administration. Support shall be offered for judicial reforms, the general audit institutions, strengthening of the economic accountability and management in Parliaments, for civil society and the free press. Furthermore corruption shall be integrated into client satisfaction studies and support offered to on-going and new international work on anti-corruption in the UN, OECD, EU, the World Bank, IMF, etc.

The last element of the action plan consists of Danida unequivocally clarifying to partners and receiving countries that corruption or the suppression of "watchdogs" can have direct implications for the possibilities of continued Danish support. Danida shall also offer visible political support to investigation, prosecution or sanctions related to corruption cases in the receiving country. Likewise, the receiving country shall be urged to adhere to and to ratify international conventions and regulations in this area.

With this initiative Danida has opened the discussion on how donor organizations can contribute to fighting corruption, both within their development systems and in the receiving countries, and how to harmonize this with the partnership strategies for development assistance.

The project implementing partners often face the dilemma of how on the one hand to act as an equal partner in development, which requires trust and confidence to achieve the best results, not least in very politicized environments, while on the other hand having to assume the monitoring and controlling role. The focus of the action plan on upgrading of Danida's own procedures, rules, systems, and capacity indicates that Danida takes on the responsibility to enable its staff to better solve this task. Transparency International can also document (the example of Singapore proves this) that the integration of anti-corruption clauses in contracts, ethical rules, and anti-corruption policies has a huge impact in the fight against corruption. The action plan encourages more transparency in the transfer of funds, which is also in line with the principles of Transparency International.

The weakest point of the action plan is probably the support towards fighting corruption in the receiving countries. The eligible areas for support are defined very broadly and could all be included into an area already receiving support, like good governance. The link between corruption and

good governance makes sense, however, there is a danger that serious anti-corruption elements are not added to the programmes, which will thus remain as they are. Some more tangible topics for support towards including the aspect of corruption could be: the quality of public services versus corruption; electronic governance; or support to anti-corruption agencies. Such topics are not excluded from the present action plan, however, nor specifically included. Likewise, it could be pointed out as a weakness that the present action plan lacks a specific focus on the business community in the receiving countries, e.g. in connection with Danish Private Sector Programmes, in order to ensure that businesses are also included as a target group.

The link between suspension/termination of Danish assistance and corruption in a developing country has been heavily debated, with a particular focus in the debate on the fact that by suspending assistance, the poorest are hit the hardest. On the other hand, Western donor organizations face a problem of legitimacy and explanation in relation to the tax payers, who actually pay for the corruption. The formulation of the action plan gets around the problem by stating that Danida shall clarify this link (by pointing out this threat), but it does not state when to implement a decision to suspend or terminate Danish assistance, and it is thus unclear how serious the problem needs to be for this to happen.

CONCLUDING REMARKS

The struggle to establish preventive measures against corruption as a public good has received considerable support, and the OECD Convention and the UN Convention show that serious measures are taken to ensure that this good becomes a global good.

In the present measures, the fight against corruption is based on both legal sanctions through national courts and on prevention, mainly in the new UN Convention, and an area in which Transparency International has good experience in connection with the establishment of integrity systems and pacts. The obstacles or threats to providing measures against corruption as a good will be the weak monitoring systems since they are still not very well developed, the lack of transparency and the focus on sanctions rather than on prevention. As corruption provides some businesses and individuals with considerable economic benefits, resistance and lack of cooperation are also to be expected.

The new action plan of Danida has allocated funds to finance the fight against corruption, however, mainly for preventive measures within Danida,

and the question then remains who will finance measures against corruption in the developing countries. The UN Convention may establish a fund to support anti-corruption initiatives, but these negotiations are still on-going.

In the short term, fighting corruption may prove to be a considerable economic burden, as a more efficient anti-corruption system will put additional strain on the justice sector, whereas in the longer run there should be economic benefits as means lost in corruption will constitute a surplus when corruption is efficiently curtailed. The assertion that corruption equals a loss of resources has been documented in a number of studies which have calculated that USD 30 billion worth of assistance to Africa have ended up in foreign bank accounts, and that East Asian countries have lost USD 48 billion because of corruption over the last 20 years. One illustrative example can be provided. When tax and customs officials in a Latin American country got permission to gain a certain percentage of whatever was confiscated in customs, customs revenue increased by 60 per cent in a year. World Bank investigations also show that countries that are perceived as corrupt face much more difficulty in attracting investment than other countries.[28] It is therefore positive when Danida and other donors invest in anti-corruption, and that the UN system focuses on prevention of corruption.

NOTES

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2. Susan Rose-Ackerman: *Corruption and Government: Causes, Consequences and Reform*, Working Paper, Cambridge University Press, 1999.
3. L. Cockcroft: *Corruption and Human Rights: A Crucial Link*, Working Paper, Transparency International, Berlin, 19 October 1998 and N. Jayawickrama: *Corruption – A Violation of Human Rights?*, Working Paper, Transparency International, Sofia, June 1-2 1998.
4. Highlighted a.o. by Jayawickrama, 1998. According to a report from the Chinese National Audit Office, one fifth of funds appropriated by the state for fighting poverty in the period 1997-1999 was absorbed by private accounts and spent on private property, cars and the financing of illegal loans. During the same period, 42 million Chinese were living below the poverty line, i.e. less than one US$ a day. This example is taken from Transparency International 2000.
5. Eigen et al. 2003, p. 1, Transparency International 2000, p. 2.
6. Eigen et al., 2003.
7. Eigen et al., 2003; Transparency International, 2000.
8. Transparency International, 2000.
9. OECD data from October 10, 2002 (http://www.oecd.org/pdf/M00017000/M00017037.pdf).
10. United Nations Convention against Corruption, 2003.
11. This article is limited to the OECD Convention and the UN Convention against Corruption. There are, however, a number of other international instruments, including the Inter-American Convention against Corruption adopted by the Organization of American States and the three Council of Europe Conventions against corruption.
12. Albin Eser et al.: *Korruptionsbekämpfung durch Strafrecht*, Max-Planck-Institut für ausländisches und internationales Strafrecht, Freiburg im Breisgau 1997.
13. Ministry of Justice *Memorandum on the 5th Session of the Ad Hoc Committee 10-21 March 2003*, Ministry of Justice, 2003.
14. L. Cockcroft: *Implementation of the OECD Convention – The Conditions for Success*, Working Paper, Vancouver, 4-5 Feb. 1999.
15. UN Convention, art. 13.
16. Cockcroft, 1999.
17. ACCI Review – April 1998.
18. Transparency International, 2000, p. 35.
19. M. Ali: *Eradicating Corruption – The Singapore experiences*, Corrupt Practices

Investigation Bureau, 2000, p. 8.

20. Transparency International, 2000.
21. Ali, 2000. p. 5.
22. Verghese Mathews: *The Example of Singapore*, speech at a conference organized by CSD in cooperation with Asian Development Bank, Phnom Penh 22-23 August, 2001 and Ali, 2000.
23. Ali, 2000.
24. Transparency International, 2000, p. 36.
25. Transparency International was established in 1993 by 10 persons from different countries. The objective was to control corruption through the creation of a global coalition to promote and strengthen international and national integrity systems.
26. Transparency International, 2000, p. 33.
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Access to global public goods for socially and economically vulnerable groups

Rie Odgaard and Kristine Yigen

INTRODUCTION

In many cases, access to public goods – be they global, regional, national, or local – are reduced for certain segments of society; typically, access to these goods for socially and economically exposed groups such as the jobless, the long-term unemployed, the homeless, minorities, the elderly, women, children, the mentally ill, and the disabled is especially restricted.

"Socially and economically vulnerable groups" is defined differently depending on circumstances; thus any definition has to take into account the specific life context of the groups in question. For instance, there is a great difference between being socially and economically exposed in Europe and in Africa, respectively – both in respect to what renders the situation exposed and vulnerable in a social and economic sense, and in respect to the possibilities at hand to alleviate the situation. But one thing remains in common for the socially and economically exposed throughout the world: they are poor, and their poverty is the most crucial inhibiting factor with regard to their access to "public" goods, irrespective of whether these goods are purely public or private.

The concept of poverty has been the subject of much discussion, from government leaders, representatives of international organizations, national and international donor agencies to researchers. Firstly, poverty is an overriding problem, particularly in the world's poorest countries; secondly, combating poverty has increasingly become one of the primary objectives of donor efforts. The development of Poverty Reduction Strategy Programmes (PRSPs) – partly under pressure from the international community – has

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 275-308
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

gained top priority on the political agenda of many governments in the developing countries.[1] Alleviation of poverty has also for a long time been the overall aim of Danish support to developing countries, and still is the cornerstone in, and seen as an important challenge for Danish development assistance.[2] Global poverty is increasingly being linked to instability, conflict, and terrorism, and seen as a threat to world peace. By directing development assistance at poverty it is presumed possible to ameliorate the problems of the poor, promote democracy and human rights, protect yourself against refugees, combat corruption, remove the breeding ground for terrorism, and preserve Western values.

Although there is overall agreement that being poor is characterized by generally having too little of everything, the ongoing discussions on poverty illustrates that, throughout time, views have varied as to what it means to be poor, what causes poverty, and what is needed to alleviate poverty.[3]

Without entering this very extensive debate in detail we just wish to emphasize that the relationship between poverty and access to public goods is not only about material and economic poverty, but also about restricted access to those assets that are a prerequisite for knowing, exercising, and maintaining your rights regarding public goods. For example, it is a question about access to knowledge and education, influence, cultural identity and dignity, social networks, etc. In other words, a question of all the things that, taken together, are required in order to create a framework for an economically secure, dignified, and socially active human existence. Besides being conditional upon geographical contexts and social, material, and economic standards, this should also be viewed according to population segments, since poverty also has a gender-based, ethnic, and racial dimension.

Thus, when it comes to access to public goods, poor women are particularly exposed due to their gender.[4] Ethnic and racial discrimination constitute limiting factors as well.[5] One example of ethnic discrimination is the pastoralists (nomads) of East Africa. In the eyes of a European, many of them may seem extremely poor; yet they do not necessarily view themselves as such; due, among other things, to their strong cultural identity and dignity.[6] Paradoxically, they are often among the population groups discriminated against in relation to their access to public goods, particularly water and pastures for their livestock because of their very cultural identity and way of life; as a result, their basis for existence is constantly threatened.[7]

If poverty is to be remedied and if poor groups are to be given better access to public goods it is not sufficient to adopt a basic needs strategy aimed at improving people's access to income, food, potable water, shelter, etc. It is also necessary to employ a rights-based strategy aimed at strengthening

the rights of socially and economically exposed groups to public goods and their ability to exercise these rights;[8] with this we do not want to suggest a strategy focusing exclusively on changing formal legislation in order to specify and clarify the rights of socially and economically exposed groups. Just as importantly, sometimes even more importantly, a rights-based strategy must concern how you ensure that such legislation recognizes rules already in existence and norms that respect these groups; as well as how these, and subsequent, rights are permanently enshrined as such;[9] i.e. creating the necessary preconditions enabling socially and economically exposed groups to exercise these rights in real life.[10]

CAUSES FOR POVERTY AND MARGINALIZATION

The many perceptions regarding a definition of poverty and marginalization are paralleled by a similar plethora regarding how to explain the reasons behind poverty. Already 20 years ago, Richard Chambers was among those offering a clear outline of the disagreements pervading this debate.[11]

Roughly speaking, Chambers distinguishes between what he calls "physical ecologists" on the one hand and those who explain poverty using political economy on the other.

The physical ecologists view poverty (or, rather, hunger/shortage of food) as the result of population growth, natural disasters, civilian unrest, extreme weather conditions, refugees, bureaucratic problems in distributing emergency relief, human exploitation of semi-arid and environmentally vulnerable areas as well as a simple failure to produce enough food. In other words, the emphasis here is on the physical parameters of disasters, both man-made and natural. Among the physical ecologists, poverty is something both physically visible, plus technically and statistically measurable. Also, physical ecologists stress the health of poor people as an explaining factor.

As opposed to this, political economists view poverty as a consequence of processes that concentrate power and wealth. These processes operate on three levels: the international level (the rich countries vs. the poor countries); the national level (urban and industrial development vs. rural development, urban classes vs. the poor in the country); and, finally, on the local level in rural districts with local elites enriching themselves at the expense of poor farmers and land workers. Individualization and commercialization play an important role in the way these processes work and the ensuing consequences for the poor and marginalized. The processes undermine traditional roles of reciprocity (the obligation to share, both horizontally and vertically). Social

relations bound to obligations have to defer to commercial relations without adherent obligations.

The underlying understanding of the reasons behind poverty is reflected in the way the two viewpoints find that the problems can be remedied. While the political economists concentrate particularly on the sharing of power and the redistribution of world wealth and resources, especially the redistribution of work and income, physical ecologists focus on technological development, new modes of production, halting population growth, preventing conflicts, increased readiness in the face of natural disasters, legal reform, and reinforcing institutional capacity, administrative transparency, etc.

In connection with marginalization in the workplace, you also speak of different contributory causes relatable both to the physical ecologist and the political economy point of view. The reasons for marginalization can be technologically conditioned, as when manpower is rationalized away because of new technology being introduced into the workplace, or unemployment caused by recession where a drop in the demand for products and services diminishes the need for manpower. Structural unemployment is the unemployment caused by structural barriers in the labour market; e.g. unions demanding higher wages; or the workforce being insufficiently mobile, geographically/professionally, or simply lacking in professional skills.

In our opinion, you need to straddle both viewpoints in analyzing the causes of poverty and marginalization as well as in devising strategies to combat them. In the first place, this means understanding poverty as a structural problem created by processes concentrating power and wealth as well as a situation that will naturally be reinforced by natural disasters, conflicts, rampant population growth, etc.

Secondly, it means adopting a combination of need-based and rights-based strategies to fight it. We see combating poverty as a necessary precondition – albeit not the only one - for strengthening access to public goods for socially and exposed groups. As implied above, other preconditions are increased equality with regard to ethnic/cultural identity, gender, and race.

In this chapter, we take our point of departure in two widely different examples of socially and economically exposed groups – the jobless and long-term unemployed in Europe and the totally or partially landless in African rural districts. We wish to discuss the following: Wherein does the limited access to various public goods for these groups consist (work and land)? Why is this a global concern? And how can Denmark contribute towards ensuring these groups access to the public goods? The heterogeneity of the examples has been chosen purposely in order to throw light on just how different are the conditions of the socially and economically exposed groups in the two contexts.

What they have in common is that their access to the goods mentioned is severely limited and that their possibilities of influencing procurement of the goods are similarly restricted. First, we will briefly discuss the nature of the "public" goods we are dealing with here and what they mean to the socially and economically exposed groups.

"PUBLIC" GOODS AND SOCIALLY AND ECONOMICALLY EXPOSED GROUPS

While access to earning an income is very crucial for the material survival of poor people in big cities, sufficient access to land and natural resources is vital for most people in rural areas in Africa; for instance, in order for them to procure a number of basic goods such as food, shelter, etc. Many Africans actually perceive it as a human right to have access to sufficient land to feed yourself and your family. Nonetheless, large groups of people in the rural areas of Africa do not have such sufficient access to this fundamental prerequisite for their subsistence and are thus very much socially and economically exposed.

Many proponents of a rights-based approach maintain that access to the necessary water supply should also be seen as a human right.[12] You cannot live without water. Yet no convention specifically mentions access to water except the Convention on the Rights of the Child that grants every child the right to pure potable water. But the right to have your basic water need satisfied may be said to be expressed indirectly in Article 11 of the International Covenant on Economic, Social and Cultural Rights, stating the right to "an adequate standard of living," and the Convention on the Elimination of All Forms of Discrimination against Women (often called the CEDAW Convention) Article 14, Section 2 (h).[13]

Even as food and, to an ever increasing extent, land and water become private goods, it still remains the obligation of the state, and consequently a public task, to ensure that citizens can maintain a living and are protected against famine and hunger. For instance, this is implicitly stated in Article 22 of the African Charter on Human and Peoples' Rights where it is stated that everybody has the right to economic, social and cultural development, and that states have the duty to ensure the exercise of this right to development.[14]

So you can say there is a built-in contradiction on the one hand in the fact that the international donor society puts constant pressure on African countries to reduce the public sector, with collateral mass lay-offs, to privatize and create a liberal market for land and put pressure on them to introduce fees for, say, access to water and social services – on the other the obligation

that the African state governments in accordance with Article 22 have taken upon themselves, namely to ensure that all citizens have the right to social, economic, and cultural development.

In Europe, and in the Western countries in general, land has long been a private good. Even though private ownership to land (or at least an exclusive, individual, and private right of use to land) was introduced along with the colonization of African countries and was predominant in areas inhabited by white settlers, reality for the major part of the African populations has hitherto been quite different. Previously, land in Africa was not private property; land used to be a public good which everybody was guaranteed a right to. Communal right to land has been of great importance for families and groups of families. Traditionally land rights were managed locally; for individuals, they were defined according to affiliation with a certain family, clan, or tribe. Although the right of use to arable land was individual, a person would not cultivate the same piece of land year after year, but look for additional land in other areas. Access to such land could be granted as long as there was enough arable land to expand on.

This situation, however, is totally changed in most areas. We will return to the specific changes and their historical background, but the consequences of this development has been an increase in land claims, and that land in Africa has increasingly become a private good. As we shall see below this does not mean that a majority of African rural populations now have private land ownership; rather, it means that access to land is made more difficult as larger and larger arable land and pastures become a private good. This in turn implies that more and more people must struggle to gain access to sufficient acreages and that many from socially and economically exposed groups are threatened with eventual exclusion from access to land.

Unfortunately, the specific state of global affairs currently demonstrates that far too many people, especially in the poorest countries in the world, lack sufficient access to basic goods such as sufficient food, water, and land. If, for instance, you do not have access to land and water, the only way you can access food is through wage employment or a business of your own profitable enough to allow you to buy food and water. Land as well as water are increasingly seen as scarce resources in many places in the world[15] - leading to increased competition and a concomitant need for access to more economic and political capital in order to get access to these resources – which makes it more and more difficult for the poor to make their demands. Therefore many loose their land rights while at the same time, user fees are introduced for potable water as well as water for irrigation, etc; making it increasingly common that people are forced to supplement their agricultural earnings with work as day

labourers and/or a plethora of other income-generating activities in order to eke out a living. In other words, people increasingly have to diversify their activities in order to ensure that the sum total of these activities can provide a basis for subsistence and/or minimize the risk inherent in putting all their eggs in one basket.[16]

The increasing pressure on land seen in many places means that increasing numbers are migrating from rural areas into major cities hoping to get paid employment. Often, they end up in metropolitan slums as jobless outcasts, trying to eke out a living as petty traders or through help from friends or relatives. Many end up as petty criminals. An increasing number of the poorest from rural areas moving to the cities are the very young or older children. The phenomenon of street children is an increasing problem in the metropolises of the world, especially in the poorest countries. Population growth and statistics covering metropolitan street children in some of the poorest countries speak volumes.[17]

Similarly, the unemployed in many corners of the world are marginalized and ostracized because of their lack of access to the labour market, with ensuing consequences for income, quality of life, and welfare. "Work has become a highly sought after privilege, not only necessary for earning a living, but also of further consequence for a human being's quality of life." (Andersen).[18] The social repercussions of joblessness has been documented by a scathe of surveys showing that families hit by long-term unemployment are subsequently beset with other social problems such as increased divorce rates, more illness and hospitalization, increased proclivity to crime, frequent suicide attempts, and higher suicide rates.[19]

The right to work is a human right, but does not imply that the state bears an obligation to provide work – rather that the state must ensure the right to access to the labour market. Access to the labour market can be viewed both as a global and a private good, depending on how the society in question entertains the very notion of "the right to work." In the former Communist states, the right to work was seen as a purely public good, the state being ultimately responsible for equal access to work for everybody.[20] In the former Soviet Union, this access to work was practised as a right as well as a duty for each citizen. The quality of this work, and whether or not the work was in fact meaningful, is open for discussion. Also, it was to a certain extent forced labour.

In purely capitalist or market-based systems, work remains a *private* good, since jobs compete with each other and are dependent upon market mechanisms. In this societal model, jobs as a good are usually in limited supply. Whether or not jobs are available depends on supply and demand within

each particular field, and work is exclusive in the sense that not everybody can get access to the good, since this system makes allowance for a "natural unemployment level."[21] In a monetarist economic system emphasis is on low inflation, fixed exchange rates, price stability, low budget deficits – not on fighting unemployment.[22]

In the Nordic model, welfare society has meant that work was both a private and a public good. The public aspect lies in the fact that local and state government have created jobs (pay-subsidized job training and employment projects) for those without access to the labour market, either because their backgrounds and qualifications were insufficient or because the economic basis for actual employment was lacking. In the welfare model, work has also been a club good since certain requirements have to be fulfilled for people to have access to the goods – for instance, the proper qualifications and education, and in some cases union membership. Protecting the unemployed has been viewed as a public duty, meaning that the state has established different insurance mechanisms such as welfare benefits, systems of subsidies for housing and children, unemployment benefits, and early retirement pensions; all the while retaining private unemployment insurance as well. Some critics of these public entitlements have claimed that public unemployment benefits have in fact been a way of excluding people from the labour market because people are not sufficiently motivated to seek gainful employment. Others maintain that by reorganizing and redistributing existing work through, say, lowering hours and abolishing overtime, existing work could be better apportioned.[23] The fundamental political discord concerning the right to work hinges upon what the state's purview should be in regard to this right; more specifically, what obligations the state has in this respect. But there is agreement that the unemployed make out a socially and economically exposed group.

A number of international and regional human rights instruments deal with the question of securing access to public goods for socially and economically exposed groups. But the question remains whether or not these instruments do in fact safeguard and procure access to public goods for these groups. What are the challenges and obstacles; what are the possibilities?

PROTECTION OF SOCIALLY AND ECONOMICALLY EXPOSED GROUPS IN INTERNATIONAL INSTRUMENTS

A number of international and regional human rights instruments protect the rights of socially and economically exposed groups; among these are the Universal Declaration of Human Rights (henceforth "the Universal

Declaration"), the Covenant on Economic, Social and Cultural Rights (henceforth CESCR), the European Social Charter, and the African Charter on Human Rights.

Article 2 of the Universal Declaration prescribes that everybody is entitled to the rights and freedoms mentioned in the declaration without any kind of differential treatment. In general, this means that weak groups have the same rights as other people.[24] By including this aspect in the Universal Declaration, the international community has emphasized that it is a stated goal that the principle of non-discrimination must be universal.

Furthermore, the Universal Declaration states 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. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." (Article 25, Sections 1 and 2.)

This provision in the Universal Declaration contains social and economic rights – there are similar articles in CESCR and the Convention on the Rights of the Child – meaning that everybody at least has the right to a livelihood, defined as adequate food, clothing, health, shelter, as well as the necessary social assistance.[25] This right is closely intertwined with the right to aid and assistance to families.[26] Also, the right to a sufficient livelihood is closely connected to the guarantee of economic rights such as the right to property ownership (Article 17 in the Universal Declaration), the right to work (Article 23 in the Universal Declaration and Article 6 in CESCR), and the right to social security and insurance (Articles 22 and 25 in the Universal Declaration and Article 9 in CESCR). The African Charter on Human Rights confers on everybody the right to dispose freely of their values and natural resources; this right being executed exclusively in the interest of the people who are under no circumstances to be deprived of this right.

The social and economic rights are explicated most directly in CESCR, which is a legally binding document as opposed to the Universal Declaration. CESCR was adopted in 1966 and has been ratified by 147 states.[27]

It has long been discussed who bears responsibility for securing these rights. According to Asbjørn Eide's interpretation – which coincides with that of the Maastricht guidelines and the Limburg principles on implementation of economic, social and cultural rights – each individual is expected to fulfil his or her own needs when possible and the state, above all, must *respect* the

free right of the individual to use his or her resources to fulfil subsistence requirements – either as single individuals or collectively, united with others in society.[28] Obviously, the use of one's own resources depends on whether or not you in fact possess such resources – typically land, capital or manpower. But the right can encompass the right of indigenous people to use public or communally owned land.

In addition to this, the state has an obligation to *protect* the individual's freedom to earn an adequate livelihood. For instance, this protection can entail protecting the natural resources sustaining indigenous people from economic forces or from the dumping of waste in such areas. The crux remains that the state should not necessarily be seen always as a provider, but rather as a protector. First and foremost, the state is under obligation to ensure that the individual is able to procure his or her own food by offering protection against players or parties threatening, say, the living conditions of indigenous peoples by preventing their access to land.[29]

In cases where no other options exist, the state then becomes obliged to *fulfil* these social and economic rights (ultimately and as a last resort). Fulfilling the social and economic rights may entail aid or welfare to create opportunities for those who have none, or direct procurement of food and/or resources that can meet basic needs when no other possibilities exist. Examples: benefits in periods with widespread unemployment, say, during a recession, aid to weak groups and the elderly who are unable to support themselves, aid and support during crises and natural disasters, and assistance to marginalized groups.

The right to work is enshrined in the Universal Declaration (Article 23) and in CESCR (Article 6), prescribing that everyone has the right to work, to freely choose employment, to just and favourable working conditions, and to protection against unemployment. The right consists of three other principles, namely the right to non-prejudicial equal pay for equal work; the right to just and favourable remuneration ensuring a decent living fit for human beings; if need be, the right to other social security; and, finally, the right to form and join unions to protect your interests.

The right to work implies several aspects. First and foremost the right to labour market access is not only stipulated for national citizens but for all residents and the individual must be allowed to choose employment without state interference. Forced labour is prohibited; health and safety at work have to meet certain standards if the right is to have any meaning.[30] Also, protection against unemployment forms part of the right to work. The right is elaborated upon in Articles 6 to 8 of CESCR and in the European Social Charter.

In the industrialized parts of the world, viewed from a historical perspective, work is linked to remunerated employment, having developed into the primary

way of distributing national income among members of society. In the Roman Empire, work was mainly done by slaves; and up until the 20th century, in the Nordic countries, all (male) members of society were simply obliged to work. You had to work under an employer who met certain requirements regulated by law. Without such employment you were considered a vagrant – in Sweden, if you lacked such an employer, you could be forced into military service. Nazism used military mobilization as a means of overcoming unemployment.[31] Many of these historic facts were among the reasons the right to work was embedded in the Universal Declaration.

The European Social Charter includes a number of work-related rights – including the right to earn a living through employment freely entered into, to just working conditions, to a safe and healthy work environment, to fair wages sufficient to maintain a decent standard of living for the person employed and family; as well as the right to organize in unions, etc., to collective bargaining and the right to social assistance if need be. In its provisions on work (Article 1), the European Social Charter emphasizes that member states must accept that their primary purpose and responsibility lies in securing and maintaining as high and stable a level of employment as possible with a view to ensuring full employment.

In its preamble, the ILO links universal security to working conditions, prevention and protection against unemployment. Also, the work-related rights already described form one of the pillars of ILO.

Although the conventions described above do encompass the right to work, this is not to be taken in the sense that it is the state's purview to create jobs; individuals are not *guaranteed* employment according to the conventions. The state's obligation lies solely in providing the individual unfettered access – i.e. not preventing access - to the labour market – and individuals can invoke the right to an education and labour market counselling.[32] Consequently, persons cannot necessarily choose their employment freely, but the state is precluded from using forced labour. The right to work is not a civil right, but an economic right, although no direct economic obligations fall upon the state in this regard. The economic right entails that the state must abstain from interfering with the market and the distribution of work in society must be regulated by individual free choice, not by the state.[33]

In conclusion, the "right to work" involves a number of work-related rights and principles such as non-discrimination, equal pay for equal work, protection during periods of unemployment, social security, the right to organize and to join unions, and rights concerning work environment and working conditions in general. However, the state bears no legal responsibility for ensuring that everyone so wishing can in fact obtain work, although policy

statements in the ILO conventions, in CESCR, and in the European Social Charter do point in this direction.

THE RIGHT TO LAND AND THE RIGHT TO WORK

The landless or partly landless in African rural areas

For an African, access to land is important for several reasons. Land is not merely a question of owning a specific stretch of land, thus being able to eke out a living; affiliation to land is also of very important social and cultural significance.

Many Africans perceive "the right to land" as a human right; this, it can be argued, is in accordance with the African Charter on Human Rights Article 22, defining economic, social and cultural rights as embodied in human rights. The majority of African populations live in rural areas and subsist on agriculture and agriculturally related activities, or other use of natural resources.[34] Therefore many people are deeply dependent on access to land – be it arable land, pastures for livestock, or natural habitats which form the basis for hunting and gathering activities. The many different types of livelihood patterns prevailing in Africa and rules and norms related to land rights are deeply rooted in the culture of most Africans.[35] Thus it is difficult to separate access to land from the question of cultural rights in Africa.

Although Article 22 in the African Charter on Human Rights is open to interpretation, and even though land is increasingly becoming a private good in Africa, it is difficult to shirk the fact that states – pursuant to Articles 2 and 22 – are obliged to provide mechanisms to ensure that everybody dependent on land can get access to sufficient land to make a living regardless of race, ethnic background, gender, etc.[36]

In most African countries, public welfare benefits are virtually non-existent; therefore, access to the basics for maintaining a livelihood – the means to produce or buy food and other essentials and/or access to networks that can provide assistance – are quite literally life necessities.

Yet for Africans, hunger, hardship, violence, and shortages of everything is the order of the day. There seems to be broad agreement that the African countries, particularly the Sub-Saharan countries, are among those in the world hardest hit by poverty, conflict, etc.

REGULATION OF ACCESS TO LAND IN AFRICA

Most countries in Africa have legal pluralism. Thus land rights are regulated both according to customary law and norms and to state laws and regulations as well as in accordance with national policies.[37] But most people living in rural areas – especially the people that are most exposed and vulnerable socially and economically – have land rights that are primarily regulated by so-called customary laws and norms. Consequently, the focus here will be on such rights. However, as we shall see, it is not possible to view such customary rules isolated from formal legislation and national and international policies.

One general characteristic of customary rules is that they are usually not written down.[38] Also, they generally do not imply an exclusive, private right of ownership; but rather constitute a right of use whether individual or communal.

Customary law and norms have changed substantially over time, influenced by changes in society as well as by government intervention. This carries with it an international dimension. Interaction between different parts of Africa, the Middle East, Asia, and a number of European countries in pre-colonial days and during the subsequent colonization of Africa has left indelible traces, in relation to land rights as well.[39] Changing dominions and arbitrary border delineations both before, during, and after the colonization of Africa, leading to segmentation of population groups and their territories and a multitude of conflicts, have entailed that questions about land rights can have both local, regional, national and international implications. Post-colonial politics and the positioning of the African countries in the international political and economic system have also clearly influenced the question of land rights and land as a public vs. a private good. A growing pressure exists on the land available to rural populations, especially due to issues like increased privatization of land ownership; population growth; the annexation of more and more areas for commercial activities, be they private or public, including oil and mineral extraction, in a number of African countries; the expropriation of more and more areas for the establishment of national parks and reserves, etc.[40] Thereby, land has increasingly become a private good in Africa, and de facto land rights have been reduced, particularly for the weakest groups.

This has given rise to new interpretations of customary law and norms as well as manipulation. Thus powerful groups have in many places been able to reinforce and bolster their own land rights, partly by using the pluralist legal systems to their advantage; partly by securing themselves access to still greater stretches of land; and finally by affirming their right to this land by private deeds. Much of the recent literature concerning the question of land rights in

Africa describes these occurrences and the processes facilitating them.[41]

Societal changes have also changed existing customary law, and new "customary laws" have arisen.[42] At the same time, land has increasingly become a marketable commodity. Private rights complete with deeds as well as user rights are being traded. This is the historical development that has generally contributed to making land a private good – in Africa as well.

In Africa, even if you do not possess land yourself, this does not necessarily mean that you do not have access to using land as there are possibilities of leasing and "borrowing" land, etc.

The African survival strategies are very complex. For the poorest, life in African rural areas rarely means subsisting on just one activity. You may till one small piece of land (your own or rented), work intermittently as a day labourer, engage in petty trade, offer small services, etc. Since more and more people live in marginal areas where agricultural activities are a high risk business due to unpredictable weather conditions, diminishing land fertility, etc., most have to supplement their income with other endeavours. Thus you speak of diversifying your livelihood.[43]

One particularly exposed group consists of individuals whose only possibility of supplementing their income is working as casual labourers for others. This is especially an option during peak periods (sowing, harvest, weeding, etc.). Since these are the very periods where the poor themselves require additional manpower to safeguard their own coming crops, the vicious circle begins.[44]

As a consequence of this increased pressure on land, a plethora of schemes have cropped up in order for people to gain land access. As mentioned, there are possibilities of leasing, borrowing, paying with part of your harvest, or paying with your own labour in order to gain use of someone else's land for a period of time. There are innumerable ways you can pay for user right to land and countless conditions governing how you may in fact utilize the land for the duration that it is at your disposal.[45]

One thing these schemes have in common is that everything is up for negotiation. Consequently there is broad agreement that land rights in Africa can not merely be understood according to manifestation or content; they should be understood as processes, i.e. as the prevailing result of negotiations undertaken by individuals, groups of individuals, and various governmental and non-governmental bodies.[46]

However, the positioning of the persons and groups of persons involved in these negotiations differs, and results reflect this. Obviously, the socially and economically exposed groups generally hold the weakest positions. They have less access to education and information and have less influence on societal

affairs regarding their own situation, including changes in rules and norms.

Many studies have shown that particularly women, pastoralists, and hunters and gatherers are generally among the hardest hit.[47] In some rural areas conflicts between generations have led to increased difficulties for young people to obtain access to sufficient land; thus the question of age can be an important factor as well.[48]

Women's access to land is regulated differently in various parts of Africa – for instance, according to whether the societies in question are matrilinear or patrilinear. Although the picture is in no way unambiguous, there is, as mentioned, broad agreement that the majority of people with insufficient land access in Africa are women.[49]

There are many reasons why pastoral land rights have come under pressure. In part, formal legislation has stressed that you could maintain land rights by providing clear proof of investments and proving that the land is in fact being used – i.e. cultivated. Given the nomadic or semi-nomadic existence of pastoralists, leaving palpable traces of investments is not easy. Many of the areas that have previously been turned into national parks, reserves, etc. have been inhabited by pastoralists who consequently have had to migrate to other areas where they have had to compete for land, both with those already settled there as well as other migrants and/or refugees. In general, protecting the land rights of pastoralists is only treated cursorily in formal legislation in Africa.[50]

A similar evolutionary process has also beset hunter-gatherers like *San* and *Basarwa* in Southern Africa and pygmies in Central Africa. Most of these groups fall under the category of indigenous peoples.

Why is this a global problem, and what is being done?

As it appears, the question of land rights for socially and economically exposed groups has an international dimension. In a great many African countries, formal land legislation is rooted in the colonial past and in national legislation from the former colonial powers. Historically, the interplay between the formal and often contradictory legal framework and different customary laws and norms has resulted in numerous "hybrid forms." The international donor community in particular has viewed this situation as opaque and an expression of insecure land rights for those users who do not possess deeds to their land.[51] This point of view, however, has been substantially challenged by recent research.[52]

Within the last decade, pressure from donors and international organizations such as the World Bank and the IMF has greatly expedited land reforms and the preparation of new land policies and land legislation in many

African countries.[53] Although nations like Tanzania, Uganda, Mozambique, Malawi and South Africa do to a certain extent recognize customary law in this area, there are also clear indications of directional goals leading to liberalization and privatization. While customary law and rules concerning land rights rest on principles protecting groups rather than individuals and linking rights intimately to duties, the individual, private right to land ownership is by nature exclusive in relation to the group and not tied to any group obligations.

It is still too early to evaluate the effects of these reforms, but questions have been raised as to whether the formalization of land rights also solves the problems encountered by socially and economically exposed groups whose land rights are defined according to customary law.[54]

Many studies indicate numerous reasons why these groups become increasingly exposed and vulnerable when more privatization and formalization of land rights are thrust upon them.[55]

Even though socially and economically exposed groups hold the weakest position in land right negotiations, a number of studies argue that they are after all involved in these negotiations; if for no other reason because they are located in the physical vicinity of the people with whom they are negotiating and because, most often, there is a mutual interest for the negotiating parties to get results.[56] The same studies also maintain that privatization can easily lead to total exclusion of the weakest, especially women.

Thus the way to proceed seems rather to be, first to recognize customary law in formal legislation alongside other unwritten rights to the extent that they do not discriminate in terms of race, gender, or ethnic origin, or interfere with the use of common areas for people dependent upon them (for instance, pastoralists and hunter-gatherers). Second, that states establish mechanisms ensuring that land rights rooted in customary law are not undermined by manipulation. And third, that limits are set to private land accumulation – including limits as to how far the state itself can go as "land owner."

The international donor community, including Denmark, can play a significant role in this context in relation to:

1. Ensuring that knowledge is acquired about conditions in the individual African countries.
2. Identifying democratic forces on all societal levels in the African countries as well as internationally, and cooperating with them.
3. Urging African countries to adopt international conventions banning discrimination (such as CEDAW, ILO 169 etc.) and promoting human rights.

4. Expediting the fight against poverty based on an in-depth understanding of the nature of the problems besetting socially and economically exposed groups instead of an overall agenda of fighting terror.

THE UNEMPLOYED IN EUROPE

The unemployed

The ILO and OECD define an individual as unemployed/out of work if he or she has not been employed for a given period, is actively seeking employment and is available to the labour market. Typically, the long-term unemployed are thus considered to be out of work, while people on disability or early retirement are not considered to be unemployed as they are no longer available to the labour market.

There are different types of unemployment; on paper they are categorized separately as seasonal or frictional unemployment, or structural and recession-related unemployment. Seasonal and frictional unemployment occurs for shorter periods of time, depending on the seasonal swings in the labour market (for instance, the tourist business) or between-job unemployment. Structural or recession-related unemployment lasts longer and often affects the unskilled or poorly educated.

There are several reasons that marginalization occurs in the labour market. As previously mentioned, it may be technologically motivated unemployment, recession-related unemployment, or structural unemployment. The structurally unemployed will often remain jobless unless the structures of the labour market are in some way changed. In Denmark, those typically affected in this regard are women, the elderly, unskilled workers, and ethnic minorities.

SOCIAL, POLITICAL AND ECONOMIC CONSEQUENCES OF UNEMPLOYMENT AND THE GLOBAL ELEMENT

The social and personal costs arising from unemployment have been detailed in literature on unemployment.[57] Unemployment often entails experiences of economic destitution and ostracism; the unemployed more often fall into debt, just as homelessness and domestic and family turmoil are more frequent in unemployed households than in families with jobs. To this you might add that the unemployed report feelings of boredom, alienation, shame, discrimination,

increased social isolation, crime, and lack of self-confidence, self-esteem and good health.

Similarly, unemployment often plagues groups that are already underprivileged in society; i.e. low-income groups, immigrants, etc.

Throughout time, unemployment and lack of a source of income has made people relocate across national borders. History abounds with examples of immigration to countries where work was available. After World War II and up until the mid-1960s, such movement in and out of Denmark typically went between Denmark and countries like Norway, Sweden, England, Germany, and the USA. At the close of the 1960s, the structure and extent of immigration changed; first came outside recruitment of manpower – typically from Turkey and the former Yugoslavia – then through the influx of refugees and family reunifications from the Third World, i.e. from countries outside the USA and Western Europe.[58]

It is common knowledge that unemployment causes cross-border migration and immigration so the global dimension in this discussion is evident. In an European context the question of geographical mobility has long been on the agenda and strategies have been devised to safeguard geographical mobility so EU citizens are not restricted just to working in their native countries. But apart from the question of geographical mobility Europe has also recognized that creating jobs requires a coordinated regional effort.

CREATING JOBS – THE EUROPEAN EMPLOYMENT STRATEGIES AND THE CHALLENGES INVOLVED

The European Employment Strategy (EES) was first launched in Luxemburg in 1997 as a five-year plan. In 2002 the strategy was revised and then evaluated so it is now a key component in the Lisbon goals for economic growth, more and better jobs and greater social cohesiveness set for 2010.[59] The overall goal of the employment strategy is to achieve full employment; the 2010 target for employment is 70 per cent (up from the current 61 per cent). Also, the aim is to increase the percentage of employed women to 60 per cent (as opposed to women's current share of 51 per cent). This means that the EU needs to create 15 million more jobs (to be evaluated in 2006).

At the European Council's meeting in Stockholm in March 2001 these goals were elaborated and it was agreed that the general level of employment should be raised to 67 per cent in 2005; 57 per cent for women in 2005 and 50 per cent for older women and men in 2010.

This strategy is designed in order to meet the challenges foreseen by

the EU because of demographic trends (comparatively more older and less young people), globalization, and the increasingly knowledge-based society in general.

The employment strategy is aimed at coordinating the employment policies of individual member states as well as determining common goals for an employment policy for the entire EU. The employment strategy consists of the following components:

1. Guidelines for an EU-wide labour market policy where member states adopt a set of common policies of labour market priorities.

2. Annual national action plans where each member state must outline how these guidelines are to be implemented at the national level.

3. Common labour market reporting where the Commission and the Council together evaluate each national action plan and present a collective labour market report to be used for review of the guidelines.

4. The Council deciding on specific policy recommendations for each member country.

In the latest guidelines for employment (adopted July 22nd 2003) specific emphasis is on proactive and preventive measures for the unemployed and others without attachment to the labour market, job creation, building new businesses, furthering adaptability to a changed labour market for both employees and businesses, promoting lifelong learning, providing more manpower and an active senior workforce, and equality. Also, the guidelines seek to further integrate the less fortunate groups into the labour market and combat discrimination of these groups, economic incentives making it more attractive to work, transforming moonlighting into real jobs, and reducing regional disparities in employment figures.

In its specific recommendations for Denmark, the Council emphasizes that Denmark already lies well above the EU targets, but that efforts must be strengthened to promote inclusion of older employees and prevent bottleneck problems in sectors with a preponderance of senior employees, e.g. in the service sector and educational sector. It also highlights the fact that the efforts to integrate foreign workers into the labour market should be enhanced and that a balance should be struck between increased economic incentives on the one hand and prevention of social ostracism on the other. Denmark is also urged to reduce the high marginal tax rates.[60]

The European Council's recommendations clearly show regional

disparities in employment figures. Countries like Belgium, Greece, Spain, France, Italy (and, to a certain extent, Luxemburg) are distinctly below the EU average and far from achieving the EU goals, whereas countries like Denmark, the Netherlands, Austria, Portugal, Finland, Sweden and the United Kingdom have already reached the goals or are close to doing so.[61]

The first European employment strategy (1997 – 2001) has been evaluated and the guidelines described above have been drawn up based on this evaluation.

The evaluation points to structural improvements in the EU labour market despite market differences between member states and the difficulties inherent in establishing a clear-cut cause and effect between end results and specific policies. The period from 1997 to 2001 saw a clear correspondence between national labour market policies and the goals and guidelines determined by the EU. The evaluation stresses that more than 10 million new jobs were created in this period (a rise of 6.5 per cent) – 6 million of these for women. The number of unemployed fell by more than four million (a drop of 25 per cent).[62]

It is also emphasized that there are still a number of structural problems and challenges. In 2001, for instance, 13 million people were still unemployed; 42 per cent of whom were long-term unemployed. The challenges remain substantial, especially regarding the stated goals for the senior workforce. The regional lopsidedness in unemployment patterns also remains a problem.[63]

The challenges in implementing the employment strategy lie primarily in the fact that the Council's recommendations are not binding, but precisely that: recommendations. This makes it uncertain whether or not implementation will actually take place and if so, to what extent.

But the strategy is based on an active employment strategy following the (Scandinavian) social democratic model and studies have shown that such a proactive employment policy can make a difference in the employment situation in the individual countries. Also, the employment strategy may dictate that the de facto differences in employment policy from country to country can pave the way for learning processes and exchange of useful experiences between the countries involved. Such an exchange of experiences from countries championing a proactive employment policy to countries leading a more passive one will probably lead to less social marginalization.[64]

Member states can seek funding for job-creation initiatives from the European Social Fund whereby financing for instigating an active employment policy is also provided.

THE DANISH MODEL

The Danish model, as demonstrated in connection with the latest Danish chairmanship of the EU, focuses on a labour market with enough of room for all and social inclusion. Danish policy has been to stress that a labour market with ample room is essential in order to gain full economic value of cooperation within the EU. A labour market with ample room means that as many people as possible – regardless of ethnic background, gender, age, disabilities, creed, and sexual orientation – remain active participants in the labour market and society in general. This roominess also entails a non-discrimination aspect, meaning that employment and roominess (non-discrimination) should go together. There has also been focus on the risk of marginalization for different groups, so the various reasons for marginalization need to be attacked simultaneously. For instance, increasing employment for women may depend on providing better day care for children; improving employment for immigrants may necessitate better offers of language courses and housing; for the elderly, the solution may be working shorter hours or handling fewer tasks, etc. In other words, this is a question of creating equal treatment and equal opportunities by measures like increased coordination of employment policies with education, housing and/or family policies.

The Danish model also involves focusing on new forms of employment policy partnerships at the local, national, and regional levels. Among other things, the Ministry of Employment, in a preliminary report to the conference on "Room for all and social dialogue," suggested partnerships involving local organizations like women's, immigrant, church, and youth organizations.[65] Moreover, Denmark has also attempted to place the social responsibility of companies on the agenda and to use pluralist leadership as a tool to create a more roomy labour market.

Even though a proactive employment policy seems to be pursued in an EU context, the new trend we are seeing is rising employment – in Denmark as well. Consequently, any assessment of the employment strategy and the Danish unemployment model will be incomplete without looking at the actual implementation, especially if you wish to scrutinize and synchronize goals, strategy, and actual policy, since these aspects may be far apart. And we still see cases involving discrimination, for instance regarding immigrants' access to the labour market.

CONCLUDING REMARKS

Above we have highlighted the various problems encountered by economically and socially exposed groups in Africa and Europe, respectively. We have demonstrated that in Africa, land as a resource has gone from being a public good – administered by local authorities – to being, increasingly, a private good. This means that individuals rather than groups have to fight to acquire and hold on to land rights. Developments have also meant that it has become even more difficult for socially and economically exposed groups to make themselves heard in the increased competition to acquire and maintain land rights because of their inferior position in society.

We have also pointed out how criticism has been voiced about the measures being taken by a number of African countries (especially prompted by the international donor society) in order to change legislation and land policy, and in order to instigate actual land reforms with the express purpose of furthering economic growth; thus seeking to combat poverty, promote gender equality, etc. This criticism has pointed to the fact that the ongoing initiatives will lead to more land being privatized and individualized and that this will at best not harm the socially and economically exposed groups, and at worst actually be detrimental to their overall situation

We have expressed our agreement with this criticism voiced in a number of areas since many studies have indicated how precisely these groups become more exposed when and if increased privatization and formalization of land rights are forced upon them.[66] Instead, we have suggested that the path forward should be: 1) that customary law be recognized in formal legislation on an equal footing with other types of rights in so far as this in no way discriminates on the basis of race, gender, or ethnic origin and does not hamper utilization of common areas for groups dependent upon these (such as pastoralists and hunter-gatherers), 2) that – through government initiative – mechanisms are established to ensure that land rights rooted in customary law are not undermined, and 3) that limits are set to private land accumulation – including the state itself as "land owner." Finally we have made a number of proposals as to what role the international donor community – including Denmark – can play in this regard.

We have also seen how attempts are made from the public sphere – including the regional public sphere – to safeguard access to work for individuals and how – not least in an EU context – access to the labour market for individuals is seen as a public task. Harmonization of labour market policies and fewer restrictions for manpower mobility across borders in Europe show that the right to work as a policy area is also becoming more and more of a

cross-border affair. At the same time you can discern a tendency towards (or a desire for) entering into closer cooperation with the private sector to solve unemployment problems through public-private partnerships.

But there does not appear to be a global approach or institution for taking care of unemployment problems, and the question remains whether such an approach would in fact be realistic since the nature, character and reasons behind unemployment in an African context differs drastically from the European context. On the other hand, a case could be made for letting the public sector play a determining role in establishing the right to work for individuals because this is a state purview for countries having ratified CESCR. Since this obligation has already been inscribed in the international human rights instruments it can be used as a point of departure for a global approach to unemployment problems in general. The challenge lies in establishing a global approach and global institution while at the same time ensuring coordination between other global policy areas like trade, peace and security on the one hand, and on the other hand securing an approach to the unemployment problems safeguarding at the very least that there are no discrepancies between these policy areas; i.e. that global trade does not lead to increased unemployment.

Using global public goods as an analytic tool has been useful to refine and clarify the dual public/private nature of land rights and the labour market. At the same time it is evident that human rights principles play a certain role, both in relation to land rights and their distribution as well as current European labour market policies. For instance, there exists a link between the principle of non-discrimination and pluralist leadership

The concept of global public goods, however, is very broadly defined and seeks to accommodate any conceivable empirical situation. The examples have demonstrated that the broadness of the concept creates an opportunity to uncover numerous facets, but the question remains whether it is useful to operate with such broadly defined concepts. There is a danger, we think, that the concept may be diluted, and focus may become blurred.

NOTES

1. See, for instance, UNDP: *Human Development Report 2003. Millennium Development Goals: A compact between nations to end human poverty*, New York, Oxford, 2003 and www.worldbank.org/poverty .

2. See, for instance, Udenrigsministeriet (*The Danish Foreign Ministry*): *Danmarks udviklingspolitik. Udkast til analysedokument. Partnerskab 2000*, Danida, april 2000 and Udenrigsministeriet (*The Danish Foreign Ministry*): *En Verden til Forskel. Regeringens bud på nye prioriteter for dansk udviklingsbistand 2004-2008*, Danida, June 2003.

3. For instance: Chambers: *Rural Development. Putting the last first,* Longman, New York and London, 1983; R. Chambers: "The Poor and the Environment: Whose Reality Counts?" in *Poverty Reduction and Development Cooperation. Report from Conference. CDR Working Papers 94.6,* 1994; IWGIA: *Indigenous Affairs 1/03. Indigenous Poverty: An Issue of Rights and Needs*, IWGIA, Copenhagen, 2003; IFAD: *Assessment of Rural Poverty. Eastern and Southern Africa,* International Fund for Agricultural Development (IFAD), Rome, 2002, Udenrigsministeriet (The Danish Foreign Ministry), 2003.

4. A number of studies exist devoted to the worldwide, gender specific problems in poverty, the access of men and women to resources, etc. See for instance L. Cotula: *Gender and Law. Women's rights in agriculture*. FAO Legislative study 76. FAO Rome, 2002; S. Mvududu and P. McFadden: *Reconceptualizing The Family in a Changing Southern African Environment,* WLSA Regional Office, Harare, 2001; WLSA: *Critical Analysis of Women's Access to Land in the WLSA Countries*, WLSA Regional Office, Harare, 2001; R. Odgaard and A. Weis Bentzon: "Rural Women's Access to Property in Patrilineal Communities in East Africa – in a web of norms" in: A. Hellum and J. Stewart (eds.): *Women's Human Rights and Legal Pluralism – Linking Laws and Realities*, forthcoming at Weaver Press, Zimbabwe; R. Odgaard: *Hvad får afrikanske kvinder ud af frivilligbistanden?,* Mellemfolkeligt Samvirke, Copenhagen, 1989, just to mention a minute selection.

5. Unfortunately, history is ripe with many examples of this. A number of recent instances can be found in the IWGIA yearbooks from the year 2000 onwards.

6. For an elaboration of this discussion, see for instance: IWGIA: *Indigenous Affairs 1/03. Indigenous Poverty: An Issue of Rights and Needs*, IWGIA, Copenhagen, 2003 and the contributions to V. Broch-Due and A. Schroeder Anderson (eds.): *Producing Nature and Poverty in Africa*, Nordiska Afrikainstitutet, Uppsala,1999.

7. Cf. N. Johnsen: "Placemaking, Pastoralism and Poverty in the Ngorongoro Conservation Area, Tanzania" in: Broch-Due and Schroeder Anderson (eds.), 1999 and R. Odgaard: "Scrambling for Land in Tanzania: Processes of Formalisation and Legitimisation of Land Rights" in: T. A. Benjaminsen and C. Lund (eds.): *Securing Land Rights in Africa*, Frank Cass. Publishers, London, 2003a.

8. Some recent studies dealing with this subject: D. Vinding: Editorial in IWGIA: *Indigenous Affairs 1/03. Indigenous Poverty: An Issue of Rights and Needs*, IWGIA, Copenhagen, 2003; C. Moser and A. Norton, with T. Convey, C. Ferguson and P. Vizard: T*o Claim our Rights: livelihood security, human rights and sustainable development*; ODI (Overseas Development Institute), 2001; SLSA team: *Rights talk and rights practice: Challenges for Southern Africa,* Cape Town, International Development

Studies, University of Sussex, 2003.

9. See the example below concerning land rights for the socially and economically exposed in Africa.

10. The relevance hereof and the adherent initiatives are clearly dealt with in SLSA team, 2003.

11. Chambers 1983. Although Chamber's book is rather long in the tooth we still believe his way of categorizing the different approaches to understanding the reasons behind poverty and his strategic visions on how to remedy poverty are of great relevance.

12. See for instance B. Derman and A. Hellum: "Neither Tragedy nor Enclosure: Are there Inherent Human Rights in Water Management in Zimbabwe's Communal Lands" in: T.A. Benjaminsen and C. Lund (eds.): *Securing Land Rights in Africa*, Frank Cass. Publishers, London, 2003.

13. Derman and Hellum 2003. Among other things, Article 14, section 2 of the CEDAW Convention declares that "State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on the basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (….) (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

14. African Charter on Human and Peoples' Rights (adopted 27 June 1981).

15. See for instance World Bank: *Reaching the Rural Poor. A renewed Strategy for Rural Development. A Summary*, Washington D.C., 2002, annex 8.

16. Cf. the discussions of *'livelihood diversification'* in F. Ellis: *Rural Livelihoods and Diversity in Developing Countries*, Oxford University Press, 2000 and '*sustainable livelihoods'* in Moser and Norton, 2001, Dalal-Clayton et al. (eds.): *Rural Planning in Developing Countries. Supporting Natural Resource Management and Sustainable Livelihoods*, IIED/Earthscan Publications, London, 2003.

17. See for instance www.world.bank, clicking on "Population and Reproductive Health."

18. Svend Aage Andersen: "Klasseanalysen og den ny underklasse", *Solidaritet* 1997, www.solidaritet.dk/soli97-3/1997-3-5.htm.

19. Nygaard, 1996 and Andersen, 1997; Mogens Nygaard Christoffersen: *Opvækst med arbejdsløshed – en forløbsundersøgelse af to generationer født 1966 og 1973*, Socialforskningsinstituttet (Danish National Institute of Social Research), Copenhagen 1996.

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22. Gunnar Thorlund Jepsen: "De vise og de kloge i Europa," article in Danish daily *Politiken*, April 11, 2000.

23. Andersen, 1997.

24. Cf. the chapter in this book by Hans Henrik Brydensholt on legal protection and

the rule of law as a global public good for an elaboration on the principle of non-discrimination.

25. Similar rights are embedded in the International Covenant on Economic, Social and Cultural Rights (Article 11) and in the Convention on the Rights of the Child Article 27).

26. These rights can also be found in the International Covenant on Economic, Social and Cultural Rights (Article 10) and in the Convention on the Rights of the Child (Article 27).

27. UNHCHR: http://www.unhchr.ch/pdf/report.pdf.

28. G. Alfredsson and A. Eide: "Article 25" In: *The Universal Declaration of Human Rights – A Common Standard of Achievement,* Kluwer Law International, 1999.

29. Ibid., p. 535

30. Alfredsson and Eide, 1999.

31. Alfredsson and Eide, 1999; Goldsmith, 1998.

32. Kent Källström and Asbjørn Eide: "Article 23" in *Universal Declaration of Human Rights – a common standard of achievement*, Kluwer Law International, 1999.

33. Ibid.

34. IFAD, 2002, UNDP, 2003.

35. See for instance R.W. James and G.M. Fimbo: *Customary Land Law of Tanzania. A source book*, East African Literature Bureau, Nairobi, Dar es Salaam, 1973; C. Juma and J.B. Ojwang: *In Land we Trust*, Zed Books, London/Nairobi, 1996; and R. Odgaard: "Scrambling for Land in Tanzania: Processes of Formalisation and Legitimisation of Land Rights" in: Benjaminsen and Lund (eds.), 2003.

36. IFAD, 2002, UNDP, 2003.

37. Customary law and norms vary according to where you are on the African continent and the ethnic group concerned. In parts of Africa with Muslim populations many follow the Muslim law *shari'a.*

38. It is, to be sure, becoming more widespread to seek titles documenting ownership of a particular stretch of land, cf. contributions in Benjaminsen and Lund (eds.), 2003.

39. Illustrative is an example of changed land rights for women in a previously matrilinear area in Southeastern Tanzania. Changed patterns of inheritance and settling have been brought about, first by Arab dominance, and the later colonialist agricultural policy with subsequent commercialization of agricultural production; which again has lead to a weakening af women's land rights. See for instance: S. Chachage and J. Nyoni: *Economic Restructuring and the Cashew Industry in Tanzania*. *Tanzania Agriculture Situation Analysis,* Report, Dar es Salaam, 2001 and F.P. Maganga and R.Odgaard: *'UTUMI.' Planning and Implementing Community Based Forest Management in Kilwa and Lindi Districts. Report on the results of the socio-economic studies in Lindi Region, Tanzania.* Report for Danida, 2002.

40. The numerous and catastrophic conflicts brought about by oil and mineral extraction in Africa is evidenced daily in the media; cases in point: the so-called "blood diamonds" and the conflict in Congo involving several African countries. See for instance Ingrid Samset: "Conflict of Interests or Interests in Conflicts? Diamonds & War in the DRC" in *Review of African Political Economy*, September/December Vol. 29, No. 93/94, pp.

463-480, 2002.

41. See for instance the contributions to Benjaminsen and Lund (eds.), 2001, Benjaminsen and Lund (eds.), 2003 and C. Toulmin, C. et al. (eds.): *The Dynamics of Ressource Tenure in West Africa*, IIED, James Currey, Oxford, 2002.

42. See for instance Odgaard 2003a.

43. *Livelihood diversification* has become increasingly commonplace. The definition we have used in particular is this: "A livelihood comprises the assets (natural, physical, human, financial and social capital), the activities, and the access to these (mediated by institutions and social relation) that together determine the living gained by the individual or household." (Quoted from Ellis, 2000, p. 10.) When discussing improvements in conditions for the rural poor, you speak about "sustainable livelihoods," with the following definition in mind: "A livelihood comprises the capabilities, assets (including both material and social resources) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from stresses and chocks and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base." (Quoted from Dalal-Clayton et al., 2003. A further discussion of "sustainable livelihoods" can be found in Moser et al., 2001).

44. See for instance H. Høgh Jensen et al.: *Fieldnotes*, Malawi, October 2003.

45. See for instance Benjaminsen and Lund (eds.) 2001 and 2003; Toulmin et al. (eds.) 2002; S. Berry: "Tomatoes, Land and Hearsay: Property and History in Asante in the Time of Structural Adjustment" in: *World Development,* vol. 25; No. 8, pp. 1225-41, 1997.

46. R. Odgaard: "Afrikanske jordrettigheder og retlig pluralisme: Eksemplet Tanzania" in S. Schaumburg-Müller and B. Selmer (red.): *Retlig Mangfoldighed. En fælles udfordring for retsvidenskab og antropologi.* Jurist- og Økonomforbundets Forlag, Copenhagen, 2003b; also, see S. Berry: *No Condition is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa*, WI: University of Wisconsin Press, Madison, 1993; Berry 1997; FAO, 2002, and the contributions to Toulmin et al. (eds.), 2002 and Benjaminsen and Lund (eds.), 2003

47. This is evident from a number of articles in: H. Veber et al. (eds.): "*....Never drink from the same cup."* Proceedings of the conference on indigenous peoples in Africa. IWGIA/ CDR, Copenhagen, 2003; IWGIA, 2000; IWGIA, 2001; IWGIA, 2002; IWGIA, 2003; WLSA, 2001, R. Odgaard et al. in: Samset, 2002, IFAD, 2002; and UNDP, 2003.

48. Toulmin et al. 2002; Odgaard et al. 2003a.

49. Odgaard and Weis Bentzon, forthcoming; Odgaard 1999; Cotula, 2002; FAO, 2002; UNDP, 2003; Odgaard 2003a.

50. See for instance the sections on Africa in Part I of IWGIA 2003; R. Tenga: *Pastoral Land Rights in Tanzania. A Review,* IIED Drylands Programme: Pastoral Land Tenure Series, 1992; R. Tenga and G. Kakoti: "The Barabeig Land Case" in Veber et al. (eds.), 2003; IIED: *Land Tenure and Resource Access in West Africa: Issues and Opportunities for the Next Twenty Five Years,* International Institute for Environment and Development, Drylands Programme, London, 1999.

51. Cf. for instance Berry 1997, Lavigne Delville et al. 2002; SLSA 2003, and the contributions to Benjaminsen and Lund (eds.), 2003, to name but a few examples.

52. For example S.E. Migot-Adholla et al.: "Indigenous Land Rights Systems in Sub-Saharan Africa: A Constraint on Productivity?" in: *World Bank Economic Review,* vol.

5, No.1, 1991; Berry 1997; E. Sjaastad and D.W. Bromley: "Indigenous Land Rights in Sub-Saharan Africa: Appropriation, Security and Investment Demand" in *World Development* Vol. 25, pp. 549-562, 1997; Toulmin et al. (eds.), 2002, Lavigne Delville et al., 2002 and the contributions to Benjaminsen and Lund (eds.), 2003.

53. FAO 2002; SLSA team 2003.

54. Berry, 1997; Odgaard 2003a+b.

55. See for example Berry, 1997, Toulmin et al. (eds.), 2002; Lavigne Delville et al 2002; the contributions to Benjaminsen and Lund (eds.), 2003; R. Odgaard, 2003b; Odgaard and Weis Bentzon, forthcoming; SLSA team, 2003.

56. See for example Berry, 1997, Odgaard, 2003a+b as well as the other contributions to Benjaminsen and Lund (eds.), 2003.

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4

ACCESS TO INFORMATION

The right to know

Anders Jerichow

A cassette tape, a telephone, a winding radio, an e-mail, and a statute book. Governments have been overthrown with these tools, peasants have taken up competition with city folk, Untouchables have turned against the high caste, poor people have challenged the market, and citizens have challenged the administrative nobility. It is all about transforming knowledge from an abstract "right" to a concrete tool for development.

INTRODUCTION

Power is still measured in soldiers and weapons; prosperity in dollars and cents; welfare in work and spare time. Health, on the other hand, is measured in quality of life and life expectancy.

All of these issues figure in development statistics; or they do not, as the case may be. Because sometimes, these issues are precisely what are left out of the official statistics and budgets or wherever such information rightly belongs.

For many years, the former Soviet Union did not publish health statistics for the population in regions fraught with environmental problems. Some states do still not publish their military budgets. States that do not bother revealing what they pay themselves in fees and perks. Some do not find it necessary to inform about the management of joint natural resources. Some commit themselves to respect international Conventions, but do not inform citizens about their rights.

What those in power will not reveal precludes others from knowing. But these people are not faceless. Behind the development statistics are citizens, each with a passport, a place to live (if they have a roof over their heads at all), a place to eat (if there is food), a school (if their children have access to education), and a place to work (if there is employment).

For both sides, information and knowledge is a question of power. Be it between states and citizens, between rich and poor, between big and small enterprises.

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 311-326
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

KNOWLEDGE BEGETS ACTION

Only a few decades ago, the "East" and the "West" quarrelled furiously over human rights. Other battles were fought over the number of missile heads in the Soviet and US arsenals; over trade agreements; over the North vs. the South. However, the battle over human rights became almost religious. The East mocked the West for always carrying on about "political" or "civil" human rights, while at the same time and with considerable egotism claiming to represent access to "material and social rights" for the people.

This was meant to imply that the two types of rights were alternative. Two separate and alternative values, two kinds of norms, two different roads to development.

But then ask the peasant from Anatolia why he one day took his family in hand and moved to Istanbul, like almost one million Turks every year move to the big city at the mouth of the Bosporus these years? Ask the East Germans why, by the force of a public wave, they let the Wall and the so-called People's Republic tumble? Ask millions of South Africans why they demanded – and obtained – democracy?

The answer: The peasants "have heard" that Istanbul is more wealthy. The East Germans had heard that West Germany was more free. And the South Africans that democracy was attractive. They would "know" exactly this: that the big city was better than the village, that market economy was better than state control, and that democracy was better than apartheid. But where did this information come from?

In all three cases, "knowledge" or "information" leads to decision, to action and to dramatic change. When one million people each year depart from Turkish villages in order to settle in the big city, tremendous demands for welfare are at stake. When a society like East Germany chooses to rise up in order to oust one regime in favour of another, enormous political power of liberty is what tears down the wall. And when an entire population claims rights which they were always denied, it is an overwhelming act of will which in the case of South Africa was able to transform white into black, oppression into liberation, dictatorship into democracy.

In none of these three examples were developments planned, neither from the top nor the bottom. The mayors of Istanbul never aimed at receiving one million new inhabitants a year. GDR´s party leaders claimed to have the people on their side. And the apartheid regime in South Africa certainly never told the blacks that they had a right to freedom and equality, not to mention brotherhood.

However, access to knowledge made the Turks, the East Germans and

the South Africans act. Move. Tear down walls to escape confinement. And kick in doors in order to get access to power.

Their actions were not immediately caused by ideology. People acted out of concern for themselves and their families. To improve their social, material and political conditions. In order to gain influence on their own lives.

Those in power in the three countries could have prevented – or tried to prevent – their actions. As China continues to do, the Soviet Union for years prevented people from freely choosing their place of residence; the Soviet Union also required special permissions for people to move to the big cities, just like it limited the citizens´ access to leave and enter their own country. Other states have more successfully than East Germany hindered their citizens in toppling the totalitarian regime. Many states besides South Africa have precluded certain groups of the population from obtaining freedom and equality. And brotherhood has been entirely out of this world.

Admittedly, the Turks, East Germans and South Africans have also encountered more obstacles than help. Most Turks have moved to the big cities against all odds. They have left their villages and by themselves put op a house on the outskirts of Istanbul. These new neighbourhoods are called "gececondus", meaning constructed overnight. The East Germans insisted on carrying out their first demonstrations when they still risked being arrested and thrown into the dungeons of the regime. And the black South Africans started to get organized when the whites still acted as they liked against the rights of the black.

The will for change prevailed.

And even if East and West used to quarrel whether human rights were "political" or "material", today access to knowledge and information must be recognized as a practical tool, not only of political value and even less an abstract norm. If anything, knowledge has been a banal tool to turn an urge into reality, a human motive for obtaining better conditions, for knowing where and how life can be improved, which demands you can make – and which rulers can be made accountable.

USEFUL AND DANGEROUS TOOLS

It looks like a shopping list for some highly imaginative amateur coup: a cassette tape, a telephone, a winding radio, an e-mail, and a statute book. But make no mistake. Governments have been overthrown with these tools; peasants have taken up competition with city folk, Untouchables have turned against the high caste, poor people have challenged the market, and citizens

have challenged the administrative nobility. It is all about development and the access to knowledge.

Once things run amuck, the spread of information can trigger revolutions just as it happened in Iran. The result was a transfer of power which changed the agenda for the Middle East. But probably the most decisive tool was nothing but loads of cassette tapes. Ayatollah Khomeini, who then lived as a refugee in a suburb of Paris, recorded his sermons on tape. Throughout 1978 they were smuggled into the dictatorial Iran of the Shah where the cassette tapes were copied and distributed during Friday prayers. They sold like hot cakes in the bazaar, as forbidden but popular words hidden under the counter, quickly tugged under the coat and played at home with the curtains drawn. At the beginning of 1979, before the Shah's secret police knew what was happening, Khomeini was on his way back home and the Shah on his way out of Iran. Words proved stronger than might, stronger than the fear of the Shah's dungeons and the torture of his executioners. That the regime of the Ayatollah would later adopt the oppressive methods of the Shah was still for the future to reveal.

The telephone has brought about another historic development, which may not seem as dramatic as the classic revolutions where prisoners and torturers trade places and where the rulers and the subjects trade keys. But precisely the telephone enables ordinary people even in the poorest of societies to turn about the tradition of city folk profiting from the peasants. Traditionally, peasants have had to sell their produce for a mere song, so the middlemen from the city can make the profit when selling on to even larger cities. But a telephone can make all the difference, as the World Bank documented several years ago, because a few phone calls enable the villages to know the market price for their produce – thus reducing the risk of being cheated – before taking their produce to the market. Even small increases in the price that peasants in the developing countries may obtain can thoroughly change their conditions, create growth and pave the way for development. There are examples from Nepal of villagers having increased their income fourfold by a phone call to competing regional markets.

Both in the political revolution and by challenging the local market, knowledge has been the outset and the tool which made the difference and enabled change.

NEW ROADS TO THE MARKET AND TO PROSPERITY

You can have too little but not too much. Too little knowledge will downright hamper the chances of development. But, there are no examples that too much knowledge can have the same result.

The road to the market is concrete. But, just as important as the asphalt is the reputation of the road, whether in Denmark or Afghanistan. No one chooses the slowest road to work day in and day out be it in Århus, Odense, or Copenhagen. In this country we avoid the roads with too many bumps, roads with uncoordinated traffic lights, and roads with the highest parking fees. And we keep ourselves continuously informed, through facts or experience, about the best and most economical, time wise and possibly petrol wise route to work or to do shopping. Also, in conflict-ridden developing countries like Somalia, Afghanistan or Cambodia, decent, passable roads by themselves constitute a welfare commodity and a parameter of growth. In Afghanistan, the Soviet occupation to start with, then civil war and frequent local armed skirmishes have for decades made small and larger roads dangerous to pass. Some roads have been destroyed during the years, some mined and most not maintained at all. Many peasants have altogether given up getting to the market to sell their grain. Many have instead chosen to plant opium poppy, where the market works the other way around. You must bring grain to the market yourself. But the "market" will come by itself to the poppy producer. It is an essential difference: you have to sow and harvest wheat by yourself believing that you can find a road by which you can bring the wheat to the market, trusting at that point that the price for the whole operation will be worth all the effort. The poppy seed you only have to put into the ground. Then the buyers will come to you – no matter the conditions of the roads, often regardless of war and war lords in the vicinity – and buy the poppy production cash on delivery, often in hard currency and guaranteed at a higher price than wheat will ever obtain.

In this case, different kinds of knowledge compete and the peasant has to weigh one against the other: the legal against the illegal, what is possible against the impossible, insecure against guaranteed profit.

But the road to the market is more than the actual trip in the lorry or by donkey cart. It also concerns knowledge about transport cost, road tolls, custom duties, etc. The one who makes the road of the product from producer to buyer most profitable will win the race for growth. This is true both for industrialized countries and developing countries. In an Afghan province the local war lord may be able to dictate both transport, road tolls, and "taxes" as he pleases. With discrete infringements of the law, "calculated risks" and through knowledge and experience, international drug lords may also control

the opium traffic further into the world. But in the legal market of developing and industrialized countries the most efficient production and the largest knowledge wins – both as far as the shortest and cheapest road and the rules and taxation are concerned.

And the necessary knowledge does not necessarily stop at distributing and selling your own products. Maybe you also want to make the return of the lorry profitable. For many years, brisk money was made by taking trucks with dairy produce from Northern Europe to Iran. But carriage by truck became expensive because the vehicles had to return empty. There were, to be sure, Iranian farmers who would like to sell their vegetables the opposite way, to Europe. But sufficient knowledge about the ripening of the produce was lacking in order to hit the European market exactly at the right moment. It was harvested too early or too late or transported for too long or inappropriately. Lack of knowledge became lack of profit = no growth or prosperity.

THE INTERNET OPERATIONALIZES KNOWLEDGE

Recent years prove that new knowledge and communication can also be conquered as a tool by the third world. By using the Internet, small businesses – from craftsmen to coffee farmers – have succeeded in bypassing the middlemen who traditionally make the happy profit from bringing the goods from the village to the supermarket in the rich world. Why not trade directly? If a small workshop of wood carvers who usually make next to nothing from a figurine – and does not usually hear about the full-cream prices which the figurine will finally fetch in a gallery in Paris or Copenhagen – can sell the figurine themselves directly to the gallery through the Internet, the price suddenly becomes much better for the original craftsmen. In this respect the Internet has become a potential – and formidable – tool for small and big producers not only of souvenirs for tourists but also of any product from manufactured goods to inputs for larger products which may be assembled somewhere else in the world.

Together with modern radio and television, the Internet is an uncontrollable tool for migration. In the “old days” the upper class could to a certain degree keep their riches to themselves – not only because of its power to hold on to the goods and to oppress the poor, but also because the poor only to a minor extent knew what they were missing out on. Today people even in remote villages of Bangladesh, Mexico and Yemen watch television showing crystal clear images of the welfare in other latitudes.

Prosperity is like a magnet. Historically, the world has yet to see nations

that prefer poverty to wealth and oppression to equal opportunity. It is an urge in all of us. We want to be better off ourselves and we want our children to be better off. We are all driven by the knowledge of our neighbour's prosperity; television and radio are unstoppable. No communist dictatorships or puritan theocracies have been able to restrain people's appetite for news – on the radio and television.

The Internet is the tool which can operationalize human knowledge and tell people how to move on. Once, the Europeans went west "knowing" or sensing new possibilities in America. Today, Europe and America themselves are the destinations for new waves of people, which are less popular. Governments are going all out to control migration. New ingenious rules of asylum and limits on immigration and citizenship are conceived. States cooperate to elaborate common rules, common barriers, even - if necessary - common police forces to keep the immigrants at bay. But migration continues and moves dynamically, because the immigrants and their travel agents are almost faster at keeping up to date with the rules than are the governments at formulating new rules. The Internet and the proud obligation of modern states ruled by law to publish all rules enables those on the other side of the borders to continue their search for the lowest fences and better possibilities for crossing from poverty to potential wealth – from the third world to the best world we know today.

KNOWING YOUR RIGHTS

Just as dramatically as knowing the road to the market, to growth and to welfare can change your conditions of life, knowing your rights can change your conditions as well.

Another glimpse of the world of poppy growing: knowing their rights was exactly what a group of Afghan clan leaders from Jallalabad did when, one day in 2002, they went to the capital of Kabul to ask for an audience with President Karzai. Their errand was exactly a question of rights. They knew that, with Western funding, Karzai had promised the poppy growers USD 350 per hectare for abandoning the poppy in favour of wheat. But, from their own experience, they also knew that in fact the local authorities only paid the clan leaders USD 50. So they kindly asked the President where the other USD 300 went? Of course they knew the answer. The rest had dripped of in the intermediary layers of bureaucracy in the form of corruption and "shrinkage". But two irrefutable facts remained: First that the clan leaders felt cheated of their right; second that it was no longer profitable to substitute poppy for

wheat. And, just like the local peasants had to make up their minds whether it was worthwhile to change crops, Karzai had to make up his mind whether he had the power, the influence, and the will to stop the corruption in the public administration – where tradition and law, anarchy and the rule of law were simultaneously confronted and where the knowledge of the clan leaders and the landowners about their rights challenged the political rulers.

Access to knowledge also comes into play concerning something as vital as freshwater, which by the way is also treated as a recognized "public good". Witness both India and Northern Africa: in Indian villages where the caste system is still predominant, the well is traditionally placed in the high cast part of the village. The Untouchables and the low caste often have to go far to fetch water. But can the high caste charge for the water? Or is it a common benefit, a common right? If a new well is to be dug – who then decides where it will be dug? And does one part of the population have as much right to water as other parts? It is a question of welfare, of quality of life; in some cases of survival. It will hardly be the high caste who will volunteer to tell the Untouchables about their equal right to water. But undoubtedly the Untouchables will themselves procure the knowledge which can be made into a tool to demand influence on the location of the well. Similarly, in Northern Africa, not only the individual Egyptian peasant is totally dependent on stable access to the water from the Nile. In fact all of Egypt lives or dies with the freshwater from Africa's largest river. But again: Who decides over the water – large landowners, the state, or individual peasants and citizens? And who knows who decides?

When talking about access to water, the two rights may collide – the right to water and the right to knowledge about the use of the water.

The fact is that states upstream can gain control over the future of Egypt. If they use the water, Egypt will run dry. Egypt itself constructed the Aswan dam to ensure a reservoir in the Nasser Lake. But other dams are on their way upstream. Egypt has already called it a declaration of war if any of the countries upstream get too thirsty for the resources. If all the countries around the Nile are to obtain growth and modern prosperity there may be too little water. Then suddenly freshwater – the "common public good" - becomes an explosive source of war and conflict.

But are we talking about equal access to water or a variation of the free market? Likewise between states: equal rights or a variation of the free market or military power? Citizens will claim to know their rights – so will states.

The world does have tools – institutions – to negotiate opposing interests. But the world does not have tools to dictate distribution of knowledge.

KNOWLEDGE OF THE RULE OF LAW

It is a known fact that people use precisely that – knowledge – as basis for their actions. Knowledge makes it possible to make specific decisions about how to change and improve your conditions. But should the access to knowledge be recognized as a common public good?

Denmark has made the export of constitutions and the establishment of rule of law systems and democratization a brand on the development assistance market. With Danish development funding, legal experts have thus assisted in formulating new legislation, e.g. in Uganda and Nepal. It is not just a case of bureaucratic export systems, but rather a political ambition to support the establishment of the legal foundation upon which human rights and democratization can be ensured, thus enabling people precisely to act based on knowledge about – and protection of – their rights. There is very good reason for many governments in totalitarian countries to label this "interference with their internal affairs". But those days are long gone when questions about democracy and rule of law could be dismissed as a mere ideological dispute between East and West. It is also very concretely a matter of giving people influence on their own lives and knowledge about their rights.

Throughout history, the most repressive states have tried to legislate about the ambitions of the dictatorship via laws and rules that have suspended human rights. The occupying forces of Nazi Germany in Poland moved around the inhabitants of Warsaw in order to gather the city's Jews in a ghetto pretending to protect public health. The communist regime of North Korea has forced women to abortion if their pregnancy was the result of sexual relations with foreigners. During the so-called Cultural Revolution, China made knowledge about Mao's thinking a prerequisite for obtaining food and other "goods". Lots of countries have by law prohibited their citizens to organize, professionally or politically. Nor is it, from a historical perspective, so long ago that human beings were traded as slaves. The last country to prohibit slavery was Mauritania as late as in the 1980s. In some countries, like Pakistan, the Sudan and Mauritania, slavery or bonded labour most probably still thrives.

Today, common international agreements and conventions have prohibited slavery, genocide and forced abortion. Other conventions have permitted professional and political organization – and agreed on a number of other common rules for governance and civil rights. But existing national and international law is one thing. It is quite another giving people knowledge about their rights.

Knowledge is useful – and is being used. In 1996, a Saudi asylum seeker in Great Britain sued the government in London for wanting to move him to

Dominica, in collusion with this island's government. The background was that the asylum seeker, Mohammed al-Masri, had become a source of political tension between Great Britain and Saudi Arabia, because as a dissident he took advantage of his British rights to send cascades of critical fax messages to citizens in the Arab Peninsula. But not only did he know about violation of rules in his old country – he also knew the legislation and rules about legal protection in his new country well enough to be able to sue and gain the right not to be expelled to Dominica. This is how a country ruled by law works. Citizens' access to knowledge about their rights is also an effective and practical tool for each influencing their course of life.

POWER ALONG WITH RESPONSIBILITY

Someone has to rule. Everywhere anarchy is without support and without attraction for any longer period of time. Regulation is thus necessary; even the most stubborn liberalist accepts limitations to monopolies to ensure free competition. And legislation is necessary; the poor also need legal protection and guarantees as a safeguard against exploitation and oppression and a level playing field – even if it does not necessarily mean equality.

The German Democratic Republic called itself a "people's republic". Nevertheless, the East Germans demonstrated in Dresden before the fall of the Iron Curtain under slogans like "We are the people". At that time their Government was not accountable towards its population. A party supported by the military made the laws themselves and adjusted them as the system saw fit.

The people won. The old system lost. In the process, several "versions" of the old system tried to stop it from crumbling by introducing limited reforms allowing some modernization, while still holding on to the old monopoly of the party bureaucracy. No good, said the people. And finally the wall came tumbling down, as did the so-called socialist system and its entire apparatus of oppression. East and West Germany reunited under democratic rule, where Governments stand and fall with their backing in a Parliament and enlightened electorate.

Other countries are exactly where the GDR was when it tried to save its skin through partial reforms. As an example, all the six countries by the Arab Gulf have introduced advisory or elected assemblies. They are supposed to endow the local political systems with a bit of popular legitimacy. But at the same time the local rulers have either restricted the influence of these popular assemblies or subjected them to yet another assembly appointed by them and

issued with the power of veto. Therefore, in the end it is still impossible for the populations by the Arab Gulf to oust the supreme rulers. It did not work in GDR, nor in the former Soviet Union, nor in other countries in the so-called Eastern Block. It remains to be seen if the people in the Arab countries and the World's most populous country, China, will accept less influence than citizens in other parts of the World, who have ubiquitously demanded the right to change any government that has lost its own credibility.

In the old Eastern Block, the rulers tried to dictate a certain ideology – "Communism" – at the cost of popular access to influence. In the Muslim World, orthodox parties demand that their religion be above everything else. Nevertheless, in the World's only "Islamic Republic", Iran, this has lead to rivalry between the religious interpretations of the ruling priests on the one side and the popularly elected Parliament on the other. Even on the side of the Parliament you will find highly educated priests who advocate that nothing in Islam, not even a self-appointed priesthood, can come before the will of the people as expressed by the ballot with free and well-known alternatives.

FREE MEDIA

Joseph Stiglitz, Nobel Prize winner in economics, wrote that free access to information and knowledge has a direct impact on the struggle for growth and on limiting poverty and Roumen Islam, Director in the World Bank, wrote: "Free and independent media can reveal corruption in governments and limited liability companies, be a mouthpiece for the citizens, contribute to create consensus to make changes and enable the markets to work better by providing reliable economic information. Not only does freedom of speech and a free press make government abuse of power less probable ("sunshine is the strongest antiseptic" as they say), but they also increase the probability that peoples´ basic social needs can be fulfilled. In this way a free press reduces poverty and its worst consequences – under-nourishment or worse, hunger – and promotes economic development".

These two economists point out that both governments and enterprises are often close-fisted with information about their management and economic dispositions. For the sake of growth and prosperity they recommend openness in management and the development of free and independent media, which can guarantee knowledge about the results of the dispositions of public authorities and private businesses.

If citizens are to replace public authorities, and stock owners are to replace the board of directors of companies on a qualified basis, they need

knowledge about the state of affairs as well as alternatives. Both to decision makers and citizens, knowledge thus becomes a useful tools – for the old decision makers to hold on to power, for the citizens or stock owners to ensure change. If knowledge is monopolized by political rulers or strong enterprises, it will upset the balance of power to the detriment of the competition between knowledge, attitudes, quality, and prices, which is necessary for the citizens vis-à-vis the state, for small enterprises vis-à-vis big enterprises, small states vis-à-vis big states, etc.

Lack of knowledge has been designated by the United Nations Development Programme (UNDP) as a main reason that the Arab countries with their 280 million inhabitants in 2003 have not extracted sufficient value (development, growth, welfare) from their resources.

"Creativity, innovation and knowledge are the first victims of oppression," says the report. State control systems are to blame when less literature is translated in the Arab countries than in any other part of the world with similar economic development and level of education. The number of citizens with access to the Internet is among the lowest in the world. Access to new knowledge and new research is low and at the same time there are attempts to censor national media while the educational system is subjected to tight restrictions. Investment in research, not least in natural science, is similarly low.

But this "deficit of knowledge," which is to blame for the modest social and economic development, is neither incidental nor conducive for the Arab countries. With the present demographic growth they will have to fulfil the demands from another 100 million new inhabitants for welfare – schools, health care systems, and work – in the course of the next 15 years. But the lack of political and economic freedom is increasingly obstructive for knowledge and education – and, in the end, for economic production. This is the much celebrated international "information society" demonstrating its power.

In May 2004, James Wolfensohn, the top director of the World Bank, wrote that a free press not only serves to materialize the freedom of expression, but also as a source for creating accountability, a driving force for popular participation, and keeping an eye on public corruption. A free press also contributes to creating more efficient and stronger institutions. According to Wolfensohn, through their contribution to creating transparency and accountability both in the public and private sphere, the media are thus recognized as a "development good," which can improve the accountability of Governments and contribute to more efficient exploitation of resources.

BRAIN DRAIN

For centuries, poor people have migrated due to war, crisis, and disasters, while large numbers of enterprising people have themselves ventured into a search for the pot of gold at the end of the rainbow. In the most glaring cases, societies have feared a regular "brain drain" because richer societies have attracted well educated migrants from societies unable to pay them so much.

It is a constant traffic. One hundred years ago, Denmark and other European countries were emigration countries. Quite large numbers of so-called soldiers of fortune and well educated citizens went to America to obtain better conditions. Today the entire Western Europe tries to keep the refugees out, while residence and work permits are often granted to foreigners with qualifications that are specially needed. On the other hand it can be a challenge for less prosperous countries to hold on to their well educated people because they can find better paid employment abroad.

Knowledge is money. Education, skills and experience can be "sold" to the highest bidder. The developing countries need knowledge, new technology, education and inventiveness themselves. But often the developing countries cannot compete price wise with the industrialized countries for educated manpower.

It may be a question of time, the pendulum is constantly moving. Emigration countries can quickly become immigration countries. At the end of the 1960s, Greece was a net emigration country. Thousands of Greeks went to other countries in Northern and Western Europe to get better paid employment. Today, four decades later, Greece has become a net immigration country. Nowadays, citizens from countries in the former "Eastern Block" come to Greece in search for better work, higher pay, and better living conditions. The same trend is already detected in Turkey whence several million people in recent decades went to Western Europe in search for work. Even as we speak, the very same areas in Central and Western Turkey which used to export manpower have started to import manpower from far poorer Eastern Turkey.

Enterprise is what gets people on the move. Knowledge or information about better opportunities is what makes them decide to move.

ACTIVE, WELL INFORMED CHOICES

Is access to knowledge a right for the lucky? A privilege for the few? Or is it a common value?

Totalitarian regimes have always maintained that they know best what would do man and beast good to know. They have kept information tightly

to themselves, both concerning natural resources, society's administration and budgets as well as their own management of power. Concealment and secrecy have always been among the instruments of the dictatorship. Wholly or partially authoritarian governments have not been lavish with information on perspectives and potentials of international obligations that they have entered into. They have signed human rights conventions while at the same time locking up citizens for demanding their rights. They have denied the existence of torture while their tormentors have manhandled dissidents for demanding freedom.

In the economy both public authorities and private enterprises have covered up their financial transactions.

Knowledge and public access make a difference. Knowledge about the value of natural resources, oil deposits, water sources and gas reserves enables citizens to assess their interests. Information about the market enables us to trade as well as to act. Knowledge about rights enables us to make our rightful claims.

But who can put a price on knowledge ? Access to knowledge ? Today's answer is equal opportunities and transparency in public administration, in the economy and in the political decision process – and democracy.

However, as pointed out by Fareed Zakaria – a *Newsweek* editor – whatever amount of technical democracy may be obtained through the access to vote, this does not necessarily offer freedom and not at all equality. He points out himself that formal democracies – from Russia to Venezuela – have brought popularly elected leaders to power without dismantling the autocracy. He even points out that democracy can bring down oppressive dictators and in return do nothing but bringing fanatic representatives from the popular masses to power.

The answer to this is hardly a need for barriers against democracy - or limitations on popular influence on everyday life and the future of our nations.

Limited or false information serves to further the privileges of political, economic and all other leaders in power and to trigger actions on a distorted basis.

Only free access to knowledge offers the opportunity to act on a well informed basis and to act correctly. In the short term, it may also trigger wrong or unhappy decisions. But in the long term, access to make decisions and act on an informed basis is crucial for the mere possibility to act correctly. In a historical perspective, it is not faith but knowledge which has released welfare and better lives.

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Internet access as a global public good

Rikke Frank Jørgensen and Henrik Lindholt

INTRODUCTION

As a concept, "the Internet" covers the information network that has developed from the increasing use of information and communication technology over the last 20 years. The Internet has a material aspect, consisting of a technological network of mutually connected computers, and it has a virtual aspect, commonly known as "Cyberspace", which is an information and knowledge platform.

In the same way as human beings have millions of brain cells (neurons), which are connected to each other and through their interaction create human consciousness, the millions of computers around the globe are connected to each other and in this way create a form of collective consciousness. Cyberspace can thus be considered as the collective consciousness of the information society, a new public sphere.

INTERNET AS A PUBLIC SPHERE

If we take our point of departure in Habermas' concept of the public sphere, this is characterized by events or actions which, in contrast to closed or exclusive fora, are open to all; just as we speak of public places or public houses.[1] The public sphere appears as a specific domain, the public domain versus the private, in which communicative action can unfold and create public opinions.[2] It is through communicative action that the life-world evolves its critical potential, in that it supports the role of the public as critical counterpart to the system.[3]

Seen in relation to the formation of public opinion, the Internet's

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 327-334
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

interactive nature adds to the public space a communicative sphere. This sphere distinguishes itself from the public space we know in the physical world. Central to the public space and to public opinion formation is the mass media, which operate as a representation of the public, an edited instrument for public discourse. Cyberspace supplements the mass media with a medium in which all citizens can in theory express themselves as well as actively seek and receive information. This makes possible a strengthened public sphere characterized by a broader and more diverse representation of expressions as they exist in society. In Cyberspace, all citizens can in theory articulate their views which is essential for the public debate, in that the citizens must have possibilities to make themselves heard in order to exist as a public voice.[4] At the same time, the possibilities for people to gain access to information are strengthened, which gives new possibilities for action. When people express their views on a webpage, discuss in a newsgroup, meet with like-minded people or seek information globally, their participation in the public space takes on radically stronger possibilities to express themselves and find information compared with trying to submit a letter to a newspaper, to get on television, to demonstrate at city hall square with a placard or to seek information in the physical, analogue world. The Internet can thus potentially strengthen freedom of expression by increasing people's real possibilities to express themselves, meet like-minded persons, and find information on a global scale. Realizing this potential, however, requires that people have Internet access, be it via public or private access points. At the same time, technology also contains new possibilities to violate human rights, such as freedom of expression, freedom of assembly or the right to privacy, notably via new possibilities for censorship and invasions of privacy. This potential danger necessitates a qualification of the human rights standards to take account of the new information-technology context.

In viewing access to information and communication technology as a global public good, it is important to distinguish between Cyberspace as a public sphere and its physical counterpart, the Internet, as the two elements develop differently. Concerning Cyberspace, one can argue that it is a global public good, insofar as it is a good which all can consume: a good where the consumption by one individual does not exclude consumption by another; a good which in its essence is universally available. Cyberspace corresponds to radio waves or television signals: in theory, it is at the disposal of all and as such does not exclude anyone. Whereas the Internet represents the physical structure for a new public space, Cyberspace represents the social interaction which unfolds in this space. This space is open for everyone, but only a relative few have access to this space, for it requires a computer with Internet access.

If we turn our attention to the Internet, the technological network of computers, this is basically "public by design", and as such has a universal effect. However, if we observe its expansion and conditions of access, we note that the majority of those in the developing countries do not have the possibility to use the Internet due to lack of technological infrastructure, or inadequate material and economic or social resources. The fact that a large part of the world's countries and populations have only limited access to the Internet has been termed the "digital divide". For example, Africa's entire population of 760 million people has fewer bandwidths on the Internet than the 400,000 inhabitants of Luxembourg. The digital divide means that the information society must continually undergo several stages of development before the Internet can effectively operate as a global public good.

Facts about access to the Internet and IKT

Number of Internet users:
1993: 10 mio. 2003: 665 mio.

Number of computers:
1993: 175 mio. 2003: 650 mio.

Number of computers in developing countries:
2001: 1,3 mio. computers for 684 mio. persons

As it stands now, one must consider the Internet and the associated information and communications technology as an exclusive club good largely limited to the developed countries and regions. However, an increasing global activity is taking place to develop the information society, so that the Internet can effectively operate as a global public good.

GLOBAL INTERNET POLICY

The development of the global information society was the theme of the UN's first World Summit of the Information Society, which took place on December 10-12th, 2003 in Geneva. The meeting was the culmination of an 18-month process whereby governments, civil society and the private sector held several national, regional and global preparatory conferences in order to reach a "Declaration of Principles" and a "Plan of Action" aimed at utilizing

the Internet's knowledge and technological potential to promote the goals set out in the Final Declaration of the UN's Millennium Summit in New York in 2000.

Prior to the Summit, the International Telecommunications' Union (ITU) had published a report on digital access showing that the digital divide had been reduced in recent years.[5] This trend was due to people in the developing countries having obtained increasing access to public telephones, cellular phones and Internet cafes. Hence the number of telephone subscribers worldwide has increased from one billion in 1999 to nearly 2.5 billion today. Three out of four new telephone users who are connected to the Internet live in the developing countries. Whereas Africa had 2.4 million cellular phone subscriptions in 1999, it now has 35 million.

The goal of the Summit's Plan of Action is to provide over half the world's population access to the Internet within reasonable distance by the year 2015. This entails ensuring computer and Internet access in villages, schools (from primary schools to universities), research centres, libraries, museums, post offices, health centres and hospitals, and all local and central governmental offices.

> "We do not need to travel to the moon in order to communicate. One cannot talk about freedom of expression in the world without democratizing the Internet. Freedom demands free access to information. Only with access to computers in school can we ensure that the global village we live in today becomes harmonious and not divided."
>
> Nigeria's president Olusegun Obesanjo, in his speech to the plenary session of the World Summit of the Information Society, December 10th, 2003

The political declaration of the Summit has by many observers been called the "constitution of the information society", because it lists the principles and values which must govern the development of the information society. The Declaration of Principles establishes human rights standards as the foundation of the information society, emphasizing that the possibilities of technology should be exploited to promote the right to development, poverty alleviation, the right to health, to equality, to freedom of expression, etc. The declaration thus establishes that human rights standards, e.g. for freedom of expression and the right to privacy, shall be respected and promoted in Cyberspace. The challenge, however, consists of applying the human rights principles to the information society, and describing in a qualified way how a concrete appraisal of, say, freedom of expression or the right to privacy, shall be valued in relation to new investigative measures for combating terrorism, or how citizens are

to be ensured against registration and invasion of privacy by unauthorized monitoring of their electronic footprints. In this connection, the Declaration of Principles passed by the Summit was no more than an expression of formal adherence to the human rights standards as formulated in the UN's Universal Declaration of Human Rights more than 50 years ago.

The Declaration from the Summit remains important, however, because it is a political document which signals a certain political agreement to address several inequalities at the global level, and because it declares that several of the issues which it addresses must be solved at the regional and global level. The underlying question, as with the human rights conventions, concerns the extent to which the power of the nation-state must be subordinated to international political control.

This issue was up for debate in relation to the question of regulating the Internet ("Internet Governance"), in that the allocation of Internet addresses is currently carried out by the American organization ICANN, and 85% of the Internet's infrastructure is controlled by U.S. companies. In the preparatory process up to the Summit, several countries expressed criticism of the fact that Internet domains for the entire world are subordinated to California law, and among others Brazil and South Africa argued that the task of regulating the Internet should be transferred to a multinational organization such as the UN's specialized International Telecommunications Union (ITU). Opposed to this position were the United States and the EU countries, which defended ICANN and pointed out that the organization is increasingly open for participation. The Geneva Summit resulted in a compromise, where the discussion was delegated to a UN working group which should analyse and discuss the issue in time for the Summit's second phase in Tunisia in November 2005. Furthermore, the working group should also include public policy issues such as security on the Internet.

Another global point of controversy was the establishment of a digital solidarity fund, originally proposed by several African countries but regarded with considerable scepticism by the United States, Japan and the EU countries. Here, too, a compromise was reached: a study to be carried out and a working group formed, which will examine the effects of and possibilities for redirecting existing UN development funds and report to the second phase of the Summit in Tunisia in 2005.

INTERNET AS A GLOBAL PUBLIC GOOD

As described above, one of the most essential challenges for ensuring that

the Internet actually comes to operate as a global public good is that citizens be ensured *access to* and the *possibility to express themselves and seek information in* the public space which Cyberspace represents.

In Denmark, access to the Internet for all citizens was defined in 1996 as a key political objective.[6] This was codified with the change of the library act, which now accords the population better possibilities to access information on the Internet.[7] With the passing of the new library act in 2000, Danish public libraries, besides loaning books, are obliged to provide free public access to the Internet and digital information resources. Similarly, there have been several initiatives to strengthen the use of computers and the development of information and communication technology competencies in the Danish primary schools.

Thus, it has been politically decided that access to the Internet is such an essential element of democracy that everyone must be ensured free access. In addition, an increasing number of municipalities are setting up computers with free Internet access in order to strengthen citizens' possibilities to communicate with the public sector. A number of wireless network initiatives are part of these tendencies, thus free wireless access points are being established in a number of municipalities. These developmental tendencies are characteristic not only in Denmark but are in fact global tendencies which concretely reflect themselves in the World Summit on the Information Society, and which signify a political interest in democratizing access to the Internet.

Physical access to the Internet, however, is only one aspect. The global development of the information society, besides the emergence of digital divides, is also characterized by violations of freedom of expression and freedom of information in several countries. These interventions vary from actual state censorship to restrictions on access to information via control over Internet providers, use of state firewalls and/or installation of filters on public computers. Another issue that was debated at the World Summit is connected to the increased digital copyright regulations, whereby digital information increasingly becomes a commodity that must be purchased. Because of the political nature of these human rights challenges, they are inherently more difficult to address than specific physical infrastructure issues, but they are no less urgent when we consider how the information society is to be structured and regulated.

In conclusion, despite the fact that the World Summit and several countries, via their national technology strategies, have declared that access to the Internet should be a global public good, there continue to be serious challenges to achieving this objective.

NOTES

1. Jürgen Habermas: *The Structural Transformation of the Public Sphere*, Oxford: Polity Press, 1989.
2. In his major work, *Theorie des kommunikativen Handelns* I-II, Habermas provides a comprehensive interpretation of the modern society, centered around the concept of communicative action. With a point of departure in a division between communicative action directed toward understanding and result-oriented action directed toward goal fulfillment, Habermas describes the social rationalization as proceeding within two different spheres: the system world and the life-world. The life-world represents individuals' linguistic and cultural horizon of meaning and is the locus of the communicative action. Jürgen Habermas: *The Theory of Communicative Action*, Volume Two, Oxford: Polity Press, 1992.
3. Ibid, p. 154.
4. Habermas 1989, p. 4.
5. ITU, *World Telecommunication Development Report*, Geneva, 2003.
6. See Ministry for Science, Technology and Development (formerly Ministry of Resarch) *Informationssamfundet for alle – den danske model*, Copenhagen, 1996.
7. "Equal access to information and information for the citizens is a fundamental precondition for a democratic society. As electronic communication becomes increasingly widespread, and along with more information and services becoming accessible in electronic form, it is an increasingly more important task to ensure that all have access to information technology."'Bemærkninger til lovforslaget om biblioteksloven". *Folketingstidende* 1999/00, tillæg A, p. 2113.

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Research, global public goods and welfare

Peder Andersen

INTRODUCTION

The development of welfare on a global scale depends to a great degree on increases in productivity, i.e., on the increasing efficiency in the utilization of labour, capital and materials, including natural resources. The factors contributing to increasing productivity can be several, including changes in economic and political structures. Regardless of whether these changes promote or hamper the countries' welfare, however, there will be a positive effect from increased education and research. A well-trained labour force is one of several preconditions for obtaining the full benefit of the new knowledge that research produces, and there is an important interrelationship between research policy and educational policy. In the following, we will focus on the significance of research and research policy for countries' welfare and for the spread of welfare between countries.

There has been an increasing professional and political focus on research as a source of welfare. There is also continuing debate on the means of promoting the application of research and the usefulness of education together with measures to make more effective use of the research system. A key feature of this discussion has been the relative importance of concrete, goal-directed and more immediately applicable research versus the more long-term, less-focused research but at the same time less sure to render results. The latter entails a greater emphasis on research that is publicly financed, and which enters into open international research cooperation, while the former implies that the market plays a central role and that the research be closely linked to the individual company's production and thereby profits. The interesting question concerns the extent to which research - and hence, the knowledge which research produces - will be protected by private property rights, via

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 335-344
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

the application of patent rights, for example; or whether it be accessible to all who can utilize the research results. An important question in connection with this issue is how the research is to be organized and financed if the research results are to be diffused to as many recipients as possible and as cheaply as possible.

Not surprisingly, there is no simple answer to these critical questions. Nevertheless, the further organization and financing of international research is one of several important elements in improving the welfare of the world.

RESEARCH AND KNOWLEDGE AS A SOURCE OF WELFARE

The production and spread of knowledge affects economic growth at both national and global levels. Those countries, regions and groups of countries possessing the capacity to increase and exploit the greater knowledge which is the result of research and development will achieve greater growth in productivity than others. Entirely fundamental is that knowledge must affect the competence of the labour force through the knowledge created by research and education. However, knowledge can also be more directly built into products, including new products, production processes and into the labour processes and cooperation of firms and organizations. In addition, the increased international integration, with fewer trade barriers and the like, is helping to diffuse knowledge more rapidly.

It is hardly a new insight that knowledge, technical progress and embedding of new knowledge in the labour force are absolutely critical for the creation of welfare; see box on economic growth theory. Hence, several factors are essential in order to obtain the full benefit of the knowledge produced by inputs into research and education; cf. OECD (1996, 2003) on the concept of "knowledge economy."

The value of knowledge in a global context depends to a great degree on whether the institutional factors contribute to the spread of knowledge. Knowledge can be diffused in various ways. If knowledge is built in via new technology in new machines, equipment and materials, we can speak of embodied technical progress. In this situation, new knowledge is diffused in line with capital equipment being replaced and augmented with new equipment. There occurs a global diffusion of knowledge via the replacement of existing capital and by the increased international division of labour.

Economic growth theory

The traditional theory of economic growth has focused especially upon the significance of capital accumulation via investments in real capital. Growth in the amount of capital operates to drive forward total production and demand in the economy. Seen from this vantage point, a key element in a growth-promoting policy will be to promote investments in the economy, e.g., by increasing savings. Even with a high rate of investment, however, the growth impulse of capital will at some point in time disappear, such that increasing savings and investments will produce economic growth only during a phase of adaptation. Hence, over the long term, production per person will thus be constant unless permanent technical progress occurs. Technical progress can increase the effectiveness of the production factors and thereby allow for a continuing improvement of living standards. Traditional growth theory, however, does not attempt to explicitly account for what it is that determines technical progress.

In recent growth theory, also known as "endogenous growth theory", the attempt is made to directly identify those factors that can ensure permanent growth. Recent developments in growth theory reveal several schools. One school focuses on the educational level of the labour force, which is viewed as possessing human capital in line with physical capital. By including the educational level of the labour force in the calculation of capital, the concept of capital becomes broader, and via accumulation of human capital, economic growth is assured in this type of models. Another school within recent theory of growth focuses upon how diffusion of knowledge can generate positive external effects which can stimulate growth. These external effects emerge when knowledge is a collective good, i.e., a good that the individual cannot prevent others from using. One branch of these models, the "learning by doing models", describes how new knowledge - and thereby technical progress - is generated as a by-product of production and investments. Still another branch of the growth models, which emphasize the importance of positive external effects, focuses upon how the creation and spread of knowledge can be actively affected via investments in research and development. In these models, technical progress is the result of a goal-directed research input, where permanent growth arises in line with the new discoveries that affect business productivity.

The fewer restrictions on developments in the international division of labour, the more knowledge will be diffused among firms, countries, regions and globally.

Another way in which knowledge can be spread is via direct knowledge sharing, by purchase and sale of knowledge, by cooperative schemes or via development assistance. Here we can speak of disembodied technical progress, which means that the knowledge appears independent of products and machines. The knowledge possessed by a firm, an institution or a country, by being made accessible to others, can affect the productivity of other firms, institutions or countries. Sometimes this diffusion of knowledge can be wholly or partially prevented, other times not. Whether it is a case of one or the other, both can affect the appropriate production and diffusion of knowledge, cf. the following section.

PUBLIC GOODS, EXTERNALITIES AND RESEARCH

Research findings made accessible to all become a global public good, i.e., everyone can utilize the produced knowledge without the amount of knowledge being reduced or lowered in quality for others. In this situation, knowledge is non-rivalry and non-exclusive; cf. Cornes and Sandler (1996). Therefore, the socially most effective exploitation of this form of knowledge is best achieved by organizing research policy so that knowledge is spread as much as possible and as cheaply as possible to all those who are potential users of this knowledge; here the recipients are not forced to either purchase this knowledge nor themselves to initiate similar research.

The central problem is that on a private economic foundation, it is not possible to ensure the optimal extent of the type of research that produces knowledge with the character of a public good. Firms want to be free riders, and in reality there are no mechanisms that can solve this problem on a market basis. The patenting of knowledge provides the basis for a private economic interest in research, but patenting conflicts with the principle of non-exclusiveness. Furthermore, there is the problem that there can be difficulties at the country level in ensuring the optimal level of research in as far as knowledge will not be a country-specific public good.

DANISH RESEARCH POLICY IN TRANSITION

In recent years, the Danish research system has undergone major changes. The system of research councils has been radically altered, with the establishment

of the Free Research Council and the Strategic Research Council. We are seeing an emerging division between basic research and strategic, applied research. As yet, it is too early to assess the effect of this newly created structure, but it is uncertain whether this new division of labour can ensure that the theoretically correct principles for a good division of labour will be followed.

The frameworks for future operations of universities and sector research institutions have also changed. The reforms aim to achieve closer interaction between the research institutions and the surrounding society. The most visible reform is that the boards of the universities now include some members from outside academia. The significance of this altered form of control may show itself to be crucial. In a few years, it will be possible to analyse whether the universities' basic task of producing knowledge as a public good and of spreading this good to as many potential producers as possible has been weakened or strengthened. It will also be possible to assess in what way and on what basis the research institutions have changed their focus, including whether the financing will affect the composition of research and educational activities.

These are important years for Danish research. The EU, with its decision in Barcelona, has prioritized a European-wide effort in the fields of research, development, and innovation. The plan is to reach three percent of GNP by 2010, with a third of the new investments in these areas to be financed with public funds. The precise goals for Denmark are not yet clarified, but merely approaching the goals of the Barcelona objectives would demand significant inputs in the coming years. In addition, several arguments can be made that Denmark, with its many small and medium-sized enterprises, should give priority to publicly-financed research over private research, compared with countries which have many, large, research-rich firms. Promoting the diffusion of knowledge should have high priority in Denmark. This can show itself to be one of the more important challenges which the new boards of directors should deal with.

There may also appear problems for Denmark in meeting the requirement for increasing the application of research results and, without conflict, participating in international research cooperation in which open sharing of knowledge is one of the conditions for becoming a member of good international research networks.

THE EU'S RESEARCH POLICY UNDERGOING CHANGE

The European Commission (2004), in a Communication, has discussed the role of basic research in Europe, including the need for greater emphasis on basic research in relation to strategic research and industrial technological development. The Communication acknowledges the indirect significance of basic research for economic welfare, and that the results of research have the character of a public good, such that there should be free access to them, in theory, and that this would be more easily ensured if the financing were public. In addition, it is emphasized that the private sector will be increasingly reluctant to fund basic research in the future. A central conclusion in the Communication is that it is necessary, for the reasons indicated, to contribute public funding at the European level.

It is interesting that at the European level, the trend is in the direction of more independent basic research, financed by public funding at the European level. This is in accordance with economic theory, but is also a clear break with earlier EU research policy in its support for strategic research and industrial technology development. The Communication quotes an American report on science policy from 1945: "Scientific progress on a broad front results from the free play of free intellects, working on subjects of their own choice, in the manner dictated by their curiosity for exploration of the unknown".[1]

Basic research, in order to be of greatest possible use, must be freely accessible. This also means that it will not be possible to ensure an optimal level of basic research, unless it is publicly financed, either directly or indirectly.

On the other hand, knowledge which does not have the character of a public good can, as a point of departure, be produced by private persons in line with other private goods, i.e., goods which can only be to the benefit of a firm or person. However, there are often positive derivative effects of private knowledge, i.e., firms' research and technological development. Such positive externalities mean that too little private knowledge will be produced unless incentives to this form of production are provided via subsidies or tax breaks.

THE NEED AND THE VALUE OF A CHANGED GLOBAL RESEARCH POLICY

The preceding sections describe key contradictions in constructing the frameworks for research policy. The more application-oriented knowledge

that is desired, the more it is possible to allow the general market system, with certain adjustments, to handle knowledge production. However, even in this case, it occurs at the costs of a loss of knowledge diffusion. On the other hand, incentives can be given to privately-financed knowledge production with the use of patents. The key problem here is to prevent the patents from operating to impede the spread of knowledge too much.

If there is a focus on general knowledge, which is a global public good by nature, there are good arguments for not limiting the diffusion of knowledge. Here, too, however, there is a contradiction, in that the unrestricted use of knowledge will promote the free-rider problem, which will limit the production of global public knowledge, leading to the production of too little knowledge in global terms. This will harm the development of welfare in all countries and thereby reduce the possibilities to solve the kinds of global problems that require the most advanced knowledge for their solution.

A universal solution to create an appropriate global research policy hardly exists. This theme is in line with the solution to other global problems, where there are clearly derivative effects - positive and negative - of interaction between firms, regions, countries or groups of countries. There exists no international technical means of allocating responsibility and costs of establishing a global research policy. This can only be ensured by international agreements similar to international agreements in other domains. Hence, there is a need for an international institution which could be gathered together in the concept of The Global University. This would entail that knowledge production in the Global University should be made freely available to all, firms, countries, and regions. This would give a maximum diffusion effect, thereby promoting advances in productivity, helping to reduce the costs by reducing global problems. The Global University could be a motor of development for promoting the world's welfare.

The key challenge will be to find a fair distribution of the costs of the Global University. There should be no doubt that there are great potential gains at the global level in cooperating in the production and utilization of knowledge, which is by nature a global public good.

NOTES

1. See European Commission 2004, p. 3. The original quotation is from Vannevar Bush's *Science: The Endless Frontier* published in 1945. Bush was science advisor to President Franklin D. Roosevelt.

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Education as a global public good

Diego Bang

INTRODUCTION

It is the premise of this article that education constitutes an enrichment of the individual, a precondition for the individual's ability to live in society and a prerequisite for a society's total developmental potential. An understanding of education as a precondition for the fulfilment of religious prescriptions, achievement of a religiously defined level of consciousness or striving after transcendental ways of life falls outside the scope of this paper.

DEFINITION AND DESCRIPTION OF THE CONCEPT OF EDUCATION

In a pedagogical discussion, the concept of "education" covers an activity where a pupil is the object of a conscious effect from a responsible presenter. In current usage, the activity of education seeks to transfer a given set of social norms and hereby to form the personality (socialization) and to increase the pupil's knowledge and skills (qualification).

Historically, this activity has taken place within the framework of a "school". The school as an institution in Europe appeared in the Greek city-states; its purpose was directed toward the "formation" of the imperfect human being by conscious influence through selected activities, i.e., socialization and personality formation through activities, the latter subsequently known as school subjects.[1] The activities and the subjects thus originally played a supporting and thereby subordinate role. The knowledge and skills acquired were not the goal in themselves.

These views about the relationship between socialization and acquisition

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 345-368
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

of skills (qualification) can be rediscovered in the first schools in Europe. The objective of the first Danish Education Act in 1721 thus took its point of departure in the preparation of youth for confirmation. The qualification aspect was carried out via changes in the Education Act in the 19th century, where qualification became a goal to be achieved parallel with the socialization. Enhancement of skills was intended to improve occupational possibilities. The discussion on the relative importance of and connection between these two goals has continued since Antiquity; the discussion has had many linguistic "costumes" and remains unresolved. In a current Danish discussion, it goes under the designation of "soft" versus "hard" competence. Internationally, one can find the discussion reappearing in statements of human rights documents regarding education.

The dual function of the school is reflected in the usage in the principal languages, which, like Danish, distinguish between education (socialization) and teaching (qualification), often under the collected term of "formation". English is a significant exception here. The term "education" is used to cover both aspects, with a tendency to primarily cover qualification (acquiring skills).[2] When "education" is used to cover both aspects, the word is often followed by a clarification which refers to specific values.[3]

As English is one of the main languages in the discussion about education, human rights and global public goods, this difference in meanings is not unimportant. In Danish translations of English-language UN-related documents on education, one can find "education" translated as both "teaching" and "education".[4] In the discussion that follows, we will assume that "education" covers both socialization and qualification (acquisition of skills).

Obviously, socialization as qualification also takes place in the interaction between child and parents, but in order to qualify as "education", the activity must be beyond the acquisition of skills which consists in a direct learning of a skill through practical experience, and the socialization which takes place within the family and work community. In the World Declaration on Education for All, a distinction is made between "basic education" which takes place in the family and "primary education", which takes place in the school: hence, article 5 states: "The main delivery system for the basic education of children outside the family is primary schooling. Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs, and opportunities of the community."

A child who does not frequent a school or in another way receives primary schooling, but who through practical work alone qualifies himself to support himself and his family and through his interaction with family adopts

a given set of norms, is thus not the object of education according to this definition.

EDUCATION AS A HUMAN RIGHT

The right to education is cited as one of the basic rights in the Universal Declaration of Human Rights (article 26).[5] In the Covenant on Economic, Social and Cultural Rights, this is made more precise as the "right to education". The right includes both education at the primary school level as well as middle and higher education, but with different emphasis.

The primary school level must be "compulsory and available free to all". Secondary education, including technical and vocational education, shall be made "generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education". The same applies to higher education, in that it is added, however, that admission criteria should take their point of departure in "capacity" (art. 13).

Education in a human rights sense and meaning thus takes its point of departure in the Covenant on Economic, Social and Cultural Rights, in which the concept is defined by three features: education must support the human "dignity", ensure the possibility for everyone to "participate effectively in a free society" and promote "understanding, tolerance and friendship" (art. 13). In this way, the fundamental socializing dimension of education is stressed, though attention is also paid to useful qualification. This interpretation of the concept of education is expanded in both the World Declaration on Education for All as well as in the Vienna Declaration (the latter in articles 33 and 80). In the Plan of Action for the UN Decade of Human Rights Education (1995-2004), equality of opportunity between the sexes and respect for the environment are also mentioned as educational goals (art. 2).

Like the additional rights (housing and food) of the Covenant on Economic, Social and Cultural Rights, the right to education is also interpreted within the framework of four basic aspects:

- availability,
- accessibility,
- acceptability and
- adaptability.[6]

Fulfilment of the right to education thus demands that the state ensures that school buildings (and trained teachers and instructional materials) are available. Education must be accessible to all without discrimination, including economic discrimination in the form of exclusionary school fees, school uniforms, etc. Furthermore, the school must be located in physical proximity of the pupils. The teaching as well as the form of instruction should be acceptable, i.e., relevant to the pupil and corresponding to minimum standards. And finally, the content of the instruction should be continually adapted to the changing needs of society.

In the Covenant on Economic, Social and Cultural Rights, a distinction is made between different levels of education. It is thus important to emphasize that the right to education is directed largely toward the primary education level, which is often designated as the first 5-7 years of school.[7] Secondary and higher education are also included in the right to education, but this right primarily concerns ensuring a non-discriminatory pupil admission and longer-term removal of economic barriers so as to ensure equal access to all students.

It should furthermore be emphasized that even though the right to education normally refers to primary education of children, the Covenant on Economic, Social and Cultural Rights emphasizes that this also includes adults, who did not enjoy this right in their childhood, in that it is added that "fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education" (art. 13). Regardless of age, everyone has the right to education.

The right to education is expanded in the Convention on the Rights of the Child, in which the participating states have recognized "the right of the child to education" and that the goals are "to make primary education compulsory and available free to all", "encourage the development of different forms of secondary education", "make higher education accessible to all on the basis of capacity" and "to take measures to encourage regular attendance at schools and the reduction of drop-out rates" (art. 28).

In article 29, paragraph 1 of the same Convention, the dual purpose of education is emphasized, with mention of both the full development of "the child's personality, talents and mental and physical abilities to their fullest potential" and "development of respect for human rights and the fundamental freedoms and for the principles enshrined in the Charter of the United Nations".

In the Covenant on Civil and Political Rights, the socialization aspects are stipulated in such a way that the parent/guardian has the freedom "to

ensure the religious and moral education of their children in conformity with their own convictions" (art. 18). As a result, the Convention on the Rights of the Child, article 29, paragraph 2, emphasizes that the Convention must not be interpreted as interference "with the liberty of individuals and bodies to establish and direct educational institutions", "subject always to the observance of the principle set forth in paragraph 1 of the present article".

The right to education is thus solidly anchored in human rights documents. That education is attributed such great importance must be seen as indicating the internationally recognized view that education itself is an enrichment of the individual person, and in the acknowledgement that the individual's possibilities to enjoy other human rights are closely connected with the degree of education received. Participation in political life, utilization of the right to form political parties, the possibility to become acquainted with political ideas and party programme, etc. is weakened among an illiterate population. In the same way, the lack of education will weaken the individual's rights in the economic, social and cultural sphere. Health campaigns and protection against HIV/AIDS have greater success in countries with an educated population. The possibilities for choice of occupation are often dependent on the level of education and hereby also the individual's general living standard. Equal opportunity between men and women depends on girls' equal access to primary education, while the socioeconomic status and potential social mobility of minorities are closely linked to their educational level.

It is thus not incidental that article 14 in the Covenant on Economic, Social and Cultural Rights gives specific guidelines as to how the right to education should be ensured, in that states which cannot immediately ensure the right to education on their entire territory within two years after ratifying the Covenant must elaborate a plan of action for its realization. A similar requirement does not apply to comparable rights in the Covenant.

The special significance of education is emphasized in the general comment which the Committee on Economic, Social and Cultural Rights has elaborated to the individual articles in the Covenant. Hence, "General Comment No. 13-1999" states:

> "Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. However, the importance of

> education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence."

The human rights conventions which concern the right to education do not take a position on the education sector's centralized or decentralized structure beyond recognizing the parents' right to themselves organize their children's education with consideration to the conventions' general objectives.[8]

Hence, no position is taken on whether education should be administered through a central curriculum or, as in Denmark, through widespread autonomy at the municipal, school and teacher level.

UN INITIATIVES

With the approval of the Covenant on Economic, Social and Cultural Rights, the UN's special organizations were charged with taking a leading role in the implementation of the rights. However, it was only the International Labour Organization (ILO) which took up the challenge. Only decades later did UNESCO assume the role through the holding of the World Conference on Education for All in Jomtien (Thailand) in 1990, a conference subsequently followed by the Dakar Framework for Action, enacted in Dakar (Senegal) in 2000.[9] UNESCO operates with a slightly different meaning of the concept "education" than do the human rights documents generally. "Education" in the UNESCO context refers to "basic learning needs in the best and fullest sense of the term, an education that includes learning to know, to do, to live together and to be", [10] i.e., not only explicitly as primary education, but with a focus on the significance of education for changing the individual's possibilities for action. In addition, UNESCO takes a position in the discussion of the value of day-care institutions for preschool children, in that Education for All also includes "early childhood education". [11]

The global need for initiatives for the realization of "the right to education", whether viewed in traditional human rights terms or with the UNESCO definition, is noteworthy.

The need is concentrated in sub-Saharan Africa, South Asia, South America and the Caribbean.[12] Hence, in 2000, UNESCO estimated that

- 800 million children below the age of six were without access to early childhood education;
- 113 million children of school age, of which 60% were girls, were without access to primary school teaching;

- 880 million adults, of whom the majority were women, were illiterate.[13]

These figures should be seen not only as indicators of the lack of realization of the right to education, but also as a factor in the failure to achieve internationally acknowledged goals for poverty alleviation, reduction of child mortality, combating discrimination against women as well as specific interventions in fighting HIV/AIDS. [14]

In acknowledgment of these shortcomings, the World Conference on Education for All was held in Jomtien in 1990, and resulted in the World Declaration on Education for All. The Declaration established the World Education Forum, which ten years later in Dakar developed a plan of action, the goals of which were to be fulfilled in 2015.[15] The goals include the following:

- That access to early childhood education be increased;
- That *all* children obtain access to primary education;
- That adult illiteracy be reduced by 50%;
- That girls/women have equal access to education.

This is an ambitious project comprising both an early childhood education and general education covering one sixth of the world's population. Implementation of this programme is to be achieved through government-supported national "Education for All – Forums" which will be supported in the developing countries by cooperation with regional and international institutions.

In sub-Saharan Africa, South Asia (India and Pakistan), in the new democracies and in post-conflict countries, it is estimated that eight billion dollars per year is needed in the period 2000 to 2015. In itself, this amount is not large when compared with investments in other state sectors or in comparison with other Western interventions.[16]

The plan of action calls for foreign funds to be obtained via bilateral and multilateral agreements, and includes the participation of both the World Bank and regional development banks. The implementation strategy comprises:

- Direct financial subsidies for primary education;
- Early and fundamental debt restructuring and debt relief;

- Donor coordination, so that bilateral agreements reflect the donor countries' comparative advantages;
- Closer monitoring.

The implementation of Education for All has been especially difficult, as the necessary donor funds have largely failed to materialize. At the Monterrey meeting, the international community pledged its support to the implementation of Education for All.[17] For the execution of national action plans developed by the first group of countries – Burkina Faso, Guinea, Mauritania, Niger, Guyana, Honduras and Nicaragua – the donors have estimated that USD 320 million in foreign assistance is needed, a relatively modest sum considering that these countries contain one-tenth of the target group's 150 million children. At the present time, the international community, with France as the main contributor, have placed USD 200 million at the disposal of these countries. The next group – Yemen, Mozambique and Gambia – are about to submit their plans of action, and when the most populous states such as Bangladesh, India, Pakistan and Nigeria submit their plans, the need for foreign assistance will be more acute. The Monterrey objectives are far from being fulfilled, and only France, the Netherlands, Norway and Canada have given substantial contributions.[18]

EDUCATION AND SOCIAL DEVELOPMENT

It is a fundamental pedagogical as well as human rights assumption that access to and implementation of primary education contribute to the enrichment of the individual's adult life. It is another basic pedagogical assumption that a population's general ability for abstract thinking and its acquisition of certain fundamental skills is a precondition for its capacity to apply technological aids in the production of life's necessities, whereby this increases and society develops economically.

It can also be assumed that socialization (whether or not it contains tolerance and respect of universal human rights) is not advanced only through the declared purpose of education, but to an equal degree by the school's collective organizational form.

Furthermore, we must assume, though difficult to prove, that there exists an explicit and measurable economic social benefit from a state's economic prioritization of the realization of the right to education. Not only is this benefit difficult to calculate in economic terms, it is further assumed that it is a result of several interacting causes. Furthermore, the investment is characterized by

a benefit which often first reveals itself, and is thereby measurable, over a longer period of years.

If we take our point of departure in Denmark in the 19th century, a measurement of the benefit would have to take into account (among many other factors) the following key legal initiatives and general social relations:

- Agrarian reforms, a historically recognized prerequisite for the nation's economic growth, represent a clear setback for school attendance in the short-term, in that the new class of self-owning peasants were dependent on the child's participation in farm work, such that they could not maintain the obligation of that time to attend school. Over the long term, however, agrarian reforms were the economic basis for the state's investment in education.

- The 1849 Constitution, which eliminated compulsory school attendance, was an immediate setback, but it introduced compulsory education and thereby the parents' possibility to establish schools themselves, which may have promoted a greater geographic spread of schools.

- The Trade Act of 1853, which made possible greater commercial application of primary school education.

- The emergence of industry in the 1840-1880 period, which concentrated the population in urban areas, facilitating greater utilization of existing school facilities, but which also forced children to neglect their schooling in order to ensure the family's subsistence.

- A historical period with relatively few wars which affected Denmark, giving the state more financial resources for investment in education.

- The further loss of Schleswig-Holstein following the Danish war with Prussia in 1864, leaving the state with a linguistically homogenous population.

- Additional initiatives within the field of education itself.

It is thus extremely difficult to predict the benefit of the very significant political and economic investment which the realization of the right to education will require of the developing countries.

If we take our point of departure in the framework used by the Committee for Economic, Social and Cultural Rights (availability, accessibility, acceptability, adaptability), the developing countries are faced with the

following challenges:[19]

That educational institutions are "available" points to massive investments in educational institutions which are geographically distributed, so that they meet the demand for physical proximity to the pupils. Also needed is the development of relevant teaching materials in one or more state languages, which the pupils do not necessarily understand at the start of their schooling, thus entailing additional needs for language training. There is also a need for training of teachers in order to meet future needs, and in large parts of sub-Saharan Africa to cover the loss of teachers due to HIV/AIDS. Finally, there is a need for salaries for teachers, including financial incentives or additional initiatives to ensure adequate teaching staff in the rural areas.

To make education "accessible", i.e., implement a non-discriminatory pupil admission, is made difficult primarily by culturally conditioned resistance toward educating girls, ethnic or religious minorities, and by linguistic barriers in multicultural societies which have inherited the language of the former colonial ruler and made this the official language of state administration and of education.

To make education "acceptable" demands that state schools be able to take on the competition from the private education providers as concerns the quality of school facilities and the educational level of the teachers.

To "adapt" the education to the needs of a new independent state requires a cultural break with the past. The educational sector in the developing countries very often reflects the sector as it functioned in the former colonial power in terms of organization, administration, management and especially the curriculum. The restructuring will be especially comprehensive, in that it will affect not only the primary education but the entire education system.

There is no doubt that the international community cherishes the right to education. In September 2003:

- 147 countries had acceded to the Covenant on Economic, Social and Cultural Rights,
- 192 countries had acceded to the Convention on the Rights of the Child,
- 155 had joined the World Declaration on Education for All,
- 171 had joined the Vienna Declaration and Programme of Action.

The Programme of Action for the UN's Decade of Education on Human Rights was unanimously approved by the UN General Assembly.[20]

However, the global realization of this right, which entails an education programme that would affect a billion people within 15 years, will require enormous national investments supported by foreign financing for those individual countries where the needs are most acute. In addition, there is a need for a specific and detailed programme of action and a general coordination.

Earlier programmes of action have been initiated both on a humanistic basis - we owe the former colonies support in their efforts to eliminate illiteracy - as well as being rights-based, with a point of departure in the Covenant on Economic, Social and Cultural Rights (art. 13 and 14).

The humanistic approach is unable to meet the massive need for financial assistance. The purely rights-based approach has in practice shown itself to be insufficient. It is therefore advisable to view education not only as a pedagogical and human rights concept, but also in light of the discourse about public goods.

EDUCATION AS A GLOBAL PUBLIC GOOD[21]

In a human rights context, education refers to an activity which lies beyond the basic education which takes place within the family, and is historically a "supplement" to an existing commodity. The supplementary purchase is carried out by that part of the population which possesses the economic prerequisites for it.

In the Greek city-state, the supplementary acquisition took place through the purchase of specially qualified slaves or through the purchase of free teachers who in return for a fixed hourly wage came to the home and offered tutoring in the specially selected subjects.[22] In this form, education was a private good, which in a literal sense was delivered in the private homes. The private goods were first publicly accessible as an institutional offering with the appearance of schools.[23] Hereby the price of the commodity fell as a result of economies of scale (one teacher could teach several pupils at the same time), and accessibility increased significantly. Even though one must assume that the classical state could also see an advantage in the presence of an educated population, the commodity remained private, in that only that part of education which concerned military preparatory training had the state's attention.

The state subsidy to the secular training first appeared in Europe, when the need for educated personnel in the state administration could no longer be covered by the private educational initiatives of the prosperous segment of the population. In this way, the character of education changes from private to a

partially public good.

In the public goods discourse, a pure public good is characterized by consumption being neither rival nor exclusive. If the definition of education is maintained as being within the framework of a human rights definition, i.e., primary education, only the full realization of UNESCO's goal of Education for All, understood as the opportunity for everyone to obtain an education, will give education the status of a pure public good, without taking a position on the actual content of the education.

Education is thus a public good. But it is a good which is not accessible to all, either because it is not offered or offered to such a limited extent that one individual's consumption of the good prevents the access of others; or it is accessible to all, but at a price which in practice is exclusive.

In its mixed form of public and private supply, education divides into two types: The privately offered education, being both rival, insofar as one pupil's consumption of the good can prevent others' use of the same, and exclusive, insofar as everyone cannot pay for the good, must therefore be considered a club good.

The state-financed education, which, if we follow human rights precepts must be free and non-exclusive, is in reality rival because of lack of economic resources, insofar as utilizing the right to education enters into the state's general weighting of its priorities, whereby the amount of pupils admitted is determined by state allocated resources.

Education is thus an impure public good, which by virtue of fundamental lack of non-rival accessibility has the character of a club good. In the discussion of education in a human rights and public good context, education's "mixed form" of private and public offerings obtains a club good character.

In a human rights context, education is a right with clear skills-enhancing and socializing aspects. Furthermore, the right can be viewed from the perspectives of the child and of the parents. In the Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, both perspectives can be found. Within the framework of socialization to a human rights set of values, the individual is assured the possibility to develop a full personality which can make the individual into a useful citizen and improve the individual's socioeconomic status. However, the parent/guardian is assured the right not to choose the state socialization aspect, which constitutes a potential imposition in the right to decide for oneself the set of values in which education of the immature child must take place.

From a human rights standpoint, the child's right to education must thus be realized within the frameworks of the parents' right not to be compelled to choose the state school offering. Education as a purely public good will

therefore not be seen as an ideal situation, in that only education as a partial club good can ensure the rights of the parent/guardian.

The human rights value basis of education and the parents' right to an alternative choice do not enter into the discourse of public goods. Hence, there is no necessary contradiction in the realization of UNESCO's World Declaration on Education for All. Rather, we should only emphasize that the human rights approach to the concept of education contains clear normative goals and is thereby more comprehensive than the concept of education used in the public goods discourse.

Insofar as education and the reinforced effort for the realization of this right is removed from its human rights basis and is seen exclusively in light of the public goods discourse, one could fear, first, that focus is moved from the value basis of socialization and the parents' right and hereby from the socialization aspect to the qualification aspect, and second, that focus is moved from individual (be it the pupil or the parent/guardian) to "the population" as such, which would lead to a weakening of the idea of rights. While the right to education, when seen from a human rights perspective, is anchored in a specific set of values, education as a public good is in principle "value neutral."

It is thus important to underscore that education as a public good is a necessary, but not adequate condition for the fulfilment of education as a human right. If education is viewed exclusively from a public goods perspective, the human rights socialization aspect can disappear. An example of this were the "people's democracies" in Eastern and Central Europe. Here the educational sector received high priority. Education was a public good. The day-care sector was well-developed and largely free of charge, and primary education was both compulsory and free and offered a variety of specialized offerings which ensured that all children could develop their potential. Education as a public good was thus realized. However, the normative point of departure for this system, the set of basic values, was limited to Marxism-Leninism. This point of departure, inasmuch as it dealt with a narrow understanding of economic, social and only sporadic cultural rights, had few points of intersection with those of human rights.

REALIZATION OF THE RIGHT TO EDUCATION AS A HUMAN RIGHT

The right to education has been described in article 13 in the Covenant on Economic, Social and Cultural Rights and is supported in article 14. This article

stipulates that within two years following the ratification of the Covenant, states must develop and approve a detailed plan of action for the realization of article 13, "within a reasonable number of years, to be fixed in the plan," where article 13 is not fulfilled at the time of becoming a party to the Covenant. Several countries, however, have not met the conditions of article 14, in that the plans have been neither developed nor approved. According to the Committee on Economic, Social and Cultural Rights, this neglect cannot be legitimated by invoking the character of economic, social and cultural rights as those that must be fulfilled progressively. Article 14 is added precisely in order to emphasize that the state's obligation in the area of education has especially high priority and must be fulfilled within a reasonable number of years. Exceeding the two-year limit does not mean that the demand for elaboration of the plan is void. Failure to fulfil the conditions of article 14 is seen as such an important barrier to the fulfilment of article 13 that the Committee, in 1999, has emphasized that future country reporting relevant to article 14 must contain a plan of action. In this connection, the Committee points to the possible assistance that can be obtained from the UN's special organizations and the World Bank.[24] The plan must contain detailed descriptions which relate to all aspects of article 13, i.e., education must be available, accessible, of a given quality and adapted to the country's social development.

Failure to fulfil article 14 is one of the most important obstacles to the realization of article 13. In addition, as pointed out by Katarina Tomasevski, there exist several other political/economic barriers:[25]

- The right to education primarily concerns children. Although children may constitute a majority of the population in developing countries, they do not have political influence.

- There exists a lack of clarity in the international community as to which organization should take the leading role in a realization of the right to education (UNESCO, the World Bank, etc.).

- The UN system has several times postponed the deadline for realization of Education for All (from 2000 to 2015) and has not elaborated a plan of action detailing the means necessary to fulfil the goal.

- Setting primary education as covering only five years of schooling can lead to reduced priority being given to secondary, professional and higher education, which are also contained in article 13, albeit with another character, while also "trapping" the pupils in a cycle, where they leave school at the age of 10-12 without being effectively able to

use their education to find jobs because of regulations on minimum age in employment. The low priority given to secondary education prevents them from continuing their schooling.

- Compulsory schooling represents a loss of labour to the families. An education which, in addition, cannot be applied in a job context is thereby a doubly bad investment for the family, which especially keeps the girls away from school.

- The right to education must be implemented nationally, as a public good, which regardless of foreign assistance can be financed through an unpopular taxation of the population. This taxation is especially unpopular to those social groups who finance their children's educational needs through private institutions.

- To the extent that the state is generally dependent on international donors, the national implementation and priority on a public educational sector can be affected negatively by these altered demands on the state's finance policy.

DANISH SUPPORT FOR "THE RIGHT TO EDUCATION" IN THE DEVELOPING COUNTRIES

Danish support for educational projects takes its point of departure in a human rights understanding of education. Support for "the right to education" is channelled through donations to UNESCO and through the bilateral cooperation between the Danish government and the programme countries.[26]

Danish support to UNESCO is modest and has, since 1996, been based on a programme cooperation agreement. In the period 2000-2003, Denmark contributed DKK 30 million annually to UNESCO, 45% of which was earmarked for educational purposes. Danida's (Danish International Development Assistance) support for UNESCO was evaluated in 2001.[27] The evaluation report emphasizes the following strengths and weaknesses in UNESCO as the implementing organ: UNESCO's strength lies in UN legitimacy, the presence of UNESCO field offices in the developing countries, an international expert network and the possibility to transfer experiences from one country to another. The weaknesses lay in UNESCO's broad mandate, the few resources to the implementation of projects, lack of strategy and lack of pressure from other actors, such as the World Bank. As also shown by the lack

of economic pledges made at the Monterrey summit in 2002 the international donor community seems to view UNESCO as a weak implementing partner.

By far the largest amount of Danish support for the "right to education" (about DKK 800 million) is channelled through educational projects in Danida's programme cooperating agreements with Nepal, Mozambique, Zambia and Eritrea. It is Danida's view that a rights-based approach to the "right to education" is too narrow, in that "the challenge of the needs of a knowledge-based society must be incorporated and the educational system organized accordingly."[28] It is doubtful whether there exists a genuine contradiction between the two views. Danida's approach seems to be based more upon a narrow view of what is contained in a human rights approach to "the right to education", an approach which emphasizes "acceptability" and "adaptability" and thereby incorporates the challenge from the knowledge-based society.

The current Danish Government, in its new priorities for Danish development assistance, has chosen to continue this line, and planning is now taking place for educational projects in Bhutan and Afghanistan.[29] It is the Government's intention to place greater priority on education, health, and water and sanitation through bilateral projects, while contributions to organizations which "do not have sufficient impact at the country level", such as UNESCO, are being markedly reduced (the Danish contribution to UNESCO will be reduced by DKK 5 million annually for each year from 2004 to 2008) [30] and increased priority on bilateral projects in the programme countries (totalling DKK 1,2 billion).

CONCLUSION

The right to education: human right or global public good?

The right to education can be viewed from several perspectives: pedagogical/humanistic, human rights, and as a global public good. The three perspectives, of which only the latter two are relevant in this context, point to different efforts and implementation organs.

From a human rights perspective, education considered as a global public good is thus only one part of the total project. Education as a human right is a normative project: education is not only about learning necessary social skills - respect for parent/guardian - but also about socialization to a set of values based on human rights.

In a global goods discourse, education is a necessary prerequisite for development but not a project within a specifically defined normative

framework. Education is considered as a good whose production ought to be pursued without taking a position regarding the good's normative content and the normative consequences of its being offered by state or private providers.

Seen from a human rights perspective, a shift of focus from education as a human right to education as a public good could entail limiting the concept of education to being primarily a question of skills acquisition.

Danish assistance to the implementation of the right to education

For many people, the nation states have not been capable of ensuring an elaboration of the plan of action for achieving the right to education as mandated by article 14 in the International Covenant on Economic, Social and Cultural Rights. The Committee for Economic, Social and Cultural Rights has pointed out that this task can be carried out with support from UNESCO and the World Bank.

UNESCO has assumed the role of implementer of "the right to education" through the "Education for All" programme. The initiative has taken form after many years' delay and is apparently without a detailed plan for its implementation. The project suffers from lack of cohesion between ends, means and implementation capacity. The international community has not been willing to make the needed funds available. This is due not only to resistance against donating funds, but a scepticism about UNESCO, which, with its diffuse focus and lack of strategy hardly has the capacity to implement the programme. The current government's priority on bilateral projects over support for UNESCO therefore seems justified.

Perspective for bilateral projects

The right to education, when interpreted in a human rights context directed toward children, is a right aimed at the individual; realizing this right is managed primarily by the state, but the child's family plays a decisive role.

The realization of this right requires that the family possesses the economic surplus to do without their children's labour in the daily production, and that there is visible evidence that the family's investment yields a benefit in the form of increased social/economic mobility. If this benefit is not clearly visible, we risk that the family will refuse to allow their children to enjoy the right to education due to the need to procure the necessities of life or on cultural grounds.

To realize the right to education at the primary school level for a nation's children does not require a major effort compared to other state tasks. But it requires that the state accepts the necessity of the project and to set aside funds for an investment which does not yield short-term benefits. Furthermore, it requires that the developing countries and countries in transition change the priorities in their public expenditures. For other developing countries and countries in transition, foreign financial assistance will be required. Hence, there is a need for an increased effort in the following areas:

Normative projects:

- Assistance in the elaboration of action plans, cf. article 14 in the International Covenant on Economic, Social and Cultural Rights.
- Curriculum development, especially as concerns normative objectives for education programmes so that these reflect a human rights set of values rather than a normative system from former colonial rulers or other, non-democratic forms of rule.

Traditional projects:

- Economic support for building up an educational infrastructure in the form of teaching institutions, teacher training and development of teaching materials.
- Economic incentives for parents whose children attend primary school.

The support can be based upon the following approaches: a humanitarian, a rights-based and a value neutral qualification based on either Danida's view of education or on the global goods discourse.

The rights-based approach is preferable, as it contains both humanitarian approaches as well as Danida's view of education, though with the qualification that even a rudimentary primary education adjusted to society's current needs and socio-economic realities is preferable to a rights-based approach which cannot be implemented through multilateral initiatives such as Education for All.

It is possible that the global goods discourse, because of its base in economic theory and the gradually widespread scepticism toward the UN as the pillar of the international community, has greater attention among donors

who unlike UNESCO possess both a well-developed strategy as well as the economic resources. Nevertheless, taking a unilateral point of departure in education as a global public good leads to a risk that purely value-neutral skills enhancing objectives will come to overshadow the real purpose of all education: socialization, which today means socialization to an internationally recognized set of values as codified in the human rights documents on the right to education.

NOTES

1. The first schools were probably started around 650 B.C., and in Greece around 496 B.C.; see Frederik A. G. Beck, *Greek Education 450 – 350 B.C.* (London: Methuen & Co Ltd.1964), p. 7.
2. In an American context, one can speak of "socialization", but as norm adoption and primarily with reference to the integration of the great waves of immigrants to the United States.
3. For example in the World Declaration on Education for All (Jomtien 1990). "Education" is interpreted as "basic learning needs in the best and fullest sense of the term, an education that includes learning to know, to do, to live together and to be".
4. In the Danish edition of the Universal Declaration of Human Rights, the word "education" is translated as "undervisning" (teaching) (article 26). In the Covenant on Economic, Social and Cultural Rights, "education" is translated as "uddannelse" (education) (articles 13 and 14).
5. The original English text used the word "education". The Danish translation uses the word "undervisning" (teaching).
6. General Comments No. 13 – 1999 Committee on Economic, Social and Cultural Rights UN DOC E/C 12/1999/10 1999.
7. The UN Preparatory Committee for the Special Session of General Assembly on Children, May 2002 defines primary education as being of five years' duration UN DOC A/AC.256/CRP.6 Rev 3 par. 35 – 36.
8. See for example the Covenant on Economic, Social and Cultural Rights (article 13).
9. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) was formed in 1945 with the purpose of promoting the goals of The UN Charter's article 1, paragraph 3.
10. World Declaration on Education for All (1990).
11. This is not the same as the UNESCO concept "basic education," which takes place in the family. UNESCO include pre-school children in the group which cannot do only with "basic education" but shall participate in organized education before reaching school age – not necessarily in the form of school, but rather in the form of frequenting day-care institutions.
12. *Expanded Commentary on the Dakar Framework for Action*, UNESCO 2000.
13. *Education for All – Assessment*, UNESCO 2000. There is a clear improvement in conditions compared with the figures from 1990, and due partly to the fact that the developing countries have now reached the level of 80 pct. net enrolment in primary schools, primarily in the urban areas. However, the improvement of girls' enrolment is less significant, especially in sub-Saharan Africa (*Expanded Commentary on the Dakar Framework for Action*, UNESCO 2000).
14. *General Assembly Resolution A/C.3/L.II*, UN 1997, and the *Dakar Framework for Action*, UNESCO, Dakar, 2000.
15. *Dakar Framework for Action*, UNESCO, Dakar, 2000.
16. The costs of United States military forces in Afghanistan is estimated to be about 12 billion USD per year (CIA, *The World Factbook*, 2002).

17. UN Finance for Development Summit, Monterrey, Mexico, 2002.
18. According to an interview with Jean-Lois Sarbib, World Bank Senior Vice-President for Human Development, in *Gulf News,* September 20 2003 on the occasion of the Dubai summit.
19. General Comment No. 13 – 1999 Committee on Economic, Social and Cultural Rights UN DOC E/C 12/1999/10 1999.
20. Ibid. Note 2.
21. The definitions of the concept refer to Inge Kaul, *Global Public Goods*, UNDP, Oxford University Press, 1999.
22. Beck 1964, op. cit. p. 75.
23. Ibid., p. 72.
24. General Comment No. 14 – 1999 Committee on Economic, Social and Cultural Rights.
25. Katarina Tomasevski was former UN special rapporteur on the Right to Education and the author of *Right to Education Primer*, Raoul Wallenberg Institute/SIDA, 2000.
26. Denmarks bilateral development assistance is focused on a small group of programme countries. In 2002 these were reduced from 18 to 15.
27. Nordic Consulting Group, *Sammendrag af Danida Evalueringsrapport: Rammeaftale med UNESCO*, 2001.
28. Holger Bernt Hansen, *Education is the oil of the 21st century*, Formand for Styrelsen for Internationalt Udviklingsarbejde, Udenrigsministeriet, 2000. Danish Foreign Ministry
29. *En verden til forskel – Regeringens bud på nye prioriteter for dansk udviklingsbistand 2004 – 2008*, June 2003.
30. *Undervisningsministeriets udkast til handlingsplan for opfølgning af den kollektive forpligtelse, som Danmark indgik i Dakar*, (Draft plan of action for follow-up of the collective obligation which Denmark entered into in Dakar) Undervisningsministeriet, 2003, p. 32: the DKK 5 million was intended to cover "Extrabudgetary Programme for Technical Services to Countries Implementing the Dakar Framework for Action".

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5

EXAMPLES OF IMPLEMENTATION

Health is global - and a moving target

Poul Birch Eriksen, Ellen Bangsbo, Jens Kvorning, Lene Lange,
Esben Sønderstrup, Uffe Torm and Ib Bygbjerg

In one of the poorer neighbourhoods of Dar es Salaam some 20 Tanzanians are waiting to see the doctor. Some of them have abscesses they want the doctor to look at, others have ulcers on their feet that will not heal. A few have these ulcers on their hands, too. If checked, many of them will turn out to have defective immune systems and nerves. However, a blood test for HIV or a skin test for leprosy will most likely not give the reason why. Checking their blood pressure and the amount of sugar in their bodily fluids may prove to be a more productive diagnostic tool. The results will indicate that the abscesses, ulcers that will not heal, and immune suppression are caused by type 2 diabetes - a condition often associated with old age. Yet these patients are only in their 30's and 40's.

Meanwhile, the flight from Beijing touches down at Copenhagen Airport. The aircraft is not taxied to the terminal building, but to a remote part of the airport. While in flight, a passenger has shown symptoms of a severe respiratory infection. An ambulance stands by to rush him to an isolation ward at The State University Hospital; he is suspected of having contracted SARS. The rest of the passengers are cautioned to contact a doctor without hesitation, should they come down with flu-like symptoms over the next few days. Before they are permitted to leave the airport, officials note down an address where each passenger may be reached within the coming week.

In a globalized world, local phenomena are becoming scarcer. The rapid increases in mobility, in international trade and travel, and in the mass movement of populations witnessed in the last few decades mean that infectious diseases can spread from one local area through nations and regions to other continents in a matter of hours or days. However, as illustrated by the Tanzanian example, it is not only a question of the West being exposed to a hotbed of possible infections emerging from areas in the East densely

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 371-392
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. *ISBN 978 90 04 15507 7.*

populated with man and beast, it is also a question of people in the South being exposed to products and patterns of living imported or adopted from the North that pose serious long-term risks to their health.[1] Because the nature of impact is often a gradual process of attrition, the signs may have to be looked for in order to be detected.

These years we are witnessing a number of transitions. The many successes in controlling infectious diseases since the middle of the 20th century, combined with reduced fertility, have generated a *"demographic transition"* from traditional societies, where almost everyone is young, to societies with rapidly increasing numbers of middle-aged and elderly people,[2] although the HIV/AIDS epidemic threatens to reverse this transition in some parts of the world. At the same time, researchers are observing marked changes in patterns of consumption, particularly of food, alcohol and tobacco, around the world. These changing patterns could be termed a *"risk transition",*[3] seen as emerging, lifestyle-related health problems in low and middle income countries, not confined to the better-off segments of the population, but equally a problem for the poor.

Over the past six years, the number of type 2 diabetes cases in Tanzania has tripled.[4] In Madras, India some 10 per cent of the adult population are estimated to carry this disease and another 10 per cent have impaired glucose tolerance, which can be seen as a pre-stage for developing diabetes.[4] Both in Tanzania and in India it is primarily an urban disease; diabetes is far less frequent in the countryside. Yet there is a link between country and urban ill health: under-nutrition and infection during pregnancy and infancy induce permanent metabolic changes, adding to the risk factors for diabetes and hypertension mentioned below.[5]

Apart from a *"migration transition"* - people moving from the country to urban areas - underlying causes are changes in food processing, food production, plus agricultural and trade policies that have affected the daily diet of many people, combined with changes in life and work patterns that have led to less physical activity and less physical labour, if jobs can be found at all. The consumption of tobacco, alcohol and processed or fast food fits easily into such patterns of life.

MORE THAN ABSENCE OF DISEASE

Health is, by the WHO-definition, "a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity"[6]. The Alma Ata-declaration added that health "is a fundamental human right and

that the attainment of the highest possible level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector".[7] In brief, enjoying good health may be considered a worldwide or global public good.

It is a popular perception that improved wealth will lead to improved health. A closer examination often finds no such linkage, since health improvements or health intervention for the benefit of the general public usually comes as a reaction to societal changes brought about by military or market forces. With the notable exception of the vision of Primary Health Care that was adopted at a WHO-conference in Alma Ata in 1978, history gives hardly any examples of health being used as a means for improving living conditions. Over centuries, ports and countries have had their hands more than full trying to tackle the classic dilemma of how to balance the well-being of the community and the trade that provided the same community with a livelihood: should they close themselves off and suffer economically, or open up their arms to the world, while creating systems within the entity to control disease, learning by erring, thus fighting off epidemics and pestilence? Vital statistics, clean water, pasteurized milk, mass vaccination, less hazardous workplaces, and public sewers have been steps along the way, though obtained slowly, reacting to problems as they arose.[8]

While still struggling with the traditional problems of poverty such as undernutrition and infectious diseases, lack of sanitation, and hygiene, the health systems in many low and middle income countries now also have to cope with chronic diseases like cancer, diabetes, and cardio-vascular problems, deal with violence, motor vehicle accidents, and industrial injuries, plus struggle with the effects of smoking, drinking, and poor quality of nutrition. Despite this *"double burden of disease"*, resources for health remain scarce. The increased demands on the health system are also reflected in a *"consultancy transition"* in development aid, from the traditional emphasis on core contributions such as prevention, cure and epidemiology, assisted by a number of peripheral contributions like construction, maintenance, logistics, education, information, communication, health economics, and management, to focussing mainly on health economics and management. The polite interpretation of this trend is that the developing countries have reached a high degree of sustainability; the less polite is that the core contributions of health interventions are increasingly being left out. This should be viewed in the context that the governments of low and middle income countries find themselves under increasing pressure from so-called structural adjustments or global demands of market forces and free trade; demands that often imply the absence or reduction of appropriate

laws, regulations, and standards intended to protect the health and welfare of their citizens.

NO MAGIC BULLET

There are no *"magic bullet"* or quick solutions to these challenges. Even if in Uganda, for example, the number of new HIV-infections peaked around 1990 and has since been on the wane, the number of orphans has continued to increase and is only now beginning to decline;[9] underlining that although interventions against diseases may have an effect on some parameters, one must bear in mind that the full impact of a disease has prolonged consequences.

On the other hand, the chain of causes for the challenges offer many different entry points for prevention and sharing in the successes of other countries; learning from their predicaments will improve prevention in many different settings, especially in rapidly developing countries. Looking at patterns of disease instead of individual diseases and examining risk factors and causes may prove to be a useful beginning. Especially since many low and middle income countries already have an expertise to build on. From leprosy there is a vast know-how on preventing complications like blindness, disablement, and damages to nerves and vessels that could be tapped by diabetes; the background may differ, but the main complications are the same and provide a foundation to build on. If detected early, diabetes - as opposed to, for example, HIV/AIDS - is reversible through intervention, so preventing or treating diabetes will also work as a primary prophylaxis against all the complications.

Another foundation to build on is the behaviour, knowledge, and common sense of women. In most societies it is the mother, or another woman in the household, who is in charge of cooking and cleaning, thereby playing a crucial role at the household level, as a clean and healthy environment is essential to building a strong and nurturing family. It is well-established that children of educated women are more likely to be immunized and better nourished, as will of course be the husband.[10] An educated and literate woman will encourage her children to be educated as well. "Even an activity such as consuming a good nutritious meal, which at first glance seems to be highly private, upon closer examination has public benefits. A good meal adds to a person's health, and good health enhances their ability to acquire skills and to work productively. This in turn, benefits not only them but also their families and society as a whole".[11]

There is a close and complex relationship between education, wedding

age, fertility, mortality, and healthy well-being. Increasing the education of women and girls contributes to greater empowerment of women, which leads to an increase in reproductive health, as well as to a postponement of the age of marriage; it dramatically reduces the women's risk of developing infection and dying during childbirth.[12] It reduces the size of families and the survival rate of children tends to increase. Literacy also provides the ability to learn from and be influenced by health campaigns. Social capital also exists in many countries in the form of effective networks through the workplace, etc.; social networks and innovative programmes are crucial in spreading information and providing counselling and services.

The introduction of the concept of Global Public Goods[13] and the ongoing discussion[14] may have the potential for an offensive promotion of health. At present, Public Goods that work on a global scale are in such short supply that it may curb the globalized economy. Historically, the indispensability of public goods to a well-functioning market has only been slowly recognized. The driving force has often been the realization that their absence may both degrade the quality of life for the inhabitants of a state, and/or significantly narrow the range of policy choices available to the government of a state or to private nongovernmental entities (persons, groups, corporations) within the state, thereby forcing the public sector - the government and other stakeholders – to step in and finance, subsidize and/or supply them, because their very nature of non-excludability and non-rivalry make them unprofitable for a private investor. As the importance of Global Public Goods has only recently been better understood, existing policy-making mechanisms are not yet adequate to provide them. Consequently, some in the official development assistance world[15] are seeing Global Public Goods as a vehicle for redefining development assistance.

THE IMPORTANCE OF KNOWLEDGE - FOR DEVELOPMENT AND ACCESS TO PUBLIC GOODS

In a globalized knowledge society, new as well as old barriers are arising for access to public goods. A main factor adding to unfairness and maintaining people in poor health and poverty is lack of access to existing knowledge (within therapy, epidemiology and primary health care), and an inability to utilize it. But, more importantly, continued unfairness is augmented by the mere fact that global Research & Development by and large is focussing on the problems of the rich. The most serious factor in a knowledge society is what is not done!

Seen in a Danish aid perspective this analysis holds many important messages. Below three of these are highlighted:

1. Support should be given to Research & Development in areas where Denmark has special knowledge of relevance for solving important problems for the health of the poor. This cannot be left for the main forces and drivers of Research & Development: market economy, curiosity, and CV building of researchers. Stimulus for health related research of direct relevance for solving important health problems globally is a must and part of the obligation of a rich country. Money in itself is not sufficient.

2. The pharmaceutical industries retain a significant part of the world's knowledge about therapeutics and health. Such know-how entails a moral obligation to contribute towards solving other, equally important problems, not only using that knowledge where the markets are. Incentives for such a development must be provided by the public authorities. And here the development agencies could be important players. What it takes, for starters, is that agencies like Danida (Danish International Development Assistance) begin to see industries not only as sources of investment and as sources of sponsoring and funding. But, more importantly, as sources of knowledge relevant in combating poverty. A strategy building on such an analysis would hold many new elements, new partnerships and new promises.

3. Experience and knowledge within primary health care is crucial for improvements in health conditions among the world's poor. Valuable sources for this are found among NGOs and within industry (e.g. HIV/AIDS and diabetes personal health care). Development aid strategies should actively take these valuable resources of knowledge into account. Use them as building blocks to make efficient use of what we already know and as starting points for a learning loop back to what we need to know and how to overcome the obstacles and bottlenecks met in implementation for progress.

DENMARK AS PROVIDER OF GLOBAL PUBLIC GOODS IN THE 1940s

Even before the phrase Global Public Goods was coined, examples were seen of applying Public Goods beyond the nation state, illustrated by the

International Tuberculosis Campaign of 1947-1951 in which Denmark played a major role.[16]

In 1944, during the German occupation of Denmark, a group of citizens primarily from the Christian humanitarian relief organizations met clandestinely and initiated a joint Committee for Coordination of all Endeavours to Help Victims of the War. A major motive for this group was to avoid the mistakes made in the aftermath of World War I where governments were totally unprepared and expected to be able to go from a war footing to peace in days. Also, some remembered how the United States definition of *"aid"* had been directed more at American farmers than the conquered nations. Another motive for setting up the committee was to make up for Denmark's modest military contribution to the war.

Hans Henrik Koch, permanent secretary of the Ministry of Social Affairs, was approached and agreed to chair the still clandestine committee. Because of the occupation the committee could not work in the open; however, the Ministry of Social Affairs supported it generously both financially and with manpower. Thanks to this, on May 20 1945, a mere fortnight after Denmark's liberation from German occupation, Hans Henrik Koch was able to send a detailed memorandum to the new government suggesting the creation of a Liaison Committee Regarding International Relief Work.[17] On June 2 the government officially approved the Liaison Committee and on July 19 the Finance Committee of the Parliament appropriated the sum of 20 million Danish kroner to International Relief Work to be administered by the Liaison Committee.[18]

At first, aid went to Norway, Finland, Belgium, France, the Netherlands, and the Danish minority in Southern Schleswig in the form of food, clothes and temporary board and lodging in Denmark for children, all administered by Danish Red Cross and a variety of other NGOs. From the Spring of 1946, the efforts concentrated on Eastern Europe including stations for provision of meals for children, medical centres and other more permanent aid work was set up. At the very first meeting in December 1945 the Polish authorities requested aid to fight tuberculosis.

For a number of reasons, Denmark was well-suited to meet the challenge. First of all, the war had left the vaccine production apparatus untouched. Secondly, the ground had been carefully prepared. Thorvald Madsen, director of the State Serum Institute 1909-1940, chaired the Hygiene Committee of the League of Nations where he put a lot of effort into standardization of sera and vaccines, and through his international contacts he managed to draw both international funding and scientists to Copenhagen. Research at the institute resulted in a reliable tuberculin test that - combined with epidemiological

surveys, also on the effect of vaccines, and the Scandinavian idea of injecting the vaccine into the skin - gave Denmark a leading edge in the fight against tuberculosis. It should be noted, though, that because of the disaster of Lübeck in 1930, in which 251 infants by mistake were inoculated with tuberculosis culture instead of Calmette vaccine (BCG Bacillus of Calmette and Guerin), the use of the vaccine was banned by law in Germany. Neither England, the United States, nor Canada approved the vaccine, and France, despite having invented the Calmette vaccine, only did little research.

However, the Danish model - of screening the entire population and treating and isolating the infected - was too costly and complex to export. Instead Johannes Holm, Department Head at the State Serum Institute, came up with an approach that was novel in international disease control: a thorough inoculation of the entire population in several countries to contain the spread. The financial benefit was that many could be reached using only limited amounts of money as opposed to the more costly diagnosing. The inoculations - with Danish vaccine - were to be carried out by Danish doctors and nurses working for the Danish Red Cross in collaboration with local doctors and nurses as a combined training and capacity enhancement. The vaccination campaign began in Poland and Schleswig-Holstein and then moved on to Hungary. Doctors from these countries were invited to Denmark for training.

During 1946, the United Nation's Relief and Rehabilitation Administration, set up by the allies in 1943, was replaced by a number of the UN organizations that still exist. Johannes Holm was appointed to the expert committee on tuberculosis of the World Health Organization and elected as chair at the first session in the Spring of 1947. In August 1947 H.H. Koch, permanent secretary of the Ministry of Social Affairs and chairman of the Liaison Committee regarding International Relief Work, suggested a tuberculosis campaign as the Danish contribution to the United Nations International Children's Emergency Fund. Through skilful negotiations Johannes Holm managed to ensure Danish leadership of the International Tuberculosis Campaign (ITC). He worked as its technical director and in 1951, when the tuberculosis campaign moved to the WHO headquarters in Geneva, he was appointed head of the programme.

Derived results of the Danish-led ITC is the presence in Copenhagen of WHO's regional office for Europe and the UNIPAC-facility that supplies UNICEF-programmes worldwide. It started out as a storage and shipping facility for ITC and was subsequently taken over by UNICEF.

DENMARK AS PROVIDER OF GLOBAL PUBLIC GOODS 50 YEARS ON

There a many other examples of Danish research, leadership and ingenuity contributing to better health globally:

1. In the 1950s - the "pre-Danida" era - experience from The International Tuberculosis Campaign contributed to the formation of UNICEF's Programme on Immunization of Children, later called the Expanded Programme on Immunization (EPI), and more recently the GAVI. Recent studies by Danida research professor Peter Aaby in Guinea-Bissau have shown that the unspecific effect of BCG (Bacillus of Calmette and Guerin), i.e. enhanced protection against other microbes, otherwise taking their toll of under-five children's lives, may be equally important.

2. Danish leadership in WHO's TB-department paved the road for the Director General of WHO Halfdan Mahler's leadership in the 1970s, and to the fundamental principles of Primary Health Care (the Alma Ata Declaration), still forming the basis of health care and prevention in developing countries. One of these principles or elements, the essential drugs programme, is now being "*re-invented*" in the form of support to supply via the UN Global Fund of essential drugs against the three leading communicable diseases, not controlled by the vaccination programme (malaria, TB, and HIV/AIDS).

3. In the 1980s, chronic communicable diseases like leprosy (and later TB) began to be brought under control through the invention of a simple supplying system, the blister packages. Through support from Danida, the Swiss drug company CIBA-Geigy allowed the small Danish drug company SCANDPHARM to produce and pack combinations of 2 and 3 drugs against leprosy, in day-to-day monthly packages, just like contraceptive pills, which has revolutionized patient compliance and thereby the cure-rate and leprosy prevalence.

4. From the early 1990s, research capacity building for developing countries through Danida and Danish academic institutions has served as a model for many African and Asian developing countries wishing to have their own hands-on R&D for the control of major

health related problems. Public as well as private supporters of R&D, e.g. WHO and the Gates Foundation, are now launching and supporting similar programmes - with continuous Danish engagement. Research-based support to control the growing environmental health problems, intimately linked with urbanization, and the increasing problems with supplying healthy nutrients and clean water and proper sanitation, are involving agricultural and technical Danish expertise as well as private companies and consultants.

5. Surveillance of resistance towards essential drugs like antibiotics, TB-drugs and antiparasitic drugs (antimalarials and others) may be less well known examples of Danish international recognized R&D. WHO is now housing an agency to survey drug resistance globally, and rational drug use is becoming even more important with the advent of HIV/AIDS and the related TB epidemic. Emerging resistance to essential antimalarial drugs has prompted a DK-UK supported network for monitoring resistance in East Africa (EANMAT) - with local African owner- and leadership.

6. One last, less known success story is the Danida supported drug-supply programme in Tamil Nadu, India, which is now being replicated in all India's states.

PRODUCT DEVELOPMENT

Today, there are several areas in the health sector where Denmark has a leading position in the World from which a better provision of global public goods could be derived. This is the fact in areas such as the production of insulin, establishment of basic health care systems, and improved cleaning of smoke from large power generation plants. There is reason to believe that it would be possible to strengthen the provision of global public goods by developing health care programmes and disease prevention methodologies, including new vaccines, in several related areas which may not be important in the OECD countries, but are crucial for the improvement of the health situation in developing countries.

The questions that should be raised are:

1. How shall such areas be identified and put on the Danish aid policy agenda?

2. Which means shall be used to activate the Danish resource base to solve the issues put on this agenda:
    - When based in the public sector?
    - When based in the private sector?

Re 1: There should be plenty of opportunities to get qualified proposals for new priority areas in the health sector in developing countries. Danida currently sends numerous experts from companies and institutions in the Danish health sector to implement projects in developing countries. Many of these experts gain useful experience that could be used proactively to identify areas to be investigated further with regard to their relevance as new priority areas. The question is how this experience can be collated systematically and who should be responsible for the identification of the most promising ideas.

Re. 2: It must be decided who shall be responsible for the identification of institutions and companies in the Danish resource base that could be activated to develop solutions to the problems identified.

Regarding the private sector's resource base, a most relevant framework has already been established by Danida's Private Sector Development Programme (PSDP) which is operational in all of Danida's 15 programme countries. This programme has resources and skilled manpower available for the identification of relevant companies and persons in the Danish private sector's resource base - also within the health sector. The programme can provide targeted support to companies prepared to transfer existing technology or to develop new products and services that have a commercial potential. The latter condition may cause problems for the development of new products, techniques, and methods, e.g. in the health sector, that can be seen as Global Public Goods. There are many products and services in the health sector that cannot be sold on a commercial basis in developing countries due to poverty.

With minor adjustments, the PSDP framework could be used to identify resource institutions and key persons in the public sector. A set-up activating these resources could also easily be established by duplicating the main principles in the PSD Programme.

NEW PARTNERSHIPS

Obviously, the most important partnerships for Danida activities are the ones involving people in the developing countries. But besides this, from the Danish side most of the relations between Danida and its stakeholders are determined by a partnering in implementation of the strategy for the developing aid programme activities. This means that most relations are either associated as hired by Danida to do specific jobs or by Danida sponsoring e.g. scientists' activities. Both relationships can be said to be money-driven.

In a globalized knowledge society, partnering will be based on much more than money relations. Partnerships can be initiated due to a wish for sharing and exchanging knowledge. Or partnerships can be founded on the fact that synergy can be harvested by joining forces towards a common goal, but using totally different approaches and products.

Many such new and different partnerships could be made on the Danish or on the international scene; partnerships which would help Danida carry out its mission. But not necessarily costing money or assisting in spending money; they could be partners who seek the knowledge and experience of Danida to refine their developing aid assistance. Or partners within a cultural area, inspiring Danida to find new ways to include more cultural aspects in its future portfolio. Or partnerships with industrial enterprises with knowledge they offer to share, to be used for development, but outside their business focus. Or strategic partnerships with non-profit NGOs not aimed at getting a specific activity sponsored by Danida. But these partnerships should have as their objective to help spreading important environmental or health awareness throughout the Danida system.

New and fruitful partnerships could also be formed to forward a constructive development within the field of global public goods and the general area of health.

HEALTH AS INDICATOR[19]

Whenever you are on the verge of getting carried away by the potential of globalization: global trading regimes, global financial stability, global exchange of knowledge, and global security, it can be quite a sobering experience to glance over the tables of the Human Development Report.[20] It is striking how inhabitants of the countries classified in the low human development cluster have a much shorter life expectancy at birth than people living in countries in the middle and high development clusters. Of the 36 countries in the low human development cluster, nine have a life expectancy at birth

of under 40 years and only one, Pakistan, is above the 60 years threshold. Of the 52 countries in the high human development cluster from which data are available, but two, Bahamas and Trinidad and Tobago, have a life expectancy at birth of less than 75 years.

Even though this interconnection between health and wealth seems evident, a closer inspection of the tables reveals that there is more to the explanation than *"richer is healthier"*. A baby born in Japan in 2002 can expect to outlive babies born in all other countries, despite Japan ranking only ninth in the Human Development Index. As can be seen from Table 1, the Japanese Gross Domestic Product per capita of US$ 26,940 appears modest compared to Luxembourg's US$ 61,190 or Norway's US$ 36,600. Equally, the health expenditure per capita does little to explain the Japanese longevity. If so, US Americans or Norwegians should top the list instead of Japanese and Swedes. On the other hand, Costa Rican babies can look forward to long lives regardless of markedly lower GDP and health expenditure per capita.

HDI rank	**Country**	**GDP per capita**	**Life expectancy at birth**	**Health expenditure per capita**
		(PPP US$)	*(Years)*	*(PPP US$)*
1	Norway	36,600	78.9	2,920
2	Sweden	26,050	80	2,270
8	United States	35,750	79.8	4,887
9	Japan	26,940	81.5	2,131
15	Luxembourg	61,190	78.3	2,905
17	Denmark	30,940	76.6	2,503
45	Costa Rica	9,650	78	562

Table 1 Selected countries - High Human Development cluster - 2002 Figures
Adapted from Human Development Report 2004

In the other end of the spectrum in the Low Human Development cluster, Tanzania with US$ 580 has one of the lowest GDP per capita, as can be seen from Table 2, but with 43.5 years, Tanzania has a higher life expectancy at birth than the Côte d'Ivoire's 41.2 years with it's much higher GDP and higher spending on health, both in absolute and relative terms.

Pakistan is the exception in this cluster with a life expectancy of above 60 years; still the Pakistani GDP and health expenditure is lower than that of Lesotho and Zimbabwe; both have a life expectancy in the 30s.

HDI rank	Country	GDP per capita	Life expectancy at birth	Health expenditure per capita
		(PPP US$)	*(Years)*	*(PPP US$)*
142	Pakistan	1,980	60.7	85
145	Lesotho	2,420	36.3	101
147	Zimbabwe	2,400	33.9	142
159	Rwanda	1,270	38.9	44
162	Tanzania, U. Rep. Of	580	43.5	26
163	Côte d'Ivoire	1,520	41.2	127
164	Zambia	840	32.7	52
165	Malawi	580	37.8	39
166	Angola	2,130	38.8	70
169	Central African Republic	1,170	38.7	58
171	Mozambique	1,050	38.5	47
177	Sierra Leone	520	34.3	26

Table 2 Selected countries - Low Human Development cluster - 2002
Figures Adapted from Human Development Report 2004

To complicate matters further, examples can also be found in the Medium Human Development cluster, covering the HDI rankings from 56 to 141. For the majority of these countries, the life expectancy at birth bracket is between 60 and 75 years. Swaziland (137), however, only has a life expectancy at birth of 35.7 years, despite a GDP of US$ 4,550 and health expenditure per capita of US$ 167. Swaziland is admittedly an extreme example, a small country populated by just above one million with an attributable cause for a life expectancy otherwise only seen in much poorer countries: an estimated HIV/AIDS prevalence among adults of 38.8 per cent.[21] Still, taken together, the examples illustrate that whatever relationship there may be between health and wealth, it is anything but straightforward.

There is hardly any news in this, as historian Simon Szreter points out in an essay.[22] Comparing economic growth rates in England from 1800 to 1870 with life expectancy at birth, Szreter finds little if any health improvements for the nation as a whole over the period. Despite economic growth, the national average for life expectancy at birth remained at 40-41 years until the 1870s. When it did happen, it was thanks to the provision of public goods.

The operational word in this argument is *"average"* because many examples can be found of increases in real wages leading to prosperity, better health and perhaps a move to new, more spacious housing with amenities in the suburbs, preferably upwind, away from the city stench. However, on average these examples were outweighed on a national level by a combination of an increasing demand for labour and rural depressions with the result that the industrial towns continually received rural immigrants tending to fill the

least secure and lowest paid positions and therefore only able to afford the most squalid housing. Based on 1841-figures life expectancy in Liverpool was 28 years, in Manchester 27.

A turning point came when municipalities in the manufacturing centres began investing in a public good: sanitation with a separation of the supply of drinking water from sewage. The reason this had not happened before was neither lack of knowledge nor lack of ability to think big. When it came to other public goods necessary for The Industrial Revolution, like railway construction, town councils proved quite capable. Especially since no one questioned the commercial benefits of having a railway leading right through city centres; they were refashioned accordingly in the 1840s and 1850s. Even when it came to the water supply, town councils could take the initiative. At least as long as water was seen as an industrial raw material.

The political will stopped short of sanitation, caught up in the timeless question: will those who have to shoulder the bulk of the financial burden be able to see their self-interest in doing so? The majority of the electorate - the petty bourgeois ratepayers - could not be induced to vote for, still less campaign for, such an expensive municipal measure, even though it may have given them longer, healthier and more prosperous lives. The benefits to be gained were too abstract, remote and speculative to carry conviction for these practical men, who had more than enough to do just surviving on a week-to-week basis in trade, while at the same time trying to avoid bankruptcy. A prospect drawing only closer since the increased demand for local rates would have to come out of their limited balances.

When change did come about in the late 1860s, it was a result of a new political tide. The new political will found voice through the preachings of a number of charismatic Nonconformist ministers in Birmingham, who advocated a religiously inflected call to civic consciousness and pride and the undertaking of public goods works that soon spread to Britain's other "city states". Leading doctors and scientists substantiated the message by arguing that the cause of poor health among city dwellers was the conditions they were living under more than personal inclination. Therefore, the environment they were living in had to be changed, and if this was not possible, conditions had to be made tolerable[23].

Not to be underestimated, as Szreter points out, was the change in the political landscape as a result of voting reforms. Changes in the formal municipal voting qualifications in the late 1860s quadrupled the electorate with an influx of working men. The new breed of politicians not only talked civic pride but also wooed these urban consumers instead of the traditional producer and retailer interests, thereby forming an alliance for change. It

should be noted, though, that the tax system made things easier for the reform politicians. The new majority was formed of voters, who were not faced with direct bills for the improvements in living conditions and amenities. As tenants rather than homeowners they did not pay local rates directly; instead they paid indirectly into the rents to their landlords.

One lesson to be learned from the English Industrial Revolution and of relevance for understanding Global Public Goods is that Public Goods are man-made and have to be induced, taking advantage of whatever circumstances present them. However, there is another lesson, perhaps better seen in the context of the Human Development Report than 19th Century England: availability of Public Goods does not necessarily mean that a country has the ability to take advantage of them.

In 2002, diarrhoeal diseases were estimated to be the cause of 3.2 per cent of all deaths.[24] Most of these deaths were children, primarily from South East Asia and Africa, or in HDI terms from the Middle and Low Human Development clusters. Yet, diarrhoea is preventable: a simple treatment is widely available, at practically no cost. Because of the treatment far fewer die from diarrhoea today than 25 years ago, but with 1.6 million lives claimed in 2002, this is hardly a cause for celebration. Lack of infrastructure, including distribution of the medication, and lack of trained staff prevents the treatment from being used.

Providing Global Public Goods is only part of the task ahead; giving countries the ability to take advantage of them is equally important. As for tracking improvements, health would be an excellent indicator.

RECOMMENDATIONS

Based on the discussion held in the ”Global Public Good /Health” working group

1. Formulation of an updated policy on health is needed.

2. Special focus should be placed on overcoming barriers to health as a global public good.

3. The nature and magnitude of the health problems of tomorrow - especially non-communicable diseases and their complications - will add pressure to the already stretched existing health infrastructure and other public goods. Tackling this requires a more diversified and cross-disciplinary approach.

4. The policy should give priority to areas where we in the Danish resource base have something to offer:
   A) antibiotic resistance management as an integrated part of the fight against communicable diseases;
   B) diabetes care and prevention of complications;
   C) education within health and diseases (e.g. in reproductive health, use and misuse of antibiotics, diabetes personal care);
   D) gender issues;
   E) sharing and generating knowledge, covering both support of relevant research in Denmark and capacity building in the developing countries. The mechanisms of market economy are insufficient in the area of knowledge exploitation and knowledge sharing.

5. Emphasis should be on delivery of concrete public goods more than providing just management; the core efforts within health is help to cure, prevent and survey major health problems. This goes regardless of the public goods being provided by governmental bodies or by public private partnerships. Special emphasis should be put on re-use of knowledge and know-how:
   - capacity on TB can become relevant for the fight against HIV/AIDS;
   - insights from leprosy can be used as a platform for strengthening the fight against diabetes;
   - improved maternal and child health may prevent diabetes and hypertension.

6. Efforts should be strengthened within early warning and disease surveillance (early diagnosis of diseases, collection and analysis of epidemiological data) with a special focus on bolstering the utilization of such global data in a local context.

7. WHO is in its nature and activities closely linked to securing global public goods within the health area, at least a minimum. Therefore, the activities of WHO should be supported.

8. Danida should proactively seek new partnerships extending beyond the money-driven relations.

9. Collaboration between Danida and other relevant ministries such as the Ministry of Science, Technology and Innovation should be strengthened so that the Danish education system can also be helped to face the challenges of a globalized world (more university teaching to be given in English and more topics focusing beyond Denmark and Europe).

10. In the areas (public and private) where we in Denmark have special expertise we should live up to the obligation of sharing knowledge and undertake research in areas of relevance for development.

NOTES

1. WHO 2002.
2. Omran 1971.
3. WHO 2002.
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5. Pradeepa R et al 2002.
6. Hales and Barker 1992; Yajnik 2004.
7. WHO 1946.
8. WHO 1978.
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12. Kaul et al. 1999:4.
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14. Kaul et al., 1999.
15. Kaul et al., 2003; Morrissey et al., 2002; Gardiner et al., 2002.
16. Le Ministere des Affaires Etrangeres, 2002.
17. The following is based on Krogh 1989.
18. Koch 1945.
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(Fresh) water as a human right and a global public good

Jannik Boesen and Poul Erik Lauridsen

YOU CAN'T DENY ANYONE ACCESS TO DRINKING WATER!

In the Northern part of the Ismani plain in Tanzania, before piped water was introduced in 1967, there were no permanent watercourses and only two slowly trickling springs that could provide water all year round. During the long dry season women from all the villages would queue at one of the springs to fill their water jars (or kerosene bottles). Everybody patiently waited their turn. At the other spring, only men from the village where both springs are located were allowed – to water their cows. No one except the village's own inhabitants were allowed to use that spring, but they could not deny anyone to fetch drinking water from the other.

In the Southern, higher part of the plain there are several streams and natural springs, used, among other things, for irrigation of small vegetable patches. But here also, a farmer who has a spring on his property cannot deny anyone access to collecting drinking or domestic water from the spring. On the other hand, he is free to use the water for cattle and irrigation, even if it means depriving neighbours of water they are used to having access to for their land.[1]

In many places all over the world, like on the Ismani plain, access to springs with drinking water – even to drinking water stored in people's homes – is a right you can't traditionally deny anyone. There is equal access to drinking water and no one can be excluded. Water is a socially constructed public good!

But water can also be viewed as an economic good. In 1991, the

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 393-418
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

Copenhagen Informal Consultation (CIC) was held with the participation of water experts from the entire world as preparation for the international water conference in Dublin and the environmental conference in Rio in 1992. The most noticeable result reached by the CIC was probably the adoption of the principle that an effective water management presupposes that water is managed as an economic good the value of which reflects its most valuable potential utilization.[2]

However, as participants in this process will recall, this was not an easy resolution to pass, particularly because of the resistance mounted by delegates from developing countries who countered that water is an elementary human need and thus a social good that cannot be denied to those unable to pay for its economic value. Yet the principle was adopted in its pure form, conditional on the text of a report explicating that the recognition of water as an economic good does not necessarily mean that primary users have to pay a price commensurate with the water's value. After all, a decision that water should be considered a public good including equal access for all would not mean that you can – or should – disregard the water's economic value, on the contrary.[3]

Furthermore, the 1992 Dublin statement stresses that the recognition of water as an economic good on the one hand and acceptance that access to pure water at an affordable price as the elementary right of all people on the other are two complementary ways of looking at water.[4]

But the concurrent campaign by the World Bank to privatize and commercialize water did not make it easy to maintain this complementary view. Agenda 21's total muddling of water as an economic and *social* good may have been understandable, but it has not contributed to a conceptual clarification of the difference between economic planning principles, including effective demand, and fulfilling elementary human needs.

The discussion of water as a human right and a public good may be seen as a new attempt at defining approaches to water that are clearly complementary and may mutually support each other towards an effective water management and an improvement in people's access to an elementary water supply.

THE NATURE OF WATER

Water as an element possesses a number of quite unique qualities that are significant when conceptualizing and operationalizing water as a human right and as a global public good. First, water is a fundamental constituent of the human body; without water, a human being will perish within a few weeks. Thus *water supply* – or the access to clean drinking water – is a precondition

for humans being alive and enjoying other global public goods such as clean air, peace, and universal human rights (including the right to food).

Second, water is pulled by gravity along streams from higher ground towards lower terrain – towards the subsoil water and the sea – and along its way, water often crosses man-made boundaries and property-lines (regional, national, social, and cultural). This means that the provision of water as a public good and as a human right often has to come about through cooperation across traditional lines of demarcation existing in the international and national community. This is why *transboundary water management* is often termed a regional (rather than global) public good, important enough to attract ever more attention as water becomes increasingly scarce. Sustainable water management is in fact closely knit to providing other public goods such as drinking water, biodiversity, and peace.

The point of departure in the following survey of water as a human right and as a global public good will be this differentiation between *water supply* and *transboundary water management (TWM)* since the management and the supply of these two kinds of public goods carry different implications because of the unique nature of water.

WATER AS A HUMAN RIGHT

As late as 2002, the UN system finally placed formally on record that water is a human right. This resolution came as an elaboration of the Covenant on Economic, Social and Cultural Rights.[5]

The Covenant itself (from 1966) does not mention water specifically. Since its inception, and especially during the 1990s, much wrangling has been done to argue that the Covenant does in fact encompass water implicitly on a par with "food, clothes, and shelter" – the latter are mentioned explicitly as preconditions for an adequate standard of living.[6] Thus it has been adduced that this is a non-exhaustive list of examples and that water is covered by the Universal Declaration of Human Rights (1948) since water constitutes one of the fundamental elements of life itself. Without liquid intake a human being will dehydrate within a matter of weeks, just as *clean water* is a prerequisite for preventing diseases that spread through consumption of contaminated water. Consequently, many have argued in favour of declaring (clean) water a human right classifiable alongside other basic necessities for sustaining human life and well-being.

So, while water is no doubt a precondition for fulfilling a number of human rights, only the UN Convention on the Rights of the Child from 1989 makes direct mention of water.[7] In his article *The Human Right to Water* from

1999, Peter Gleick points out how water is a prerequisite for a reasonable standard of living, for human dignity (the Universal Declaration of Human Rights), and for life itself – and thus must be seen as inherent in other rights such as the right to health.[8] As Gleick has pointed out, the "human needs" targets in many ways preceded the human rights discussion with regard to water and are still relevant for ascertaining the purely physical implications of a human right to water (see below).

Still, it was not before General Comment No. 15 from 2002 (GC15) that there was an authoritative codification of the content of and legal basis for the right to water, specifying the normative substance of this right as well as the obligations of signatory states and other players.

GC15 does, however, remain characteristically ambivalent right from the outset precisely as to how extensive the right to water is. Already in the opening section dealing with the legal basis for the right to water it is unclear whether the right to water extends beyond a certain level of domestic water to include the right to sanitation and production water, or at least irrigation water guaranteeing a minimum level of subsistence. Section 2 established that water as a human right "entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." Right after this (in section 6), the General Comment goes on to state that water is also necessary in order to fulfil a number of other rights laid down by the convention. The section continues to state that:" Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights." Here, the ambivalence is really woven into just one paragraph. The following section emphasizes that the rights mentioned include water for agriculture as well as sanitation. Obviously, such ambivalence is more problematic in a document meant to be the legal foundation in this area than was the case in the previous, political declarations.

The section in GC15 dealing with the normative import of the right to water starts by underlining that adequate water should not be construed in the narrow sense and that water should be treated as "a social and cultural good, not primarily as an economic good." In any case, however, there must be sufficient water for personal and domestic use and its quality must make it suitable for personal use – it cannot constitute a health hazard. Finally, and perhaps most importantly in practical terms, water must be *accessible*, which is defined as physically accessible (in the immediate vicinity of every household, institute of education, and workplace) as well as economically

accessible, i.e. priced so it is affordable for all. This accessibility must be free from any form of discrimination (a ban that pervades the entire GC15 document) and information must be obtainable on all water issues.

A footnote refers to discussions about exactly what constitutes a *sufficient* amount of water. Long before the formal recognition of water as a human right with the adoption of GC15, international conferences agreed on the goal that each human being must have enough water to satisfy the *basic needs*.[9] But what exactly does the concept *basic needs* encompass? Is it only potable water and water for hygienic purposes – or does every individual have the right, say, to grow food for his/her own consumption? Although fresh water is to be considered a renewable resource we do not have a limitless supply at our disposal; therefore, there have been efforts to define the minimum amount of water each human being needs to sustain life. Taking the Universal Declaration of Human Rights as a point of departure, some have argued that food is a prerequisite for human life and well-being, and that each individual therefore has the right to sufficient water in order to procure food for their sustenance.

However, far from everybody grows their own food. In the Western world, the majority buy their food in stores and the primary produce is produced by agriculture situated far away from the households that consume it. In these countries, great amounts of water for irrigation are needed in agricultural areas; on the other hand it is irrelevant to concern yourself with whether or not the urban population has sufficient water to grow crops. By contrast there are many places in the third world where large parts of the population are in fact dependent on water for growing crops; here it makes good sense to say that water as a human right also includes water supply for food production.[10] Here, again, it may be worth discussing whether you are talking about food for private consumption or whether you also have a right to sell these crops to earn an income. The Universal Declaration of Human Rights does in fact stress that everybody has the right to work – meaning the right to an income allowing you to purchase everyday needs. Besides, agricultural systems are usually geared to produce the vital requirements with whatever water is extant, so water shortages occur when agriculture is commercialized. Therefore the discussion of whether or not water is a human right quickly turns into a discussion about how much water for which purpose, and about how much water is needed to ensure human well-being, leading to a discussion mainly about water as an economic good.

Thus interpretations of what constitutes basic needs vary, yet a number of major development organizations have arrived at more or less the same definition: basic needs do not include water for producing food (since food

can be produced elsewhere), but only water for drinking, food preparation, personal hygiene, and the like. Different development organizations have also offered recommendations as to how many litres of water constitute a human being's basic need – WHO, for instance, recommends a minimum of 20 litres per person per day – 50 litres if hygiene is not to suffer.[11] Now 20-50 litres per day may not sound extravagant and there are in fact very few countries that do not have sufficient water to reach this *quantitative* goal. There are, however, many countries that are lacking in water *quality* and many places where substantial investments are needed to transport water close enough to densely populated areas to make people willing to fetch these 20 to 50 litres per person per day.

While the Covenant on Economic, Social and Cultural Rights recognizes that it will have to be implemented progressively according to resource availability, the right to water – like other fundamental rights – does place certain immediate obligations upon states, including the obligation to fulfil this right as quickly as possible. Also, states are obliged to guaranteeing non-discriminatory access to sufficient, regular and safe water and water supply for personal and domestic use within reasonable distance; to lay down a national water strategy and action plan for the entire population showing special consideration for marginal groups; to monitor how the right to water is actuated (or not, as the case might be); and to prevent water related disease and especially safeguard adequate sanitary conditions. Later it is mentioned that no individual must ever, under any circumstances, be deprived of the minimum vital water requirement.

As is the case with all human rights, the recognition of water as a *human right* gives participating states the obligation to *respect* existing access rights to water sources, to *respect* the pristine state of these sources, and to contribute towards *fulfilling* the public right to water access.

Since many water sources transcend borders, yet are hardly global, the two first obligations closely knit to preserving the physical state of water supplies are very much national, but also regional – i.e. the obligations to respect and protect. So in principle, the right to water, when construed as a human right, should imply that states situated along transboundary water resources (typically rivers) must contribute towards safeguarding people's right to water in other countries close to the same resources, including water rights enshrined in tradition.

With the recognition of water as a *human right*, states also expressly commit themselves to working towards effectuating the right to water globally – including accessibility for all to a certain minimum water supply. States become mutually obliged to reporting regularly and discussing with the UN

Committee on Economic, Social and Cultural Rights how they are progressing with these obligations, thereby laying themselves open to a certain degree of external pressure (intervention). Finally, more well-to-do countries accept the obligation to assist poorer countries in fulfilling the human right to water access.

WATER AS A PUBLIC GOOD

The pure public goods, as defined by Samuelson, possess some unique characteristics:

- When the public good is produced or occurs in Nature - the surroundings - it can be freely enjoyed by anyone without limiting other people's access to it. It cannot be monopolized by a producer. Such a good is also called *non-exclusive*.

- This also means that individuals who do not contribute to producing the said public good can partake of it (*free riding*) – in other words, a player is not beset with extra costs when others consume the good and it is not depleted. This good is called *non-competitive.*[12]

Thus water can be called a pure *public* good when it is freely accessible by nature. It is difficult to fence in so no one can get access to it and it keeps coming in such quantities that the consumption of one user does not affect other users. This is of course true of rain water, but also applies to most other large sources such as major rivers, lakes, and big ground water reservoirs. In this respect, water resource management is also a public good benefiting everybody.

However, if we are to evaluate water as a public good according to these criteria it is by no means a given that water in its "natural state," even in the globe's many fresh water reservoirs, will continue to be a pure public good in the Samuelsonian sense, since pure potable water in some instances has already become a limited resource and can be expected to become increasingly so as the water consumption of weighty players reduces the amount of water available to everybody.

Those in charge of water supply can transport, store, and clean water and deliver it wherever needed in the requisite amounts and quality. Yet water supply is far from being a public good in the above sense, in so far as excluding people from access, physically or financially, is fairly easy. Water supply can be delivered by competing contractors and a market price can in fact be set.

But, when viewed as a social construct,[13] water supply is also a *public* good in the sense that the public sector has a duty to ensure the existence of water in certain quantities and of a certain quality, accessible to all in reasonable vicinity of its place of use; i.e. the water *supply* itself becomes a *public* good. Although, for instance, the water supply in Denmark has been delegated to nearly all kinds of company structures imaginable, from private corporations to limited partnerships and cooperative societies to purely municipal water works (and although these companies will probably soon be globalized!) it is, in practice, a public good in the sense that the price is so low everybody can afford a minimum consumption and that failure to pay is the only acceptable reason for denying somebody access to water.

Viewed in this context, water supply as a public good corresponds very nicely to the redefinition of a *public* good suggested by Inge Kaul, including:

- an extension from mere non-exclusivity to outright *inclusivity*; i.e. the universal public accessibility/availability is due to a public decision, not just the fact that excluding users is physically difficult. The public status of the good is a social construct, not physically inherent in its nature;

- that the market's or "Nature's" shape of the good is transformed through public participation ("public choice") in the process;

- and – perhaps the most difficult part – this choice, despite the possibility of opposing interests must be perceived as made on an informed and just basis.

Kaul suggests that this be called a *genuine public* good.[14]

The public good concept as an economic term also implies that water is defined as something that has a value attached – both a production value and a utility and an exchange value. Thereby, it becomes both feasible and financially *necessary* for individuals and society alike to weigh the different production methods, production costs and value of water against each other in relation to other goods, as well as their different uses. In other words, it becomes necessary to ensure the optimal financial, social and environmental utilization of a limited resource.

At the water conferences in Copenhagen (1991) and Dublin (1992), the adoption of the principle that water is an economic good was not seen as conflicting with water as a social good. But the economic aspect was established as a principle of water management, replacing the commonplace notion of water as a free natural good only associated with production and

distribution costs which can be procured by whoever bears these costs. The goal was to make it an accepted management principle that water has a value in and of itself amounting to its value in its most valuable use, and that this value assessment should be introduced in planning the use of scarce water resources. When water is viewed as a public and social good it becomes a state responsibility to put a high enough value on drinking water to make it competitive with industrial and irrigation water as a means of production. This weighing of the different uses of water against each other means that the value of water as potable water, for water resource management purposes, can be set higher than the price the poorest are able to pay or the price the state determines they must pay.

It was particularly due to the privatization debate that water as an economic good was later perceived as being at odds with the perception of water as a social good and, partially, as a human right (see below).

WATER AS A HUMAN RIGHT AND A GLOBAL PUBLIC GOOD

With the recognition of water as a universal human *right* you could say that the *water supply* becomes a truly *global* public good which the global community (all nations and their international organizations) are obliged to making accessible to all the earth's inhabitants in recognition of the value and costs of water, weighing these in relation to the value of all other extant goods.

By the same token you could say that the major regional and transboundary water resources are in and of themselves (international and global) public goods to the extent that you cannot discriminate between different users as to their utility value. As it becomes evident – or is expected to become evident – that water consumption becomes so massive that usage upstream makes inroads into usage downstream, an increased demand for *transboundary management* of the source will arise. Thus between the states involved the water resource in question ceases to be a pure public good; instead, it becomes a good they distribute between themselves by agreements conditional upon factors like power balances or economic mechanisms, so users in different countries no longer necessarily have equal access to water, either because upstream countries appropriate more of the resource or because countries have to regulate the behaviour of their users pursuant to water management agreements. So here the public good is really water management rather than water itself – and, in such cases, not necessarily a good to which all users have equal access.

In the following, we will outline some examples of which specific challenges come with providing water as a public good – both with regard to water supply and with regard to transboundary water management.

OPERATIONALIZING TRANSBOUNDARY WATER MANAGEMENT AS A REGIONAL PUBLIC GOOD

In recent years there has been an increased focus on the fact that water and unequal access to water can give rise to conflict in the decades to come. Prognoses predict that the global population will increase by two billion people (mostly in developing countries) while per capita water consumption is expected to surge concomitant to increased prosperity – especially in countries with high economic growth – just as we experienced it in the Western world during industrialization. Thus water is expected to become a limited resource, which will be fought over by people and states, threatening regional and international security. Some have even spoken of a risk of water wars between some states whilst others – the majority of researchers in the field – believe that the wars that will arise will be played out within the nation states' own borders, often very locally.[15]

In this respect, water is closely linked to other public goods such as peace, stability, and the sustainable management of natural resources ensuring a continued and adequate water supply. It is estimated that 40 per cent of the world population live in the vicinity of rivers shared with people from other nations; therefore, safeguarding their access to water resources depends on successful *transboundary cooperation in water management* between the countries sharing the river waters. Therefore, transboundary water management (TWM) can be considered as the type of public good called a club good, relying on cooperation between nations sharing a river for providing it. Transboundary water management is also a *means* towards securing the provision of other public goods such as *local and national* water supply, *national* security, *regional* conflict prevention and protection of *globally important* ecosystems often seen as *international public* goods.[16] Summing up, you can view transboundary water management institutions as public goods in more than one sense since:

- Transboundary water management is a regional public good rather than a global public good because water management primarily benefits the countries sharing the water of that particular river or region.[17]

- Transboundary water management can also be characterized as a means-

type public good in so far as an effective management of water resources can be a means towards creating and safeguarding other public goods such as peace, security, and global biodiversity.

- Finally, transboundary water management can to a certain extent be a *club good* since countries cooperating in the procurement of the good may exclude others from benefiting from it. If some of the countries along a river agree on loosening restrictions on navigation and haulage along the river they can choose to do so only for signatory countries, thus excluding other countries from taking advantage of this derived, regional public good (navigation).

Thus, the creation of transboundary water management institutions may hold the key to procuring other public goods and you can observe how, during the past decade, a growing share of development assistance has been channelled in this direction. The UN, the World Bank, and a number of donor countries (including Denmark) have launched initiatives aimed at bolstering cooperation across national borders in order to guarantee access to water and prevent potential future conflicts.

One of the first initiatives of its kind was the regional cooperation around the Mekong River, the source of which is located on the Tibetan Plateau and which flows through China, Myanmar, Laos, Thailand, Cambodia, and Vietnam along its 4,200 km path.

As early as 1957, by UN initiative, the Mekong Commission was formed, having since served as the node of cooperation and dialogue in the region, regardless of wars and internecine struggles between the countries involved. This regional cooperation has consisted in exchanging information on the river's hydrology, geography, ecology, and social life with a view to identifying possible projects that can contribute to spurring economic development in the region. Today, almost 50 years later, this cooperation still goes on and member countries have reached agreements and signed conventions specifying obligations and rights concerning the water of the Mekong River.

In the dry months from November to April, run-off from the Mekong is very limited, making Vietnamese rice farmers in the Mekong Delta vulnerable, because if the river water level drops too low, salt water from the sea will flow in and ruin their crops. Therefore, the fate of Vietnamese farmers is closely linked to the way water is used further upstream during the dry season. A new agreement reached in 1995 between Laos, Thailand, Cambodia, and Vietnam contains a new set of rules for usage of water all year round and especially during the dry season – among other provisions, it stipulates that if a country

wishes to use the river for irrigation or hydroelectric power, it has to notify the other countries well in advance and it has to be done in a manner that still preserves a minimum run-off. These agreements and regulations are thus important instruments in water management, contributing towards securing a stable supply of a vital public good – water.

The UN, along with a number of donor countries, has played a significant role in making the Mekong-collaboration run smoothly. Diverging interests and historic strife has not made collaboration a matter of course for these countries; external support - and pressure - has been needed in order that the four countries might continue their cooperation in the form it has today.

There is, however, an important security factor, which can threaten the provision of water as a public good – the fact that not all countries along the Mekong River have signed the 1995 treaty. Despite repeated approaches and promptings, China has chosen to stand outside the cooperation – and, apparently, not without its reasons. China is in the process of constructing a number of dams across the upper Mekong in order to exploit the river's great hydroelectric power potential. Had China signed the 1995 agreement, there would have been a tangible risk that the three countries (especially Vietnam and Cambodia) would have opposed this construction since the dams put China in a position to regulate and withhold water very crucial to the other countries during the dry season.

The China example demonstrates how a player can prevent the provision of a public good and highlights a potential weakness in international agreements and conventions as instruments to provide the public goods known as club goods; if some players (especially powerful countries like China, but also Egypt and the USA) choose to stand outside these agreements or ignore them it is difficult to coerce them into participating in a collaboration aimed at providing the public good in question (water management). It remains doubtful whether providing certain regional public goods such as transboundary water management can be secured exclusively by instrumental mechanisms (agreements and conventions), since regional and international power relations are determining for the actual authority and clout of these instruments, making them ultimately dependent on the mutual relationships and interests amongst the players.

Yet power relations also have an important part to play among the group of signatory countries to the 1995 agreement on water management. Throughout the past 50 years, powerful players (influential politicians, investors, and the hydroelectric power lobby) have been pushing for prestigious barrage projects, which – were they to be constructed – would mean displacement of hundreds of thousands of local residents. Another effect of dam building – already

experienced by numerous poor locals – is changes in the rivers ecosystems, to the detriment of fishery. In recent years, as a result of increased public scrutiny and protests against controversial dam building, there has been a tendency towards erecting barrages along tributaries in areas where local populations are poorly organized and thus only able to mount limited resistance to the projects. In many instances, the construction of dams has led to significant drops in catches for local fishermen, just as a number of corollary diseases have ensued as a result of deteriorating water quality. Only rarely do economic profits generated by the hydroelectricity produced benefit locals who, on the other hand, must bear the social brunt and cost of their deteriorating water resource. In these cases, the existence of a higher management authority, the *Mekong River Commission*, which can back up marginalized populations, plays an important role. Therefore it also remains important that economic means are allocated in order to ensure that TWM (a public good) does not only occur by right of superior force and that water is still available in sufficient quantity and quality that potable water for the poorest (water supply as a public good) is secured as basis for their subsistence.

FULFILLING THE RIGHT TO WATER – AND ITS DELIVERY AS A GLOBAL PUBLIC GOOD – THROUGH LOCAL WATER SUPPLY

Even though water supply as a human right has to a certain extent become a global public good, it is still a good that has to be produced locally. It is still first and foremost a national public good, providing which is the state's duty. According to GC15, signatory states must devise national strategies and action plans to fulfil their obligations; among these, defining indicators towards actuating the right to water, which is discussed with and reported to the Committee on Economic, Social and Cultural Rights on a regular basis.

From an early stage, however, most countries have considered water supply to be a public good, at least in the sense that purveyors should supply everybody without discrimination. Moreover, many developing countries have declared water a social good that the state has to make available even for the poorest citizens – this has often meant that the state had to maintain a heavily subsidized water supply, but also that only limited areas were adequately furnished with water due to a dearth of economic resources. With growing populations, increased pressure on resources, and deteriorating economies, the part of the population lacking access to water has grown in several of the poorest countries over the last 20 years, despite intentions to the contrary.

Increasingly, during the course of the 1990's, there have been growing doubts as to the overall ability of states to act as suppliers/producers of water. It has been demonstrated that public water supply is really of no service to the poor as they pay more for water than do their well-to-do neighbours and they actually have less access to less water – which, again, is more polluted.[18] Quite in keeping with their policies in other areas, the World Bank, among others, started advocating the privatization of water supply in developing countries, as had long been the case in many industrialized countries where it is often left to local public, cooperative, or private water utilities.

The state's role in providing the public good, then, is to establish rules ensuring adequate reliability and quality of the existing water supply at an affordable price without discrimination among users. On top of this, especially in developing countries, states need to ensure investments in new sources of water supply, using funds released from former operations, upkeep, and maintenance obligations, plus increased coverage for the poor.

In a significant number of developing countries, states still fail to live up to these obligations; today, the privatization that has in fact been widely introduced is if possible even more controversial. Consequently, the GC15 has declared that "water should be treated as a social and cultural good, and not primarily as an economic good."[19] Negotiations leading to GC15 were full of discussions regarding ownership of extant water resources and the viability of privatization of water production and distribution. However, in an effort to avoid politicizing the issue, the final draft of GC15 had no references to privatization.[20]

THE WATER SUPPLY OF BOLIVIA

The lowlands of Bolivia is a good example of an area with plentiful water resources, but with water quality that involves a health hazard. Often, the potable water source is simply the nearest watercourse and there are countless instances that this source is contaminated by faeces from domestic animals or humans, causing problems with diarrhoea and a high infant mortality rate. It is estimated that one out of ten children die before reaching the age of two.

Yet it would be difficult to reproach Bolivia for violating human rights in this context, since the reasons for this water contamination lie in the way water is managed locally. Of course the state can be castigated for not having intervened, securing a better water supply, say by establishing new potable water systems channelling water from unpolluted sources. However, you could also discuss if locals do not bear their share of responsibility for preventing

pollution of water sources, just as it is difficult to define clear limits as to how low the water quality can drop before being in violation of human rights.[21] In a country like Bolivia, routinely beset with serious health problems (such as malaria, yellow fever, and Chiaga's disease, among others), unemployment, corruption, and persistent popular opposition against the government, an improved water supply does not exactly top the national political agenda.

Thus, if there is a genuine wish to assist the rural population of Bolivia in getting better drinking water in the foreseeable future, it remains doubtful whether any progress will be made by forcing the rural population's right to access to water on to the Bolivian government as a human right. If, on the other hand, you approach the right to water as a good that other, more prosperous countries have an obligation to provide, you could clearly allocate portions of development assistance or additional funds from GEF (or Danish environmental assistance) to establish drinking water systems in the rural districts of Bolivia.

One fact making it difficult to take legal action against the Bolivian government for not providing a better supply of drinking water to the rural population is that drinking water systems have never been established for the outer rural areas. Hitherto, potable water has been fetched from nearby streams. Here, water has been managed as a non-exclusive public good accessible to everyone. It is different in the Bolivian cities where water is mostly provided through pipes more or less according to the universal principle known elsewhere, like in Denmark. This type of water supply mostly provides water of a higher quality, making it easier to regulate water supply according to economic principles. Users typically have to pay a charge for receiving the public good, which a reliable supply of water constitutes. As has been outlined previously in this chapter, the international community (particularly the West) has agreed that water should have a cost – not least in order to safeguard an optimum utilization of a limited resource. So we are dealing with a partially user-financed public good. But how much are you allowed to charge for a litre of water and can too steep a price constitute a human rights violation?

Obviously, fixing an upper limit on the price of water is difficult since this greatly depends on local factors such as income levels and production costs. But the price can definitely be too steep. Throughout the past decade there have been numerous examples of rising water prices because of privatization of the water supply, leading in many places to violent conflict with many casualties (see Box: The privatization of water supply in Cochabamba).[22] Experiences indicate that water supply can in fact be taken care of by private companies, but that this cannot be effectuated when the private company only operates un-regulated with a view to maximizing profits, the reason being that this kind

of water management rarely works from the assumption that water is a social good that everyone is entitled to. Yet privatization has proven effective in places where specific contractual demands are made on the private company in charge of water management (demands laying down rules for maintenance and improvement of pipelines, price fixing, maximum price rises, minimum intervals of water supply, and minimum daily water volume, etc.). This way you ensure that the water supply is not only managed as an economic good, but also as a social good to which everyone is entitled and has access.

Privatizing water supply in Cochabamba

In Bolivia's third largest city, Cochabamba, water supply was privatized in 1999. This privatization was carried out after the World Bank had put pressure on the Bolivian government to implement certain structural economic adjustments such as privatizing some of the services that had previously been managed by the Bolivian public sector. Shortly afterwards, the private Italian company (Bechtel Enterprise Holdings) taking over the water supply raised prices by 35 to 100 per cent while at the same time drastically reducing supply volume. For a while, taps only spewed water twice a day – from 5 to 7 in the morning. As another consequence of privatization, the city's poor population also had to purchase permissions to fetch water from public water kiosks; many could not afford this since water now meant an expense exceeding food costs and represented one fifth of monthly expenses for many households (USD 20 out of USD 100). The situation quickly became critical and in 2000 there were several clashes with police and irate users of the water supply. The military was also deployed to quell the rioting leading to several casualties (it is unclear how many were killed – some sources say one died, while other reports mention that as many as nine perished during this conflict.) After a period of continued protests the Bolivian state had to give in to the popular dissatisfaction and the contract with Bechtel (which was for 40 years) was terminated.

The Cochabamba episode illustrates that the price of water can be set too high and that conflicts may ensue when you fail to recognize that water is a social good which must have a price affordable to all. Subsequent analyses of the conflict in Cochabamba (see for instance Gleick 2002) point to the fact that privatization of water management must take place under more regulated scenarios where specific contractual requirements are imposed upon whichever private company assumes water supply responsibilities. This way you ensure that water supply is not managed solely as an economic good, but also as a social good that everybody is entitled to (Sources: Westerman 2003; Gleick 2002; Barlow and Clarke 2002; La Prensa, October 2 2002.)

INTERNATIONAL ORGANIZATION AND FINANCING

Judging by the way TWM is financed, it is very much a national rather than a global area of interest. One survey has estimated that upwards of 70 per cent of financing derives from the public budgets of the nations sharing any given water resource while about 11 to 12 per cent of TWM financing comes from international development assistance donors; only five per cent stems from the international private sector (primarily through financing of hydroelectric power).[23] Over the past decade, however, there has been a tendency for donors to try to increase the private sector share of financing, but this has primarily involved potable water supply and the building of dams.

Multilateral development assistance organizations such as the World Bank, the UN and GEF have, to a significant degree, been behind the financing of new initiatives aimed at prompting countries to cooperate in water management. The EU strategy for "water management in developing countries" highlights transboundary water management as an area of initiative needing economic priority in the future programme.[24] So several different donor organizations (among them Denmark) have supported TWM, but the initiatives have not been coordinated by any supra national organization devoted to this area.

A survey of experiences in procuring TWM as an international public good has indicated a need for a separate agency – the International Shared Waters Facility (ISWF) – integrating expertise and coordinating a concerted international effort.[25] The idea is that ISWF will support states building and maintaining a productive regional collaboration ensuring continued procurement of transboundary water management as a public good, just as this body will be able to act as a disinterested third party – an honest broker – when conflicts arise between countries.

Thus the ISWF will be able to act both as a resource organization capable of assisting nationally and regionally as well as contributing to the channelling of funds to some of the regional tasks that the countries involved typically do not have the means (or the priorities) to raise themselves.

The idea of establishing an ISWF is still in the planning stages, however; it remains uncertain whether or not it will become reality. Until then, work in this area will most likely continue in a decentralized manner as previously and depend upon coordination between the development organizations involved and their ability and will to prioritize TWM.

At present the expertise (and authority) in international water cooperation is dispersed among a number of different organizations (UNDP, the World Bank, GEF, the Global Water Partnership, and the World Water

Council, among others). And, while the ISWF concept does involve thoughts of gathering some of the expertise and work in the international water resources management in one place, we do not know of any such effort to encompass cooperation in the water supply area in its entirety – this field remains atomized. Thus all of 23 UN organizations, bodies and secretariats participated in the drafting of the World Water Development Report for 2003: *"Water for People, Water for Life."*[26] Incidentally, this state of affairs prompted Michel Camdessus to remark in his preface to the report from the global panel on financing water infrastructure that they had encountered problems in collating data "because water, despite its status as a vital necessity, still – surprisingly – is an orphan among international organizations."[27] There is no single special UN organization for water. Besides the bodies mentioned above it is perhaps especially the purview of WHO, but the FAO, WMO, UNEP, and UNDP also deal with water in its different aspects.

The absence of one single international organization for water obviously not only makes it more difficult to gather the necessary data; it also hampers support, coordination and monitoring of the many water-related goals and plans that have been adopted at international meetings in the past. On the other hand, this undergrowth, this array of meetings, commissions, councils and forums with public as well as private and NGO participation has maybe contributed to a higher degree of public awareness concerning water than has, say, the WHO concerning food. Thus, globally speaking, water could be said to be approaching fulfilment of Inge Kaul's second criterion for a true public good, namely public transparency in decision-making (see the section *Water as a public good.*)

Usually it is estimated that in excess of one billion people – nearly everybody in the developing countries – lack access to pure drinking water, but also that more than two billion people have gained such access in the past 20 years. One of the global goals for 2015 is to reduce this billion by half – and reduce it to zero before the year 2025. So it will be some time before potable water becomes a tangible global public good! This lack of access is only due to an absolute dearth of water in very limited, local instances; to the contrary, it is most often due to lack of investments in water supply. Thus it is estimated that a full 70 per cent of global water consumption goes to the use that is normally least valuable, to wit, agricultural irrigation. Of the remaining 30 per cent, only a small percentage is for potable water, the rest goes to industrial and environmental purposes.[28]

Just as a comparatively small portion of available water goes to potable water supplies, different estimates of investments within the water sector show that the part of these investments going to water supply is relatively

limited. Out of total annual sector investments of approximately USD 80 billion, USD 13 – 15 billion are estimated to cover water supply. But actually it is also estimated that the aforementioned goals for 2015 and 2025 should be reachable if the present level of investments can be maintained (while the goals for sanitation would require a doubling of investments).[29] In the water decade from 1981 to 1990 which was proclaimed following the first big international water conference in Mar del Plata, 1977, the number of people covered by water supply doubled from 1.4 billion to 2.8 billion globally, while the corresponding number of people not thus covered is estimated to have shrunk from 1.8 billion to 1.4 billion. The goal, then, was to achieve full global coverage by the coming new millennium.[30] But during the 1990's the rate of new development dropped, only just keeping up with population growth, so by the year 2000, more than a billion people still had no water supply.

However, it is still expected that the present level of investments will permit a recovery of the deficit in another 20 years, due to the concomitant insistence on corollary improvements in water supply management, including user involvement in maintenance and user fees in order to improve overall maintenance and efficiency in water consumption. It is argued that the technology exists to ensure that such an essential good as water can in fact be provided at prices that both cover production costs and are affordable even for the poor (who are often not covered by water subsidies). There are also examples that the poorest can receive public aid towards their water consumption while paying the full cost to the provider.[31]

In reckoning investment needs in the water sector, their importance is often underlined by arguing that water and sanitation are vital needs if the poor are simply to survive. For instance, in his aforementioned preface to the report of the panel on water infrastructure financing, Camdessus writes of the need to double the flow of funds to the sector, and that this is basically a question of giving our brothers and sisters enough to drink! But the need for more than doubling total sector investments (from USD 80 billion to USD 180 billion annually) – which is regularly announced to the world media – is really not only for sanitation, but especially for sewerage and waste water treatment in the rapidly growing cities of the developing countries.[32]

Assessments of how funding for these needs will or must be covered, i.e. discussions about whence the future doubling of funds for the entire sector is to be drawn, often also aggregate to sector level. One such detailed assessment only anticipates fairly small rises in the developing countries' own public contributions as well as contributions from donor countries, while drastic increases are foreseen from the regional and international private sectors.[33] Most of those concerned, like the international panel on water financing,

content themselves with the hope that increased financing will be forthcoming from all potential sources.

It is, however, characteristic that all sources anticipating an implementation of the 2015 goals – especially the "concluding" G8 water plan adopted at the Evian summit in September, 2003[34] - are less concerned with financing itself than with a deep-going reform of sector governance (including water resource management) which is seen as a prerequisite for financing from all potential sources: user fees, national and local government, private companies and financial markets, donors, and international financial institutions.

CONCLUSION

In the above, transboundary water management and water supply have been discussed as human rights and global goods in their relatively tangible manifestations as, respectively, agreements between the involved countries concerning use of shared water resources and as the supply of adequate, pure water for domestic use within a reasonable distance. In both of these manifestations it has been relatively simple to treat water from a normative human rights point of view, especially when it comes to state obligations to respect existing water rights, protect the pristine state of water sources and fulfil the right to a supply of water. Sometimes, however, enforcing the right to water from a purely legal standpoint can be beset with difficulties since the normative demands will be open to interpretation: exactly how much water are we talking about? And is there not a local responsibility to secure the sources of drinking water? We will abstain from entering into whether or not it is reasonable to discuss these questions from a purely legal point of view, but while the normative foundations for securing water as a human right seem to rest on a solid foundation in the existing human rights instruments, it seems equally obvious that a legal system of recourse does not exist at present.

Full operationalization of the concept *global public good*s is still embryonic. There are, for example, no surveys clearly indicating exactly how big a portion of development assistance to the third world has been earmarked for securing global public goods and the numbers referred to in this article are estimates extrapolated from categories that are not unequivocally global goods. The rich conceptual differentiations between *pure* and *impure* public goods, club goods, *means-type* goods, and *competitive* vs. *non-competitive* public goods, not to mention *genuine* public goods, bear witness to the complexity of the very concept; in fact, it would seem that there is a need to rewrite this

complex set of concepts to a simpler and more operational nomenclature if the concept is really to gain foothold among donor organizations and in general.

This being said, it is an absolute practical necessity that we deal hands-on with securing the resources and rights dealt with in this chapter as human rights *and* public goods. The example of *transboundary water* management along the Mekong River demonstrated the necessity of establishing institutions that are able to secure a sustainable water management across geographical, political, and cultural barriers; this at the same time is the key to safeguarding other public goods such as water supply, regional peace, and global biodiversity. In particular, transboundary water management can help securing the rights of poor and marginalized populations; in this respect, the "public goods approach" and the "human rights approach" may serve to complement each other.

Thus we are faced with a series of challenges with regard to ensuring global water supply and water management. In this context, the concept *global public goods* could be useful in efforts to further this development and become operational in implementing the social and economic human rights we have committed ourselves to globally (and/or the UN millennium goals, for that matter); e.g. by contributing to economic models outlining how it can be done and financed by the global community, thus also contributing to the necessary global income redistribution!

Will it, as in the climate area, be possible to devise new mechanisms like, say, a global water fund, financed through global water fees? There are innumerable ways of financing global public goods, including the use of market mechanisms but not necessecarily with a profit motive.

Perhaps the latest reorientation of the international discourse on water towards a higher emphasis on *good (global) governance* has also meant that the concept of global public goods has acquired renewed relevance in this context – perhaps both for water as such as well as for governance, which also comprises water supply and water management. This subject is broached in the previous article by Hans-Otto Sano.

NOTES

1. J. Boesen and E. Hansen: *Case study on local water management in the Ismani rural area, Tanzania,* Centre for Development Research, Copenhagen, 1991.
2. DANIDA: *Copenhagen Report; Implementation mechanisms for integrated water resources development and management*, Danida, Copenhagen, 1991, p. 8: "efficient allocation of water can only come from a full recognition of the costs and benefits associated with various alternative uses taking into account future needs. In other words, water is an economic good. Failure to recognize this key principle has contributed substantially to wasteful and environmentally damaging uses of water. Whether or not different categories of users are charged the full economic cost of providing their water supplies, that cost must be apparent and accounted for in resource management strategies."
3. The relationship between the three ways of perceiving water – as a public good, a social good, and an economic good – is dealt with at some length below. For the sake of clarity a *public* good can be defined here as a good to which everybody has equal access in principle; a *social* good may be defined as being a good to which society has the responsibility of securing equal access, even for the socially less fortunate; while an *economic* good means a good where economic value enters as a factor in its production and distribution.
4. WMO: *International Conference on Water and the Environment: The Dublin Statement and Report of the Conference*, WMO, Geneva, 1992.
5. Committee on Economic, Social and Cultural Rights: *General Comment No. 15*. 2002. See: E/C. 12/2002/11.
6. "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 (…)" (The UN General Assembly, December 10, 1948, the Universal Declaration of Human Rights, Article 25). The same phrasing is used in the legally binding International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16 1966.
7. The UN Convention on the Rights of the Child, Article 24: "…and through the provision of adequate nutritious foods and clean drinking-water…"
8. P. Gleick: "The Human Right to Water", *Water Policy* 1(5) pp. 487-503, 1999, is considered a seminal work in the discussion about water as a human right, quoted copiously in the documents ultimately leading to the inclusion of water as a bona fide human right in General Comment No. 15.
9. Both in the Mar del Plata declaration after the first major international water conference in 1977, at the UN "Right to Development" summit in 1986, and at the UN summit in Rio concord was reached on the goal of being able to satisfy every human being's basic need for water (Gleick 1999).
10. As examples one could mention that producing one kilo of potatoes requires 500 litres of water (500 l/kg). Corresponding numbers are 1,000 l/kg for rice, 3,500 l/kg for chicken, while producing one kilo of beef is estimated at 100,000 litres of water (Pimentel, David and M. Pimentel (eds.): *Food, Energy and Society*, Colorado University Press, 1995).
11. WHO: *The Right to Water*, WHO, 2003.

12. Paul A. Samuelson.: "The Pure Theory of Public Expenditure." *Review of Economics and Statistics* 36 (November) 1954, pp.. 387-89. See Appendix 3.
13. I.e. social construct in the broadest sense: something not in and of itself endowed with given characteristics, something that acquires these characteristics through decisions, conventions, traditions, etc., made by human beings.
14. I. Kaul: "Public Goods: Taking the concept to the twenty-first century;" in: D. Drache (ed.): *The Market of the Public Domain: Global Governance and the Assymetry of Power,* Routledge, London and New York, 2001.
15. Aaron T. Wolf, Shira B. Yoffe and Mark Giordano: "International waters: identifying basins at risk", *Water Policy* 5, pp. 29-60, 2003; Thomas Homer-Dixon and Valerie Percival: "Key Findings" in *Environmental Scarcity and Violent Conflict: Briefing Book*, Washington, D.C.: American Association for the Advancement of Science and University College, University of Toronto, pp. 6-10, 1996; Sandra L. Postel and Aaron T. Wolf: "Dehydrating Conflict", *Foreign Policy*, September/October, pp. 60-67,2001.
16. Overseas Development Institute and Arcadis Euroconsult: *Transboundary Water Management as an international Public Good*, Development Financing Study 2001:1 prepared for the Ministry for Foreign Affairs, Regeringskansliet, Sweden, 2001.
17. For a thorough description of this concept: P. Stålgren: *Regional Public Goods and the Future of International Development Co-operation – a Review of the Literature on Regional Public Goods*, Expert Group on Development Issues, Working Paper 2000: 2, Swedish Ministry for Foreign Affairs, Stockholm, 2000.
18. World Commission on water for the 21st Century: *The Poor Pay Much More for Water ... Use Much Less – Often Contaminated*, Press Release, August 5, 1999.
19. General Comment 15: art. 11.
20. IPS: Press release, Geneva, November 27, 2002.
21. In this particular rural region North of San Buenaventura it is not uncommon that human faeces are eaten by free-roaming pigs who are thus also free to bathe in the stream whence water is fetched.
22. For a critical survey of experiences garnered from the privatization of water supplies, see M. Barlow and T. Clarke: *Blue Gold: The Battle Against Corporate theft of the World's Water*, Earthscan, London, 2002.
23. Overseas Development Institute & Arcadis Euroconsult, 2001:13.
24. Communication from the Commission to the Council and the European Parliament: *Water Management in Developing Countries: Policy and Priorities for EU Development Cooperation*, 2002, KOM/2002/0132.
25. Overseas Development Institute & Arcadis Euroconsult, 2001.
26. Commission on Sustainable Development: World spending must double to meet water, sanitation goals set at 2000 millennium summit, sustainable development commission told, press release from Commission on Sustainable Development on 07/05/2003, Eleventh Session, AM Meeting, may 2003. See: ENV/DEV/726* 07/05/2003.
27. J. Winpenny: *Financing Water for All, Report of the World Panel on Financing Water Infrastructure*, Executive Summary, World Water Council/Global Water Partnership, March 2003.
28. World Water Commission: *A water secure world. Vision for water, life and the*

environment, World Water Council, 2000.

29. Commission on Sustainable Development 2003, Global Water Partnership: *Towards Water Security: A Framework for Action*, Global Water Partnership, Stockholm, 2000.
30. The Economic and Social Council: *Achievements of the International Drinking Water Supply and Sanitation Decade 1981-1990*, The Economic and Social Council, 1990.
31. World Water Commission, 2000. op. cit. p.36.
32. Global Water Partnership, 2000. op. cit. p.76.
33. Ibid. p.78.
34. G8-Summit Evian: *Water – A G8 Action Plan*, G8-Summit Evian, 2003. See: http://www.g8.fr/evian/navigation/news/news_update/water_-_a_g8_action_plan.

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The international trade system

Christian Friis Bach[1]

INTRODUCTION

The need to strengthen and enhance global public goods is great and in a multitude of areas, developments are moving in the right direction. Today, more than 200 regional and international environmental agreements have been signed; the International Court of Justice has increased efforts to prosecute crimes against humanity; furthermore, cooperation concerning global standards encompassing everything from food quality to corporate social responsibility is moving at a swifter pace than anytime previously. But nowhere have things proceeded as quickly as in the area of world trade. The creation of the World Trade Organization with its wide-ranging set of regulations, system for settling disputes and possibilities for imposing sanctions constitutes a milestone in creating a truly international system of trade as an unquestionable public good.

A global public good must have a number of characteristics: everybody must have access to it and one person benefiting from the good must not infringe upon the next person's possibilities to do the same. This is why a global trade system codified in unmistakable rules can also be a global public good. In principle at least, everybody is free to take advantage of the global trade rules. And the fact that one consumer or company gains from global trade rules does not exclude others from similar gains. The international trade rules, drawn up under the auspices of the World Trade Organization, constitute the world's traffic lights.

Establishing global public goods is not only to the advantage of the poorest countries; as a result, affluent countries like ours most certainly stand to increase their prosperity as well. All rich countries, and especially small, open economies may harvest special benefits from a strong international trade

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 419-432
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

system based on firmly established rules. A reinforced and concerted effort is definitely in our own best interests, as well as others'.

In essence, however, strong global trade rules are no different from other global public goods; they are difficult to put firmly in place because no one can claim ownership and everyone can benefit from them once they are established. Certain countries may see this as an open invitation to free ride. If other countries work to establish strong global trade rules, then why not just profit from their existence without actively participating yourself either in the negotiations or in the implementation?

Another snag lies in the fact that a country may often see an advantage in interfering with free trade and bending international trade rules as long as the other countries do not do likewise. If a given country as part of a strategic trade policy manages to lure powerful and knowledge-intensive companies within its borders it may also gain strategic ground by ignoring global trade rules. Interfering with free trade, however, may also be prompted by need or destitution. Or countries may be forced to interfere with free trade in order to give their own companies a chance to gain foothold on the international market.

This means that individual countries may stand to obtain an advantage by subverting free trade, but if everybody does, all will suffer as a consequence. Thus, agreement is hard to reach in global trade negotiations. Everybody hopes their counterparts will comply with the trade agreements they accede to, while resorting to evasion, prevarication, and equivocation themselves. This means that the global trade rules are as yet too weak and feeble.

Also, the actual implementation of global public goods entails difficulties. You need to establish balanced negotiations where everybody participates and gets their say. Here, multilateral negotiations are often preferable to regional or bilateral talks where it is easier for the stronger countries to dominate proceedings. Financial and distributory mechanisms must be put into place guaranteeing a just distribution and equitable cost sharing.

But even when the global public goods have been established, problems still remain. Advantages and drawbacks fall very unevenly on strong and weak shoulders. An international trade system can contribute to growth and development; it can prevent monopolies, protectionism, and opportunism; it can bolster economies of scale; it can cheapen and facilitate importing goods a well as systems, institutions and standards. It can strengthen national reform processes and inspire to increased self-determination and democracy. But taking advantage of global trade rules is difficult if not impossible if you have nothing to trade with. In the short-term, a number of countries may lose out on more trade liberalization and stronger trade rules because they are exposed

to harsher competition, or because they are dependent upon importing cheap subsidized food from the rich countries. This is especially true of many of the poorest countries that are unable to survive in the cutthroat global competition. The poorest countries and the poorest people are at the same time the most vulnerable victims of the fluctuations that may result from a close association with the global market. One example is the drastic roller-coaster prices and cheapening of commodities like coffee and cocoa.

Thus the establishment of free trade and forceful global trade regulations do not automatically benefit everybody involved, and the players that stand to gain most from international trade will often be those who are already strongest at the outset. Often developing countries do not have the needed institutions or the social and environmental foundations that could ensure their fair share of the boons of international trade – and subsequently ensure a fair distribution of these boons. You need to make allowances for this through special rules and redistribution – between individual countries, between the rich and poor inside countries, between women and men. Therefore, the international trade system needs to be combined with mechanisms that ensure that all will benefit from them; mechanisms that can mitigate the negative consequences and mechanisms of distribution which ensure that all get their equitable share of the gains from global trade rules and a freer trade.

A global trade system can also be abused. Large companies can use their market power and the environment as well as people can suffer. Therefore there needs to be a set of strict global rules and guidelines. Otherwise, the system risks self-immolation, drowning in monopolies, market rule, and abuse. For sure, the advantages of the global trade system are by no means equally distributed, as has been demonstrated by numerous studies.

Apart from this, the creation of a public good may also lead to other public "evils." This is true also of trade rules. If goods and services are allowed to move more freely, this will apply not only to beneficial and legitimate goods and services. Free trade and less regulation across country borders may entail increased global crime, trade in human beings, drugs, and arms, as well as terrorism and white-collar crime. Therefore, merely securing free trade is not sufficient. Here, too, it will be all-important to combine free trade and global trade rules with a far more rigorous global regulation effort in a number of areas.

Thus, developing an effective international trade system demands that a number of preconditions are in place. We will examine these in the following.

EFFECTIVE NEGOTIATIONS

The first element is to secure that the process leading to establishing the global public good is as clear-cut, democratic and balanced as possible. A public good is characterized by being available to everybody. But as far as negotiations in the WTO are concerned, the harsh reality has been that too many have been excluded from the proceedings. In other words, steps need to be taken in order to ensure that the system really works. There has to be balanced, democratic and fair negotiations – as well as organizations assuring that all have real influence – including the poorest countries and women; a system guaranteeing that there is sufficient capacity at all levels to hammer out a durable framework for free trade; a system resting firmly on the inviolate rules of the democratic game and fundamental principles of transparency; a system involving mechanisms to resolve conflicts built on generally accepted legal principles of equality before the law as well as equal access to due process.

Here, a concentrated and concerted effort is needed; countries with long-standing traditions of transparency and inclusiveness in political processes stand a good chance of making a viable contribution. They must support measures to promote ownership – not least hearing processes in member countries, regionally and in the WTO; also considering the creation of an interparliamentary assembly associated with the WTO. They must strive towards better access to negotiations and bolstering capacity for weak and underrepresented negotiators, not least poor and marginalized groups. They can fortify the WTO system of resolving disputes, making it simpler and quicker to use without compromising the rule of law for member states, including developing countries. And they can actively support hearings and involving society in general in the WTO's ongoing reviews of trade policies pursued by member countries.

Even though the recent WTO Ministerial Conferences have demonstrated that developing member countries are stronger, better prepared and better organized today than they where in the days of the GATT and in the early days of the WTO, there is still a long road ahead.

EFFECTIVE RULES

The next precondition would have to be that the rules, agreements and organizations comprising the public good are in fact effective. In other words, that the international trade system really works as it is supposed to. This in turn requires the establishment of relevant international law. This may concern determining international standards; e.g. reducing tariffs,

export subsidies, dumping, and other technical trade hindrances; as well as establishing technical standards and fundamental environmental standards further ensuring that prices reflect production costs. It also requires rules governing competition, information, transparency, the exchange of experience garnered (e.g. experiences gained from the introduction of the inner market in the EU), infrastructure, etc.

Here, the WTO has already come a long way. In fact, overall developments, compared to other international political processes, have been both wide-ranging and encouraging. But still, a lot remains to be tackled. And especially in some of the areas where many poor countries could benefit substantially from the system (agriculture, clothing, the textile industry), the affluent countries have blocked significant progress. This undermines confidence in the system and creates an imbalance. The ongoing negotiations under the Doha Development Agenda will be an important crucible determining whether or not the WTO really is a global public good which all can gain access to and benefit from – or whether it is really an instrument promoting the trade policy strategies of selected rich countries – critics are claiming the latter. Hopefully, the former is the case.

Rules, of course, are one thing. Whether or not they are adhered to, quite another. In this regard, the WTO has made substantial headway towards establishing an effective legal system ensuring compliance with the letter and spirit of regulations. Whenever something is agreed upon, disputes are resolved in a sensible and civilized manner and those who do not abide by the rules are penalized accordingly. Verdicts are even handed down rather quickly – in less than 15 months. This would normally not be possible for the legal system in most rich countries.

True, the General Assembly of the UN is even more democratic when it comes to participation and votes, but democracy becomes hollow when a motion is carried and then not complied with. This often happens in the UN. Less in the WTO. This, however, does not mean that the system is perfect. As in any legal system, there is equality before the law – but there is not always equal access to the law. The poorest countries may encounter difficulties when conducting the more difficult cases, and often lack the resources needed to do so. Thus there is a need to strengthen international "legal aid" and ensuring that the poor countries stand a better chance of benefiting from their guaranteed due process within the rules behind the global trade system. But things are moving forward and the rich countries don't necessarily always win. In fact, the USA is the country that loses most cases. All told, the WTO rules function much more effectively than in many other international organizations.

EFFECTIVE INTEGRATION

The problem facing a number of developing countries is that their production simply cannot compete internationally. Quality is too poor and costs are too high. General levels of education, infrastructure and business legislation are low. In other words, they are unable to make use of the international trade system to their own advantage. Therefore, the free trade system needs to be supplemented with initiatives that can contribute to give more developing countries – especially the poorest – a real possibility of benefiting from international trade rules. The developing countries have to be given strengthened possibilities to become full-fledged players in free trade; e.g. by capacity building, industrial development, infrastructure, market access, strengthening social capital, quality control and strengthening the private sector. But also by transitional rules making special allowances for each country's stage of development and needs.

Therefore, there needs to be a cohesive interplay between development assistance and developing the international trade system. By increasing focus on supporting regional trade cooperation between individual developing countries and capacity building in industry and export, the developing countries' effective participation in the international trade system can gain strength and momentum. There is a need for increased financing of technological infrastructure (i.e., upgrading machines as well as people) in the developing countries, rendering them better equipped to gain export certification and approval.

At the same time, it must be made easier for the poorest developing countries to join the WTO. In practice, becoming a member involves a costly process and this may exclude some of the world's poorest countries – contrary to the spirit behind the concept of a public global good. Furthermore, a system reform is needed creating space for special and differentiated treatment of developing countries. The system must be more acutely targeted at each country's specific development stage and corollary needs instead of arbitrary timetables and percentages. Even though, theoretically, there is equal access to a public good, this may not always be true in practice. Here, like many other places, affirmative action may be needed to ensure true equality.

ETHICS AND DISTRIBUTION

Finally, there is the ethical aspect associated with the trade system. It must be ensured that everybody benefits from trade and that no one is short-changed. The public good we call "free trade" can be abused, making it instead a

"public evil" – like the Internet – also a public good, yet also prone to abuse by criminals and terrorists. To prevent this, rules have to be embodied in the international trade system, making sure that trade is ethical. This means establishing international standards and mechanisms to counteract potential problems – including inequitable sharing of profits and environmental and social rules making sure that the trade rules do not open up for clearing natural preserves or extinction of species, non-sustainable waste of resources, squalid working conditions, child labour, the exploitation of women for cheap labour, etc.

These correlations need to be made plainly visible – e.g. by involving environmental questions, fundamental workers' rights, and questions regarding women's rights in the regular reviewing of the trade policies of WTO member countries.

A just international trade system therefore also requires working for fundamental international environmental rules, rules affirming employee rights, health standards, human rights and women's rights. Specifically, this can be ensured by improving coordination between the other major international conventions and agreements and the international trade rules. As we shall see below, this has considerable bearing on how we should conduct our foreign policy.

PRECONDITIONS

Establishing a strong international trade system raises a number of dilemmas for development assistance and for the way we ought to devise our international involvement. In order for this to succeed, it demands a number of adjustments in our foreign policy.

How to avoid that development assistance is undermined and peters out

First of all, there must be established good and effective mechanisms for financing the solution of the problems that can arise as the result of an international trade system. The danger is that establishing global public goods siphons funds away from fighting poverty. Thus it is necessary that we think of the global public goods as part and parcel of our overall development strategies and separate financing global public goods from ordinary development assistance which should continue to be directed at combating poverty in the world's poorest countries. There is much to be said for establishing a special

pool of funds for financing efforts specifically aimed at establishing the global public goods. For example, in the area of trade, these funds might be used for negotiations and the participation of developing countries, support for implementing agreements as well as support for alleviating the negative effects that these agreements may cause in other countries. As has been mentioned, these are activities that hold great advantages for ourselves. They benefit rich countries' companies, they benefit global market stability, and they benefit global economic growth and development.

Taking a long-term view, the increased focus on global public goods should lead to new international means of financing. Just as national public goods are paid for through taxes, excise and otherwise, we need to discuss how global taxes, duties or finance methods can more permanently and firmly support the creation of global public goods. Regarding the climate, implementation of the Kyoto Protocol will automatically provide more funds to build the global public good, which a stable climate means. This is done by dealing in quotas, common implementation, and energy projects in developing countries. Similarly, the WTO could be associated with instruments capable of financing improved negotiations, better implementation of agreements reached and a better handling of the negative effects of increased free trade that may harm some of the poorest countries in the world. In connection with the GATT Uruguay Round it was agreed to help countries that ended up in a quandary because of the rising food prices, but this decision did not result in the allocation of funds or financing. Here awaits a major task since the unequal distribution of benefits and problems will become increasingly glaring. There is a need for a permanent redistribution mechanism just as the common market in the EU was supplemented by structural funds to transfer income between rich and poor regions in Europe.

Broader foundations in the individual countries

The next major challenge will be how to enhance coherence and professionalism when procuring global public goods. In rich countries the salient point will be a far more intense and direct involvement of the individual sector ministries, while the coordinating function still rests with the Foreign Ministry. The individual sector ministries must be globalized thus creating better understanding and awareness concerning global aspects and related questions in the laying out of national policy. This development is already underway. Content responsibility for a number of global public goods increasingly rests with the individual sector ministries, e.g. with the Ministries of Health in relation to global health

(WHO); with the Ministries of Agriculture in relation to agriculture (FAO); with the Ministries of Defence in relation to military security (NATO); with the Ministries of the Environment in relation to international environmental issues, including trade and the environment. This ongoing development must be continued and strengthened so ministries and departments are far more directly involved in global cooperation. This is especially important in the area of trade where the EU is increasingly solely responsible and where an effort by individual EU countries will necessarily involve going beyond national boundaries.

The Ministries of Industry and the Ministries of Agriculture in rich countries should become more actively involved in setting up industries and agriculture in the world's poorest countries. The Ministries of the Environment could take part in an energized effort to mitigate negative environmental effects of trade.

All this can lead to increased professionalism, solidity and inclusiveness. Professionalism because the sector-specific ministries possess the know-how needed to handle all the very complex problems in cooperation with their worldwide network of peers. Solidity because the ministries and their human resources will provide an added and improved platform for participation in global projects. And finally inclusiveness because far more people will become actively involved in the international effort to procure global public goods. Not only the ministries and their departments, but also their networks. This will increase our international perspective and perspicacity.

Better harmony and coherence between international conventions

A third major challenge in establishing a global trade system as a public good is securing a better coherence between the WTO and other international rules and conventions. This could be about global health and food standards; it could be the interplay with global environmental agreements or the fundamental employees' rights under the ILO. Such an interplay is necessary to ensure that free trade really works in the sense that we slowly but surely get harmonization between the various global standards and rules. This means that goods will move more freely across borders and we can avoid that, say, health and environmental standards in the rich countries end up as de facto trade stop blocks obstructing exports from developing countries.

But apart from this, harmonization and congruence between WHO rules and the rules in other international organizations and agreements must

ensure that free trade benefits as many as possible without destroying nature's balance. Congruence with global environmental agreements is needed to ensure that free trade is always conducted with due respect for fundamental environmental rules. Congruence with global employees' rights must ensure that workers are free to negotiate, organize and thus fight in order to ensure their fair share of the benefits arising from free trade – and the coherence will also ensure that free trade exists on an ethically proper foundation without collateral damage unintentionally harming groups like children or women.

The difficult question remains how to ensure this congruence. Here, there have been two different models. One model is to enshrine international standards and rules directly in the WTO set of rules. This was the strategy chosen when the fundamental patent rules were written directly into the Uruguay Round Declaration, instead of merely referring to the rules in the World Patent Organization (WIPO). This has since engendered a heated debate and difficult negotiations and has meant that development of international patent rules has increasingly been moved from the WIPO to the WTO. This is problematic and there is agreement across the board that it will be cumbersome and counterproductive that WTO should simultaneously assume responsibility for both formulating and enforcing environmental rules, health standards and employees' rights.

The alternate model is simply to refer to existing agreements, conventions and organizations. This model was used in connection with the international food standards negotiated under the FAO/WHO *Codex Alimentarius.* These standards were incorporated into the WTO through the Agreement on the Application of Sanitary and Phytosanitary Standards and the Agreement on Technical Trade Barriers. This way, the internationally agreed upon standards and rules are in effect given priority against the WTO free trade rules. The advantage of this model lies in the fact that the standards are conglomerated with the WTO – yet still reside outside the WTO because negotiations regarding these standards are relegated to organizations possessing both the requisite professional expertise and methods applicable to the specific issues involved. Yet an individual country entering into a dispute with the WTO can still refer to and defend standards and rules regarding environment, health or working conditions. Therefore, the prevailing international standards will slowly become the basis from which international trade is conducted. This will ensure a more dynamic development of international standards and rules meaning that economic integration into the WTO can fuel increased harmonization in other areas. This one global public good, free trade, will – and should – lead to an increased focus on other global public goods such as environment, health, and working conditions and workers' rights. Congruity

between the different agreements will ensure a better balance between the development of the different global public goods.

CONCLUSION

A strong international trade system is a global public good which can without doubt benefit rich countries. But, as is the case with all global public goods, benefits and drawbacks are unevenly distributed. For many of the world's poorest countries, access to negotiations is cumbersome, possibilities for real participation in world trade are inadequate, and the potential for collateral damage resulting from increased integration is unfairly hazardous. The international trade system is thus a clear-cut example of how establishing a global public good can never be viewed outside of its total context. There is a clear need for a wide range of initiatives and congruity with other public goods if this project is to succeed. The international trade system must not just be a public good on paper; it has to be so in practice as well.

Thus, the debate concerning an international trade system as a global public good will invariably lead to new discussions as to how to prioritize development assistance. Focus has to be on strengthening and financing global negotiations and agreements. We especially need to scrutinize the major challenge in globalizing the central administration so the sector ministries (Environment, Health, Food, Education) make global considerations a natural part of their everyday business whenever national policy in any given area is decided upon. And it shows the importance of a far better coordination of international negotiations and further convergence of international organizations. We must face all these challenges.

NOTES

1. This article has been written with contributions from a work group under the Danish Council for International Development Cooperation, especially Mette Bloch Hansen (Women and Development, KULU), Hans Peter Slente (the Confederation of Danish Industries, DI), Jens Kvorning (The Danish Federation of Small and Medium-Sized Enterprises), David Madié (personal member) and Niels Lund (The Danish Youth Council, DUF).

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The global responsibility of private companies

Henrik Brade Johansen, Helle Bank Jørgensen and Jens Kvorning

INTRODUCTION

In the working group on global public goods and human rights, the global responsibility of companies was often up for discussion. The participants felt this was an important subject to delve into more substantially, since the systematic involvement of private companies in procuring public goods is becoming ever more wide-ranging. An increasing number of private companies are acting on their own to instigate public goods – public goods like:

- Creating jobs; thus generating income, and hence increased prosperity.
- Improving the working environment.
- Improving the external environment.
- On-the-job training as well as traditional education.
- Improved health through proper nutrition and workplace health check-ups.
- Improved living standards through company housing projects.
- Improved living conditions, particularly for women and girls.

The purpose of this chapter is to describe the background motives increasingly prompting private companies – especially a number of major, multinational Western companies – to codify the procurement of global public goods as part of their business policy and to illustrate the possible consequences for

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 433-450
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

the developing countries; all this of their own accord. The mere fact that companies are progressively becoming direct contributors to development assistance should weigh into Danida's general deliberations. The authors are of the opinion that together, Danida and private companies are in a position to ensure an even better utilization of development assistance funds, provided that the cooperation between companies and Danida is further and systematically intensified. Therefore, this chapter will deal with some of the dilemmas that such a proactive cooperation can entail and how Danida can act in order to ensure the best utilization of development assistance in the short as well as in the long run.

The chapter has the following outline:

- Why do companies assume these increased global responsibilities?
- What, specifically, do companies do to live up to their global responsibilities?
- What factors obstruct companies in their efforts to procure public goods?
- Is Danida in a position to reduce or eliminate these obstacles; and if so, how?

WHY ARE COMPANIES ASSUMING INCREASED GLOBAL RESPONSIBILITY?

Increased globalization

Throughout the past two decades, the widespread globalization of a vast number of industries has been incited by management wishing to reduce production costs across the board. Low wages and an unlimited pool of labour to draw from has prompted many labour intensive companies to transfer parts of their production to low-wage areas such as Eastern Europe, Asia, South America and, for a few companies, Africa. At the same time, companies have increasingly chosen to specialize and outsource a great many functions meaning that their supply chain has become more complex and elaborate. Thus globalization has meant that nowadays, a great many products are manufactured by many different subcontractors on several continents; and that the finished product is introduced identically worldwide. Concurrently, there

has been an unprecedented pace and thrust of developments in information technology and the constant flow of information has been unprecedented. Customers, employees, shareholders, partners, authorities, NGOs and the media are all stakeholders behind the company branding its product.

In more recent years, several companies have experienced how these various stakeholders hold them increasingly responsible – not only for their own actions, but also for actions by their subcontractors and other partners. Companies no longer only bear the economic and legal responsibility for generating profits, paying taxes, creating and maintaining jobs and complying with applicable legislation; they are progressively being held accountable for the social, environmental, and economic consequences of their enterprises and products. Simply put, companies are expected to contribute to sustainable development.

Consumers are demanding ethics behind socially responsible products

In 1999, Environics International Ltd. and The Prince of Wales Business Leaders Forum in association with PricewaterhouseCoopers conducted the survey *The Millennium Poll on Corporate Social Responsibility*, comprising some 25,000 persons in 23 countries on six continents.[1] Among other things, this survey showed that two out of three consumers believe that companies should not only focus on economic goals, but that they are also under an obligation to contribute towards creating a better society.

According to several studies, European consumers are especially vocal and adamant in their demands for corporate social responsibility. *The First Ever European Survey of Consumers' Attitudes Towards Corporate Social Responsibility* was conducted in the year 2000, involving 12,000 respondents from 12 European countries.[2] Among other things, this study demonstrates that 70 per cent of European consumers attach importance to companies' social responsibility when buying their products; furthermore, a full 44 per cent of all European consumers are willing to pay a premium for products they consider socially and environmentally sound. Denmark has the largest share of consumers expressing willingness to pay more for products manufactured in accordance with their ideals and political views. How many such products are actually sold has not been ascertained, but the increased interest among consumers has often been evident in practical terms

when consumers boycott companies denounced for unethical conduct in one way or another.

In the media glare

Previously, companies could live a sheltered life hiding behind their network of retailers, agents, franchisers, etc., thus avoiding being directly associated with large numbers of unorganized employees, perhaps toiling under inhumane and environmentally unconscionable conditions.

In our modern-day information society you can run, but you cannot hide; believing anything else is utopian. Because of the wave of information inundating the entire globe the mounting plethora of information is enormous and ubiquitous; data is incessantly cascading to and fro, unhampered by nations and borders, and the media daily propound new agendas focusing on fresh quandaries, often deciding the order of the day for public debate. Stories both true and false are unearthed or contrived by press, NGOs and consumers alike. Examples abound and foreign as well as Danish companies have contributed to these stories. The first time Denmark had to face this was when Shell was hung out to dry for being environmentally irresponsible by intending to dump the offshore rig *Brent Spar* into the North Sea. This entire case is a prime example of how the media, NGOs and consumers can influence the global agenda. These media exposures have corroborated this fact: if companies do not concentrate sufficiently on operating proactively, thus instigating dialogue and involving the various stakeholders, convincing the surrounding world of the probity of their actions and decisions can prove difficult to say the least.

Since then, the Danish media have focused on a multitude of ethical problems. The ethical question of producing and investing in Myanmar has been publicly debated, as has the sale and spraying of pesticides in Central America and Thailand; also, the use of subcontractors in, among other places, Asia, where levels of safety, wages and minimum work age are considerably below ILO conventions and local regulations is given ever more frequent media attention.

The influence of private companies in developing countries

Thus the days are over when the large multinational companies could get away with a cavalier treatment of international human rights and environment conventions. Should they do so, the ever vigilant NGOs monitoring their every move will tend to come down on them like a ton of bricks – even though

they do not always play by the book concerning methods and documentation themselves. This has come to the attention among manufacturers of nearly all the major global brands – even though these companies are mammoth enough to set the rules regarding work in the poor countries of the world.

By truly respecting social and environmental concerns, companies set high standards regarding how you should treat employees and local communities, even in third world countries. These standards in turn rub off on their many subcontractors who are obliged to toe the same line. It is no use Nike is clean as a whistle if their local suppliers are reckless polluters or try to get away with meagre wages.

Other foreign companies, among them many Danish firms investing in developing countries with or without Danida support, often bring along with them their national norms for what is and isn't done in business.

In the poorest of countries, e.g. in Africa, the few multinational companies hitherto doing business still make up a limited enclave surrounded by local larger and especially smaller enterprises still profiting from operating as cheaply as possible through substandard wages, deplorable working conditions and negligible concerns for the environment.

But in middle-income countries and countries desiring entry into the more demanding "clubs" like, say, the EU, the demands also trickle from above, so to speak. In South East Asia there is a high awareness not to hamper local competitive advantages through excessive tariffs and restrictions. However, a keen eye is beginning to be kept on making environmental and working conditions decent – including sweatshops, textile mills, and carpet weaveries. This is the reason for the strong interest in strengthening environmental control so the many straight and narrow laws long in force can also be effectively enforced as well.

However, a number of substantial challenges need to be met before the entire legislation is observed, to a large extent because companies are constantly seeking cheap suppliers. Competition amongst the many potential suppliers suppresses price levels and companies are not always aware how these low prices are kept low because of low-wage exploitation, work security negligence and disregard for the environment. Thus breaches of the law are still widespread, not least due to lack of local official control.

Take Malaysia: 10 to 15 years ago this country was notorious for balking at all the Western talk of global environmental problems – they wanted to pollute as filthily as we had long done in the west. Today, Malaysia is far advanced in taking a sustainable advantage of their plentiful natural resources, responsible handling of hazardous waste, renewable energy, and an effective environmental policy. Danish environmental assistance has

played a very positive role in this turn for the better in Malaysia, Thailand, and other recipients of DANCED assistance – by supporting decision makers championing the participation of private companies when establishing and protecting global goods.

One has to conclude that not least consumer demands concerning ethical guidelines behind the products they buy were primarily instrumental in motivating producers of major and "exclusive" brands to start showing social and environmental responsibility; this sense of responsibility then in turn slowly seeps downward through the systems – and authorities are also prodded to tighten regulations and improve supervision and inspection.

WHAT DO COMPANIES DO SPECIFICALLY TO LIVE UP TO THIS RESPONSIBILITY?

How the companies respond

As has been mentioned above companies – notably the Western household-name brands – have long since realized that they have an important role to play in the dissemination and implementation of basic human rights, often as laid down in the ILO's 8 fundamental conventions, but also in areas such as education.

Many have pointed out that company responsibility rests on the fact that companies are a natural part of the problem as well as the solution. Global companies possess resources and influence substantial enough to bring about significant change. Add to this the fact that companies have a long-term interest in assuring that their markets can continue to expand. At present, only a limited percentage of the global population actually buy the majority of the products being marketed, but this will change if the populations of the poor countries are elevated to higher levels of income and living standards.

Typically, it has been Western companies who have faced up to their responsibility, but company management in other parts of the world have also realized that they have a role to play. One Malaysian CEO has stated: "People in the world are better educated now. Corporations should be more socially responsible towards their employees and the public. Many companies in the US and in the EU have already adopted higher levels of social standards. Companies in developing countries should follow this lead and voluntarily provide better care toward society and their employees. Responsible companies should not only ensure that their social standards be high; they should also enforce such high social standards onto their suppliers."[3]

But which responsibilities are companies assuming today and what role does this play in connection with global public goods?

From October to December 2002, 992 companies from 43 different countries spanning all continents were asked to respond to a number of questions, including sustainability and which conditions respondents wanted to deal with or concentrate on in the coming year. The result is seen in the diagram below.

Conditions that responding organizations are dealing with or will focus on in the coming year	**2002-2003**
Values, ethics, and ethical guidelines (Code of Conduct)	87% + 8%
Equal rights and diversity	76% + 11%
Environmental effects	71% + 13%
Ensuring sustainable performance from suppliers	64% + 19%
Work/Life balance	55% + 23%
Environmental effects through the full life cycle of the product	51% + 14%
Human rights, including child labour	48% + 8%
Greenhouse gas emissions	40% + 12%

Table 1: Putting principles into practice
Source: The 6th Annual Global CEO Survey – PricewaterhouseCoopers in conjunction with the World Economic Forum, 2003

Comparing these results with previous studies it becomes clear that there is a growing awareness among CEOs, and that this is backed up with specific actions proving the companies' bona fide will to act in an environmentally and socially responsible manner.

Today, most major companies have laid down a Code of Conduct typically distributed among subcontractors and suppliers as part of the requirements they are expected to meet in order to be among the Contracting Parties. Typically, this will entail complying with the basic ILO Conventions, but an increasing number of corporations are also incorporating environmental norms in their Codes of Conduct. Thus 64 per cent of polled CEOs state that they make sure suppliers are environmentally sound, and an added 19 per cent will secure sustainable performance among suppliers in the year to come.

An increasing number of companies actually supervise that suppliers really do follow the letter and spirit of their Code of Conduct, typically by arranging visits from independent parties like NGOs and/or audit firms. This has been a potent contributing factor to the relatively rapid proliferation of viable sustainable performance in private enterprise worldwide. However, the

down side to this turn of events is that usually only suppliers under contract with Western companies are involved – while producers targeting only the domestic market are only indirectly affected. Thus it has become evident that while "child labour is forbidden" with suppliers to Western companies, "children will seek employment" with home market manufacturers where there is no surveillance of health and safety at work. To ameliorate this state of affairs, some companies have thus begun digging deeper into the roots of child labour, i.e. poverty and lack of education – of adults as well as children.

One such example is IKEA; through UNICEF, they have initiated a programme in India the purpose of which is to curtail child labour by creating awareness about the fundamental reasons child labour exists in the first place. There have thus been established alternative teaching centres; also, the programme aims at helping women bolster their economic social standing by expediting their access to loans at reasonable terms and fair wages for their work.

There are several similar projects where an organization like UNICEF receives financial assistance in order to set up schools and train teachers. To ensure that girls are also permitted to attend school by their families, some centres have established a food arrangement. Here, girls are provided with more food than boys – food they can then take home with them to the rest of the family, thus enabling them to fulfil their traditional obligation of providing food for their family while still attending school.

Another positive trend lies in the fact that a growing number of companies have become signatories of the UN Global Compact, now comprising ten principles, for human rights, workers' rights, environmental protection and curbing corruption. Also, the Global Reporting Initiative (GRI) is gaining ground, meaning that companies are increasingly reporting how they are influencing their communities socially, environmentally, and economically.

Furthermore, under UN auspices, talks are underway to discuss a set of norms for human rights responsibilities on the part of multinational companies. The draft set of norms contain no new rights or obligations. The norms, however, are already under heated debate since they will imply legal obligations for companies to comply with them.

The foreign debate on Corporate Governance and the parallel Danish debate launched by the report from the Nørby Commission have also prompted discussion in Danish corporate circles.[4] At the same time, the international and Danish debate regarding company responsibilities has prompted further discussion and the need to investigate the real extent of pressure resting on companies to assume global responsibility. Most recently, the Confederation of Danish Industries initiated an investigation into just how important the

environment, working conditions, ethical human rights requirements, employee rights and related issues are if viewed in relation to price, quality and logistics. The overall conclusion of the Confederation of Danish Industries' study was that such "softer values" have become part of the stiffer competition.

The Study
This study was made in the period from March to July, 2003. It focused mainly on the textile industry and the agricultural sector. Interviews and workshops were organized with about 100 leading multinational companies, unions, and NGOs in Europe and the USA; as well as 100 of their counterparts in Honduras, India, Kenya, and China. Interviews were also conducted with about 200 workers from the four developing countries.

The full report can be downloaded at www.worldbank.org

Similar conclusions have been reached in several European countries and steps have been taken in order to further enhance compliance with ethical standards down the supply chain. For example, German retailers have agreed that over the next three years, some 2,500 textile mills, shoe, leather and toy suppliers in developing countries are to be supervised by independent monitoring firms. Hereafter, suppliers and subcontractors will be thus monitored biannually. Similarly, in France, the major retailers have entered into a cooperation entailing widespread sharing of monitored results amongst each other.

On the international arena, in March of 2003, the World Bank launched a major survey examining how working and environmental conditions could be improved among suppliers and subcontractors to multinational corporations and companies. As part of this study, interviews were conducted with some 100 leading multinational companies, labour unions and NGOs in Europe and the USA as well as a similar number of their counterparts in Honduras, India, Kenya, and China. Among the conclusions garnered from all these interviews:

- Social and environmental requirements placed on suppliers in developing and industrial countries alike are becoming increasingly more important for multinational companies.

- Demands in the social area will gradually align closer and closer with the 8 fundamental ILO conventions. Other human rights, however, are

not immediately expected to be on the agenda in the near future.

- In their practical ethical standards, multinational companies largely guarantee that suppliers comply with local legislation.
- Companies must increasingly endeavour to harmonize their specific demands to the suppliers. The existent heterogeneous implementation causes problems for suppliers and companies alike.
- Multinational companies must realize that improving environmental and working conditions demands closer cooperation with individual suppliers. Merely making the demands and monitoring will not suffice; companies must also assist suppliers in meeting these demands. And employees will have to become more involved in implementing the Codes of Conduct.
- Multinationals must ensure that there is harmony between their ethical demands and their demands regarding delivery, deadlines and prices.

The overall picture delineating the companies' contribution as it will probably have to be enhanced in the years to come tells us that there is a positive effect. Thus one Indian textile manufacturer interviewed for the World Bank Report already mentioned stated that "The multinational companies, in just a matter of years, have done more towards improving working conditions in India than the Indian Labour Authorities have accomplished in 30 years."

Unfortunately, this effort is unequally distributed and has difficulty reaching the most impoverished economies and populations. The question remains how experience from the "Tiger Economies" can be put to use in places where the Western economies have yet to see an advantage in outsourcing – and how the trickle-down effect to local producers can be expedited.

WHAT IS LIMITING COMPANIES IN PROCURING GLOBAL PUBLIC GOODS?

The effect of the companies' reaction to the lack of global public goods

As has been mentioned, an increasing number of companies are actively endeavouring to live up to their "social responsibility" – more and more companies are assuming this responsibility and enshrining it in their mission

and vision statements. They have, so to speak, defined themselves as responsible for societal developments and are beginning to act accordingly.

To begin with, this was a reaction to consumer groups protesting, particularly against the multinational companies focusing solely on profits without due consideration regarding the fundamental ethical codes prevalent in the societies in which they operated. Often, these questions concerned taxation and workers' rights, wages, work environment, external environment, and education.

The changed attitude among multinational companies has been especially apparent in areas like human rights, union rights, and the environment. This is probably due to the fact that all three areas are prominent in the public eye and the results of a changed policy including clear-cut ethical rules are easily seen. At the same time, experience from industrialized countries has demonstrated that ethical codes of conduct are profitable, increasing productivity as well as production as employees realize that the foreign company is offering more than it is obliged to and sets new and better standards for wages and working conditions, cleaner production, education, forbidding child labour, ensuring equality among men and women, etc. Introducing new rules and having them observed as well as attracting the most qualified manpower becomes easier as it becomes obvious that there is a clear correlation between the quality of products and the quality of the workplace.

Investing in a high ethical standard is also an insurance against negative consumer reactions – sudden sensationalist "exposes" of breaches in the ethical code which we take for granted in the Western world, but are non-existent in third world countries. By introducing ethical rules closely resembling the ones we adhere to in the West, the risk of being dragged through the mud and forced to resort to hasty and costly emergency solutions is reduced.

Another, more recent trend we have seen develop in Denmark during the past decade is that small and medium-size companies are increasingly turning their attention to markets and especially the virtually inexhaustible labour pool in third world countries. Internationalization and the abolishment of barriers hampering the free movement of products have forced many Danish businesses, even small ones, to enter into cooperation with companies in developing countries. A vital factor in this tendency has been Danida support like the Private Sector Programme and the Industrialization Fund for Developing Countries, mitigating a significant part of the risks involved in such undertakings.

Although small and medium-size companies are less at risk for being accused of transgressions of codes of ethics than are the far more conspicuous multinationals, they have nevertheless been improving their ethical production

standards. The motivation for this is rarely financial gain since only few small and medium-size companies have had first-hand experience regarding the connection between high standards and revenue. The explanation lies in a combination of ethics and force of habit. Often we are dealing with professionals who experience third world living conditions for the first time and react viscerally and vehemently to the abhorrent conditions they encounter. Their gut reaction is that something must be done in order to improve the most blatant outrages swiftly if they are to accept co-responsibility for, say, modernizing production. They are used to simultaneous assessment of many production risks thanks to the well-oiled Danish system where taking such factors into account is thoroughly ingrained in all companies.

Upgrading and maintaining a qualified labour force in third world countries is one of the areas where the interests of private companies and the overall objectives of NGOs and Danida most obviously coincide. Although, in principle, labour is cheap in developing countries it can rarely be used as it is, but has to undergo extensive training. Thus upgrading skilled labour in developing countries has become a crucial part of the foreign development assistance effect, partly when Danish companies choose to outsource segments of their production to the third world.

Companies clearly stand to benefit from being able to hold on to employees in whose training they have invested substantially. This is primarily done through increasing pay and bonus incentives; yet, on the other hand, the paycheck is the easiest parameter for other employers to compete with. So there is a growing awareness among companies that they must not only secure a steady influx into the work force of fresh, qualified manpower, they also need to have an incentive structure permanently in place that encompasses other factors than salary.

For the latter purpose, there are sound grounds for close collaboration between businesses on the one hand and the NGO production schools and Danida-supported schools on the other. As an example, experiences gathered from close cooperation between the private and public sectors in Denmark focusing on vocational training could be better utilized than is presently the case.

As far as Danida is concerned, there are good possibilities for creating synergy effects by devising methods to hold on to employees working on Danida-supported projects. For one thing, there is a common interest in benefiting from the maximum effect of the training invested within Danida's private sector activities. For another, there exists a number of unexploited room for improvements in employee welfare which could reduce poverty and work as an incentive towards securing long-term employment. This could be

anything from wholesome canteen services, medical check-ups and insurance, company physicians, to pension schemes, child care offers, improved housing, etc.; all these arrangements could be implemented with relatively modest investments in the individual "business-to-business"-projects – yet at the same time, such arrangements would make a big difference for the target group consisting of poor people whose standard of living everyone wishes to improve.

The fact that improved welfare depends on many other factors than wages is especially evident when you look at the women in these countries who are the ones most obviously disencumbered by "fringe benefits" such as the ones just mentioned.

Likewise, the vast majority of Danish companies will take a very dim view of child labour, blatant discrimination of women, ethnic minorities and the disabled, etc., such practices are uniformly seen as clearly unacceptable by Danish companies. This is probably mainly because of the ingrained philosophy of the welfare state as well as the spirit of international assistance more than financial calculations. However, this does not necessarily mean that any Danish company will contribute proactively to promoting equal rights – not even in the Danish labour market.

However, Danish companies are in fact beginning to discern and acknowledge the business advantages for their own businesses in actively supporting integration of newcomers to the work force, like ethnic minorities, and assimilating them into their corporate culture. Such companies, for instance, now have a much easier time accessing, say, the Iraqi market than companies not having made a similar effort. Language and appearance alike will, after all, mean that an Iraqi representative will not be subject to the security risk that an ethnic Dane could encounter. The same goes for other refugee groups like Afghans, Somalis, Palestinians, and so forth. All are from countries where work is not easily found today, but where Danish firms have a definite long-term interest in gaining foothold.

Nevertheless, even though a steadily increasing number of foresighted companies elect to procure public goods of their own accord, the list is far from complete. Thus there is reason to ask what deters companies – who could in fact contribute substantially to securing such goods – from doing so.

The main reasons would seem to be that many companies remain unaware of the obvious advantages inherent in increasing public goods as part of their business strategy and therefore have yet to formulate such a strategy for their ethical standards. However, companies are increasingly realizing the consequences they may face if they do not proactively secure acceptable conditions in their production, shipping and logistics; most recently in view

of the terrorist threat. Thus the US has enacted strict security measures that must be in place. Furthermore, as has previously been mentioned, talks on UN norms are underway. Although the adoption in the UN of these norms still remains an uncertainty, proactive companies have already instigated adherence to these norms in day-to-day business.

CAN DANIDA CONTRIBUTE TO DIMINISHING OR REMOVING THESE LIMITS ALTOGETHER; AND IF SO, HOW?

The question, then, is this: What can Danida do in order to motivate the largest possible number of Danish companies to procure their share of global public goods and thus ensure maximum utilization of the funds allocated by Danida, and to an increasing extent, by private companies? Below, we have outlined a number of strategies which in our opinion would be beneficial for Danida to follow.

It is, however, important to stress that an increased cooperation between Danish companies and Danida would need to be supervised and monitored effectively in the interest of creating proactive solutions for the inevitable dilemmas ensuing whenever private enterprise enters into cooperation with Danida. Any company has an obligation to manage its business in the interest of all stakeholders involved, including avoiding red ink on the bottom line, while Danida of course has to distribute foreign development assistance. Thus there will have to be compulsory guidelines stating to which countries and purposes Danida may contribute.

It is our overall view that a mass of unexplored and unexploited potential for intensifying Danish corporate contributions to the creation of global public goods still exists and that Danida can play an important role in realizing this potential. This is our basis for pointing out the following strategies, which we believe will be beneficial to Danida's work:

- Conditionality – Danida making demands concerning Business Conduct on suppliers to Danida programmes.

- Inspiration – Danida attempting to initiate exchange of experience and synergy between suppliers and other stakeholders not only in Denmark, but among everyone acting in the development assistance community.

- Support – given to companies who through practice have demonstrated new ways to procure global public goods.

Conditionality

Danida does indeed make demands on its suppliers and recipients of development assistance concerning proper ethical conduct in a number of areas; e.g. no assistance is given to producers of arms, alcohol, and tobacco; likewise, guarantees are required that no child labour is used and that local environment standards are met. Still, however, Danida only makes limited use of its opportunity to set up provisos for its suppliers and partners like private companies do – including supervision that the requirements are actually met.

Danida could use its influence to enhance the development effect of its assistance by making specific demands on suppliers and subcontractors and ensuring that these demands are, in fact, complied with. Danida, apart from the requirements most often spelled out in Codes of Conduct already in force, might emphasize concrete focus areas on Danida's own agenda, for instance:

- Demands on a job creation effect, targeting marginalized groups specifically defined. Jobs created measured according to assistance given making the effect on fighting poverty particularly strong, emphasizing labour intensive enterprises such as textiles, ceramics and other crafts reaching the most exposed groups.

- Securing the development of more remote locations which are often neglected because they are considered less crucial than centre areas.

- Environmental sustainability through ensuring ample water and energy resources, sustainable exploitation of forests and arable land, etc.

- The other conditions that figure most prominently in Codes of Conduct of international organizations such as compliance with local legislation, ILO Conventions, etc.

Danida is to direct and monitor short-term as well as long-term effects of these efforts; this includes ascertaining that Danida's terms are met. Furthermore, there needs to be implemented a structure inciting and securing that companies truly feel impelled to contribute actively towards creating sustainable and durable results.

Inspiration

Experience has shown that a concerted effort towards instigating visible change in the way production is carried out in poor countries will often start a trend

in the local community. This is important to bear in mind when evaluating the resources necessary to allocate to bring about these changes. The effect of the assistance provided to invest in improving working conditions, environment, etc. will be significantly enhanced when the right balance is struck so these changes become firmly lodged trends in the community using the least expenditure necessary to achieve this goal.

It would certainly behove Danida to investigate thoroughly which exact mechanisms impel other companies to emulate the market pioneers in this regard whether it be product development, improvements in work environment or other such initiatives. The result could be that methods could be introduced encouraging Danish companies and their partners to share this message and their experience with other companies. Thus a relatively small Danida investment could lead to widespread improvements in entire business sectors. The only question remains the size of the assistance needed to be allocated to achieve this end.

Support for procuring global public goods

Danida has been a key player in prompting Danish companies to translate words into action regarding the environment. For instance, in the Private Sector Programme, Danida has introduced a special environment facility defraying as much as 90 per cent of investments improving working as well as external environment. Without this facility, Danish companies and their partners would run the risk of having to resort to insufficient ad hoc remedies. This would not set the new standards, the way the Danida Environmental Facility has succeeded in doing.

Based on the considerable success Danida has had in inducing Danish companies not just to consider, but to act in an environmentally responsible manner makes it well worth considering whether this principle should be introduced in other important areas such as human rights, equal rights, health, and education. For instance, one might envisage support for combating AIDS and other health education campaigns, introduction of medical insurance, day care offers, canteen services, employee housing, in-house training, etc., as parts of the development of the private sector. Possibilities and opportunities abound and were they to be carried out fully it could mean that companies operating in the developing countries could become role models for others, as has been the case with the environment scheme.

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6

CONCLUSION

Problems and potentials in the application of global public goods

Erik André Andersen, Peder Andersen and Birgit Lindsnæs

THE DISTRIBUTION AND PROCUREMENT OF GLOBAL PUBLIC GOODS

We differentiate between three different aspects of global public goods. First, you can speak of a *wish* or a goal aimed at establishing a global public good. Second, you can ascertain whether or not this global public good has in fact been *delivered.* Third, you can investigate which *systems of production* produce this public good. These distinctions lie behind the following, concluding survey of this book's chapters. See also chart below.

PEACE AND SECURITY

Beginning with the four chapters in the section *Peace and security*, we can see that the chapter on *Peace and stability as global public goods* does not propose any unequivocal answer as to whether or not peace and stability are desirable notions, since the concepts can be and are perceived differently. Even if, at an abstract level, you maintain that there is a global and universally human desire for peace and stability, it is evident that this public good is not delivered on a global scale, but often in specific, regional contexts. Also, much is left to be desired regarding effective production systems and procurement mechanisms for this global good. Although we by no means lack research or thinking in this area, you still have to conclude that these efforts have hitherto proven insufficient.

There exists a global wish for international institutions that preserve peace and security; such institutions have in fact been established; for instance,

Erik André Andersen and Birgit Lindsnæs (eds.),
Towards New Global Strategies. Public Goods and Human Rights, pp. 453-466
(c) 2007. Koninklijke Brill NV. Printed in the Netherlands. ISBN 978 90 04 15507 7.

through the creation of the United Nations and the international adoption of the UN Charter. As to whether or not the mechanisms for ensuring peace and security through these institutions can be considered effective – say, through the UN Charter's sections on thwarting armed conflict or the decision-making process of the UN Security Council – this is a question often heatedly debated.

Similarly, there exists a global wish for rules of engagement in cases of war and these have been codified through international humanitarian law; especially the Geneva Conventions. The mechanisms for ensuring protection have been expanded through the creation of international war tribunals for the former Yugoslavia and Rwanda in the 1990's and, most recently, through the International Criminal Court. The USA, however, has not acceded to the latter, even opposing it, and China is not a member either. In real life, there continues to be serious transgressions against international humanitarian law.

The example of Bosnia and Herzegovina demonstrates that the international wish for peace and security in this war-torn country was platonic in nature until peace, after some years of hesitation, was secured through the Dayton peace agreement. The specific wording of the constitution has been criticized for freezing the country in ethnically subdivided enclaves. Furthermore, previous elections have provided this subdivision with democratic legitimacy and thus contributed to cementing the status quo.

So while the area of peace and security can be said to be surrounded by a widespread wish to establish such a global public good – and while this wish can even be said to have come true to a certain, albeit limited extent – the production systems for a tangible and sustained delivery of peace and security are deficient.

STATE AND CITIZEN

As far as good governance is concerned, looking at the four chapters contained in the section *State and citizen*, we cannot discern a global wish for establishing this as a public good. To the extent that it has been created at all, it has been created only as a club good, especially reserved for affluent countries. Historically, the impetus for creating good governance in developing countries has been an outside influence from international (donor) organizations.

The wish for legal protection and the rule of law has global reach and is expressed through the adoption of an international human rights convention on civil and political rights. And yet the rule of law is far from being actualized as a global public good. In the West, a society ruled by law

with all the appurtenances is the general mechanism for ensuring this public good, while this good in many African countries (case in point: Uganda) is safeguarded through traditional, extra-governmental judicial customs. The challenge consists in amalgamating local judicial customs with international legal principles and human rights.

Curbing corruption is a public good gradually being recognized as a global public good through the adoption of international anti-corruption campaigns and adoption of an international convention against corruption. The tangible mechanisms for an effective procurement of this global public good is a combination of national initiative (Singapore could be mentioned as a role model) on the one hand, and endeavours such as that undertaken by the international NGO Transparency International (through a corruption index and integrity pacts) on the other.

There is indeed a global wish for making global public goods accessible to socially and economically vulnerable groups; the international convention on, among other things, economic and social rights is proof of this. Specific mechanisms for assuring such access, however, do not exist in places like the African rural districts, where large population groups are excluded because of poverty. Although access can be said to be manifest in an EU context, there is too great a gap between the African and the European reality to make talk of a global public good meaningful.

So there is no clear and worldwide wish for establishing global public goods in the area we call the relationship between state and citizen; particularly regarding good governance; to the extent that this really exists it remains only a club good. In the three other areas, the global wish is expressed through the adoption of international conventions. The specific production mechanisms for sustained delivery of global public goods are most clearly visible in fighting corruption, to a lesser extent in ensuring the rule of law, and least in securing the access of socially and economically vulnerable groups to global public goods.

ACCESS TO INFORMATION

Turning our attention to the third section, entitled *Access to information,* we can see how establishing this global public good has turned out to be a worldwide wish, as manifested through the adoption of international human rights conventions. In practical terms, however, there have been major stumbling blocks due to an opposing wish among those in power to monopolize knowledge and information.

In order to combat this, simple information tools have proven effective. The mechanisms for procuring this global public good – access to information – have been privately and publicly produced information tools such as cassette tapes, telephones, radio, and published statute books – with the added effect of the privately produced, but increasingly public Internet, which is both "public by design", and which also - through email correspondence and widespread Internet access - provides an opportunity for communication and access to information.

With regard to research, there is a patent global wish that basic research and dissemination of research should be a public good. And this is also true in real life, making it possible to speak of a global public good. The systems of production are chiefly located at the national and regional levels, while the notion of a Global University has yet to become reality. On the other hand, there is no apparent global desire that more specific and targeted research (as opposed to basic research) should become a global public good.

Considering education, this global public good is firmly rooted in the human rights documents – an expression of a global wish for procuring education for everybody. However, the right to an education is by no means a global reality. The specific mechanisms for procuring and maintaining this global public good suffer from many difficulties, for instance as regards cultural and linguistic differences in the various countries and, not least, funding.

Summarizing access to information, there is a general wish to establish access to knowledge as a global public good and it is underpinned through the adoption of international human rights conventions. In practical terms, this global public good is beset with numerous limitations, but the hands-on mechanisms for procuring this global public good often work; especially through private enterprise. Of course, the public efforts could be strengthened, e.g. through international support for educational programmes.

EXAMPLES OF IMPLEMENTATION

Turning to *Examples of implementation* one should note that there are gradual interminglings between this section and the previous, since – in certain areas - the previous section *Access to information* also contains important aspects precisely about operationalization – and there is an overlap in relationship to the contribution that private goods make to the procurement of global public goods. We feel, nonetheless, that "access to information" is an independent subject, which is why we have made this distinction.

Looking at the separate chapters in the final section of the book, it is evident that there is a universal wish for procuring global health and that this wish is manifest through international health programmes. These health programmes are supported by global research in the area, and even though deficiencies can be pointed out both in regard to focus in research and in regard to funding/implementation, we are still convinced that the specific mechanisms for a sustained procurement of health as a global public good are quite firmly established on a global scale.

The right to water has been recognized as a human right. Thus a global wish has been expressed that everybody should have adequate access to water. As far as the specific mechanisms for sustainable procurement of a necessary and adequate amount of water is concerned, there are both problems of interpretation as to determining exactly where the right to water lies and problems of regulating water supply and water management, as well as how to finance these systems. The systems, however, seem to be reasonably well-rooted in specific procedures, making it possible to say that the right to water is implemented primarily as national and regional public goods.

The international trade system is built on a global wish and is manifested through the work done in the international World Trade Organization, WTO. The practical mechanisms at hand for procuring this global public good are among the best developed and afford ample opportunities for coordinating the procurement of this specific good with the procurement of other global public goods - such as health, a sustainable environment, labour protection, and human rights.

The UN Global Compact is the expression of a global wish for companies to assume global responsibility. Their contribution towards procuring global public goods such as prosperity, health, the environment, and education exists in the real world, as do the requisite production systems through these company endeavours. In the more developed amongst the developing countries, these endeavours are an effective and important supplement to the public goods produced by the states.

Thus it is evident that the four latter areas (health, water, trade, and the global responsibility of private companies) are the ones where the concrete production systems for procuring global public goods are most highly evolved. This does not mean that these global public goods are delivered in full, but the mechanisms for their procurement are in place and really work to a certain extent.

	Peace and security			**State and citizen**					**Access to information**				**Implementation**			
	Peace and stability	International institutions	Law of war	Good governance	Due process	Curbing corruption	Access to GPG for vulnerable groups: Africa	Access to GPG for vulnerable groups: EU	Simple info-tools	Internet	Research	Education	Health	Water	International trade system	Private companies
Wish	X	X	X	(X)	X	X	X	X	X	X	X	X	X	X	X	X
Good	(X)	(X)	(X)	(X)		(X)		X	(X)	X	X	(X)	(X)	X	X	X
System of production		(X)	(X)		(X)	(X)		X	(X)	(X)	(X)	(X)	(X)	(X)	(X)	(X)

Chart: Overview over the distribution and procurement of global public goods

The chart shows that there is a widespread wish for global public goods (as evidenced by the top row of X's) – and, in nearly all instances, this wish has been explicated through the adoption of international conventions and agreements. When we look at the different subjects dealt with in the present volume, we can also see how each global public good is in fact delivered, to a certain extent. The greatest difficulty lies in identifying the production systems delivering each global public good.

The chart can be augmented by adding a regional dimension. If, instead of looking solely at global public goods, you were instead to look at regional public goods, the parentheses can be omitted in many cases – and more X's can be inserted. A similar, positive point of view applies to club goods; the club of countries delivering the public good will often merge in regional collaboration, but they can also be spread out over the globe, as is the case with good governance and Internet access. In the present volume, the EU is highlighted as a regional form of cooperation delivering regional public goods in all the areas mentioned above.

NEW REGIONAL FORMS OF COOPERATION INSPIRED BY THE EU

Much would seem to indicate that the EU example is illustrative of future, regional, multilateral forms of cooperation. The EU integrates the political level with economic cooperation, the drawing up of treaties and regulations, access to trial by court, procurement of regional public goods, and the building of welfare states through subsidizing less developed sub-regions. There is a clear division of responsibilities between overall political goals and national implementation. Both the EU and the states are fulcrums for political leadership and implementation. The EU conducts an integrated policy while – at the same time – incorporating horizontal as well as vertical modes of cooperation. This type of cooperation is already fully in place in the EU, e.g. in connection with the integration of the 10 new and the soon-to-be EU member countries in the close EU vicinity (e.g. the Balkans through the Stability Pact and Turkey).

Political, economic, legal, and institutional integration and focus on regimes are the key to this success. Some regimes, however, remain separate from the EU; among others, the human rights area, since the Council of Europe and the appurtenant court retain competence in this field. In the military domain, several EU countries are members of NATO, as are the USA and Turkey. This does not mean, however, that the EU has been able to integrate the human rights regime in the overall EU strategy, and human rights do in fact loom large in the criteria for acceptance into the EU. On the other hand, while providing soft security, the EU is weak militarily, where the USA remains predominant, as it does in the NATO alliance.

However, if the global public goods that are given priority in the Millennium Goals are to be procured, this will require both a horizontal and vertical top-down approach as well as a bottom-up approach. As the only regional organization, the EU has managed to develop an approach focusing on those regional public goods, identical with the Millennium Goals that cannot be adequately procured by non-governmental players off the cuff. Regional cooperation integrating the different levels as practised by the EU may be wishful thinking in other regions as the world stands today; yet, presumably, this will be a precondition for the systematic procurement of first regional, and subsequently global public goods and human rights. Development of new modes of cooperation could be a substantive contribution to their implementation.

Yet without political will and without the political leadership of the states and the international organizations, it is difficult to believe that all of this will ever become reality, especially in the least developed countries and in

non-democratic countries, since international organizations and UN regimes can hardly create the basis for meeting such difficult challenges. Thus it is also imperative to focus on the weakest link in the global public good way of thinking – good governance – which has been recognized by both the UNDP and the World Bank of late.

Furthermore, the EU model could also serve as a point of departure for discussing how regional, supranational organizations could be strengthened in other corners of the world. It might be seen as a platform for developing regional, political leaderships consisting of a number of cooperating regional, supranational organizations integrated in the UN system, to offer one example. This could serve to raise the bar for the UN, making it a more potent organ; it should be based on political, economic, and legal integration as well as on regimes. The outcome could be that regional, supranational organizations might be represented in the UN Security Council, giving this body a more global range.

Consequently, regional, supranational organizations could contribute to making "global governance" more than wishful thinking, at least in theory.

INCENTIVES AND GLOBAL PUBLIC GOODS

The existence of global public goods increases the world production of goods and services and the potential welfare of international society as well as specific groups or regions. Also, very often global public goods and services are intermediate goods in the production of private goods and services. However, the supply of public goods is limited because of free riding, non-optimal incentive structures and inappropriate international institutions.

A pure global public good cannot be provided at an optimal level in a market economy. The single agent (nation, region, interest group or individual) has very limited incentives to produce a public good or service as the good or service cannot be traded. The optimal level can only be produced and provided if all agents reveal their true interest in the good and at the same time are willing to finance it according to their preferences.

The main obstacle is the existence of free riding. A free rider will benefit if some public good is provided and payed by somebody else. As a consequence some choose to be free riders while others do not fully reveal their preferences. The same problem arises if the good is a local, a semi-public good or a club good, or if the production or consumption of the good has a positive spill-over.

In a policy context the challenge is to create institutions and rules in

various areas which can facilitate the supply of public goods. The challenge is twofold: Firstly, the production level will most likely be too low as no mechanism to reveal the agents' true preferences exists. Secondly, even if there is a general agreement about the level of a public good the mechanism to allocate the cost of production will be up for discussion. Often, the issue of payment and different views regarding the optimal level of the public good are related to the same strategic game. In game theory, in a simple game we get the case of the prisoner's dilemma but also in more complicated games, which may be repeated, the solutions are non-optimal.

However, even if the theory predicts low levels of global public goods and shows the difficulties of obtaining solutions to the games of financing the costs, a number of cases exists where nations, groups and institutions cooperate and through agreement provide global goods and club goods, reduce externality problems and thereby help to achieve a higher standard of living.

Examples and practical issues

One of the major conflicts where an almost pure public good is playing the key role is the campaign to tackle global warming. CO2 pollution is a pure public "evil" and the reduction of global warming a pure global public good. A way to decrease global warming is to reduce the admission of CO2 into the atmosphere. Individual nations have little incentive to lower the amount of CO2 they release into the atmosphere as the benefit for each nation is very small. For some countries an increase may even have positive effects, at least in the short run.

The Kyoto process has shown how difficult it is to combat global warming. These difficulties include, free riding, tough negotiations with some countries about what goals to establish regarding reductions, and the problem of how to find ways and means to enforce the agreement. The reasons are many but follow directly from the basic theory. Each nation faces upfront economic and political costs. Binding reduction goals mean higher production costs for the industry, higher consumer prices or higher taxes. The benefits of such reductions are uncertain in terms of their magnitude, how long they will take to be effective, and how equally or unequally they are distributed among participants and non-participants (non-participants may benefit as much as participants for instance).

Another prime example of a pure global public good is knowledge. When knowledge is made publicly accessible it feeds into the education system and improves productivity. Both directly and indirectly it improves production

and results in better or cheaper products and it enhances applied research and innovation. To find ways to improve knowledge production and knowledge sharing is important with regard to ensuring the creation of global wealth, fighting poverty and also as a means to reduce inequality in the world.

The incentive to produce knowledge which by its nature is a pure public good is limited. The individual firm works hard to protect knowledge and may use international patent rights to do so. Knowledge production in a market economy demands patenting laws, as a private company has very little incentive to invest in research if these research results become a common good shortly afterwards. On the other hand, if the patenting rights create monopolies this will result in inefficient use of knowledge. This is one of the main reasons for having public universities, financed by the tax-payer, where research results are accessible to all. However, current global trends are favouring privately financed universities where universities and private firms cooperate to produce research results which are inaccessible to the general public.

To turn this development around requires a change in the funding system as well as a change in attitudes towards research, which must be regarded as an important means to create wealth on a global scale. The more university research is provided from public funds, the more research is turned into a public good, the more efficiently knowledge will be used.

The research produced by international institutions such as the IMF, World Bank, World Trade Organizations (WTO) and the UN, as well as clubs such as the EU and NATO, may be regarded as public or club goods.

THE LEAST DEVELOPED COUNTRIES

Development assistance to the world's poorest countries should be seen as part and parcel of the efforts to reach the Millennium Goals and the general procurement of global public goods. It is regional development brought about on a global scale, so to speak. In the short term, this probably means that assistance cannot be extended simultaneously on all the levels we know are essential to building peaceful and democratic states. Therefore, donors should continue to give bilateral development assistance targeted directly at the least developed countries in the world, particularly Africa, while at the same time maintaining goal oriented efforts to establish regional, multilateral organizations for cooperation capable of meeting the challenges that arise in their local area and cultural sphere.

Economic statistics make it clear that, for most developing countries, global influences mean much more than the development assistance they

receive. This is something we must take much more into account. For instance, GNP will drop dramatically whenever a country is hit by financial instability. Together, private investments in developing countries and money transfers from emigrants to developing countries are four times larger than the entire amount of development assistance disbursed. The bulk of this money, however, is invested in countries that are not among the very poorest in the world, like India, Mexico, the Philippines, Morocco, Egypt, and Turkey. These funds do not benefit the most destitute, mainly African nations.

Therefore, development assistance should concentrate on the very poorest and least developed countries, especially in Africa, while aid to the countries that are not quite as poor could be categorized as contributions towards the procurement of global public goods. Consequently, it is also important to build development assistance around strategic initiatives integrating state and non-state levels, plus to establish a solid political basis capable of ensuring that the Millennium Goals are reached and that global public goods are delivered.

INNOVATIVE THINKING AND FOCUS

Globalization calls for innovative thinking and a clear focus of action, both politically, normatively, strategically, organizationally, and financially. Alone, procuring public goods and building institutional capacity in developing countries cannot battle poverty nor ensure prosperity, since the countries involved rely heavily on global conditions and international politics. For instance, the right to good health is dependent on a concentrated national effort which is often impossible without substantial outside assistance. Fighting AIDS/HIV is dependent upon a global and concerted effort – including prophylactic research and investments in care, prevention and cures. The right to water can depend on establishing a cross-border water supply, and the right to a safe food supply may depend on peace and security and keeping borders open for trade, transportation, and communication.

In order to achieve a harmonious effect of regional and global efforts it makes sense to give high priority to the national objectives laid down in the Millennium Goals. This, for instance, could entail that the rich nations of the world commit to financing free elementary education and health to the populations of the 20 poorest countries. This could be done according to objective, internationally set criteria until the states are able to take over themselves. This could be conditional upon a mutual contract entered into with recipient nations explicating a gradual strengthening of the elements needed for good governance and bolstering human rights, plus local capacity

and competence building.

In the same vein, agreements could be made about the other Millennium Goals and global public goods.

Also, there is a need to persuade future generations of politicians; e.g. through formative qualifications in youth organizations, through democratic tutelage in volunteer organizations, and through the simple realization that politics and dialogue are the prime movers of positive change. It is still important that governments are aided in building institutional capacity enabling governments and interest groups in the poor countries to contribute to national and international decision-making processes. The UN and the world's democratic states, private organizations, and companies can all join forces to provide the necessary basis for good governance and capacity building. This could also apply to dictatorships where experience has demonstrated that there always exist qualified interest groups, citizens and civil servants genuinely interested in contributing to change.

In the 1970's, the significant Helsinki process, later leading to the formation of the OSCE, contributed to safeguarding the transition to open forms of government, creating dialogue between countless players on all levels. Similar initiatives might pave the way for a positive dialogue with government leaders in dictatorships and, in the long run, might lead to increased openness although this still remains a rocky road.

NOVEL FORMS OF ORGANIZATION

In a world of more than six billion people, a mighty effort is required in order to create optimum conditions for facilitating development, reaching the Millennium Goals, and procuring global public goods. Here, nation states as well as global players have an obligation to cooperate horizontally as well as vertically. We have already highlighted the EU as a positive example, since this is an instance where a multitude of direct, regional collaborations have been established across countries, as well as between government agencies, semi-governmental and independent institutions, and as twinning arrangements, producing tangible results.

You could envisage similar forms of direct, cross-border cooperation between sector ministries (ministries of tax, finance, justice, health, education, trade, and agriculture) and their subsidiary bodies (tax authorities, police, medico-legal institutions, university hospitals, educational systems, water and veterinary inspections). These collaborative efforts could be coordinated and facilitated by foreign ministries and ministries for development assistance,

being the bodies possessing global political and cultural insight.

One exciting vision could be if, say, the education ministries of the world could cooperate in securing the right to elementary education. The ministries could draw up common visions, goals, and norms for the contents and pedagogics of this education and look at financing options, while rules could be set internationally for which basic elements should form part of a global, secular elementary schooling curriculum. They could collaborate on which educational institutions are best placed regionally and which globally – e.g. specialized supplementary training for judges or exterminators. Likewise, the more developed countries could assist lesser developed nations with counselling on how to devise education in new academic areas. Such a collaboration could form a natural part of the mandates given to the ministries which naturally should be given separate budgets for this work.

The chance that education ministers and professionals will provide mutual inspiration rather than obstructing each other is worth betting on. Also, it could be exciting to see where a collaboration between ministries dealing with different creeds – be they Christianity, Islam, or Buddhism – might lead.

The precondition for collaboration still remains a continuing focus on establishing and developing national capacities to safeguard such collaborations – and building strong networks between national and local institutions. Good governance and respect for human rights is still entirely of the essence.

APPENDICES

Appendix 1

OVERVIEW OF CONVENTIONS, ETC.

Title	Opening of the treaty	Entry into force	Number of ratifications	Within the framework of	Source
International Covenant on Civil and Political Rights	December, 1966	March, 1976	151 (November, 2003)	UN	http://www.unhchr.ch/html/menu3/b/a_ccpr.htm
International Covenant on Economic, Social and Cultural Rights	December, 1966	January, 1976	148 (November, 2003)	UN	http://www.unhchr.ch/html/menu3/b/a_cescr.htm
The Universal Declaration of Human Rights	1948	1948		UN	http://www.unhchr.ch/udhr/lang/eng.htm
Convention for the Protection of Human Rights and Fundamental Freedoms	November, 1950	September, 1953	45	Council of Europe	http://conventions.coe.int/treaty/en/Treaties/Word/005.doc
American Convention on Human Rights "Pact of San José, Costa Rica"	November, 1969	July, 1978	25	Organization of American States	http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/key_issues/eng
African (Banjul) Charter on Human and Peoples' Rights	June, 1982	October, 1986	53	African Union	http://www.africa-union.org/home/Welcome.htm
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field	August , 1949	October, 1950	191	UN	http://www.unhchr.ch/html/menu3/b/q_genev1.htm
Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea	August , 1949	October, 1950	191	UN	http://www.unhchr.ch/html/menu3/b/q_genev2.htm
Geneva Convention Relative to the Treatment of Prisoners of War	August , 1949	October, 1950	191	UN	http://www.unhchr.ch/html/menu3/b/91.htm
Geneva Convention Relative to the Protection of Civilian Persons in Time of War	August , 1949	October, 1950	191	UN	http://www.unhchr.ch/html/menu3/b/92.htm
Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1)	June, 1977	December, 1979	161	UN	http://www.unhchr.ch/html/menu3/b/93.htm
Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)	June, 1977	December, 1978	156	UN	http://www.unhchr.ch/html/menu3/b/94.htm
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions	November,1997	February, 1999	35	OECD	http://www.oecd.org/document/21/0,2340,en_2649_34855_2017813_1_1_1_1,00.html
United Nations Convention Against Corruption	October, 2003	Not yet in force	108 signatories	UN	http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	December, 1984	June, 1987	133	UN (November, 2003)	http://www.unhchr.ch/html/menu3/b/h_cat39.htm
Convention on the Elimination of All Forms of Discrimination Against Women	December, 1979	September, 1981	174	UN (November, 2003)	http://www.unhchr.ch/html/menu3/b/e1cedaw.htm

Convention on the Rights of the Child	November, 1989	September, 1990	192	UN (November, 2003)	http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm
Charter of the United Nations	June, 1945	October, 1945		UN	http://www.unhchr.ch/html/menu3/b/ch-cont.htm
United Nations Millennium Development Goals 2015	September, 2000			UN	http://www.un.org/millenniumgoals/
European Social Charter	1961	1965	26[9]	Council of Europe	http://conventions.coe.int/treaty/en/treaties/html/035.htm
Freedom of Association and Protection of the Right to Organise Convention, Convention 87	July, 1948	July, 1950	142[10]	ILO	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087
Right to Organise and Collective Bargaining Convention, Convention 98	July, 1949	July, 1951	154[11]	ILO	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098
Forced Labour Convention, Convention 29	June, 1930	May, 1932	163[12]	ILO	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029
C105 Abolition of Forced Labour Convention, Convention 105	June, 1957	January, 1959	162 [13]	ILO	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105
Equal Remuneration Convention, Convention 100	June, 1951	May, 1953	161[14]	ILO	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100
Discrimination (Employment and Occupation) Convention, Convention 111.	June, 1958	June, 1960	160[15]	ILO	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111
Minimum Age Convention, Convention 138	June, 1973	June, 1976	134[16]	ILO	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138
Worst Forms of Child Labour Convention, Convention 182	June, 1999	November, 2000	150[17]	ILO	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182
The ILO Constitution	1919	-	177	ILO	http://www.ilo.org/public/english/about/iloconst.htm
World Declaration on Education For All	1990	-	-	UNESCO	http://www.unesco.org/education/efa/ed_for_all/background/jomtien_declaration.shtml
Vienna Declaration and Programme of Action	June, 1993	-	-	UN	http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument

1. http://www.ircr.org/ihl.nsf/WebNORM?OpenView&Start=43.1.105&Count=150&Expand=43.1#43.1
2. http://www.ircr.org/ihl.nsf/WebNORM?OpenView&Start=43.1.106&Count=150&Expand=43.1#43.1
3. Ibid
4. Ibid
5. http://www.ircr.org/ihl.nsf/WebNORM?OpenView&Start=52.1.54&Count=150&Expand=52.1#52.1
6. http://www.ircr.org/ihl.nsf/WebNORM?OpenView&Start=53.1.39&Count=150&Expand=53.1#53.1
7. http://www.oecd.org/dataoecd/59/13/1898632.pdf
8. http://www.unodc.org/unodc/en/crime_signatures_corruption.html
9. http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=035&CM=&DF=&CL=ENG
10. http://www.ilo.org/ilolex/english/docs/declworld.htm
11. Ibid
12. Ibid
13. Ibid
14. Ibid
15. Ibid
16. Ibid
17. Ibid

Appendix 2

GLOBAL PUBLIC GOODS FAQ
A MINIATURE DICTIONARY

This ”miniature dictionary” will seek to answer some of the most frequently asked questions regarding global public goods.

WHY CONCERN YOURSELF WITH GLOBAL PUBLIC GOODS?

One of the greatest challenges facing humanity is the fact that many problems are increasingly global in nature; meaning that solutions more often than not must be found at the global level. Since public goods play a positive role for the nation state, the idea has arisen to expand the concept of public goods to apply globally. Hence the investigation of how to use the concept *global* public goods.

WHAT ARE THE THEORETICAL FOUNDATIONS?

It is demonstrable that public goods *in the long, strategic perspective constitute a necessary and positive contribution to societal development* (i.e. make for a more well-performing and efficient society). Public goods are often associated with the post-war social democratic welfare model, but the project does not involve (partisan) politics. First and foremost, it is a rational argument for public goods. Most liberalists also share this point of view. The task lies in finding the proper balance between the public and private sector and in finding appropriate means of financing public goods. These are the areas where political differences are to be found.

WHAT ARE PUBLIC GOODS?

Definition: A public good is a service or product that you cannot exclude others from using and where the consumption of one party does not influence the possibility of consuming for others.

This definition applies to so-called “pure” public goods. If, for one reason or another, there is limited access to the use of public goods – which will frequently be the case in real life – you often speak of “impure” public goods. Here there are two types:

- club goods (only for members, but without competition among members for the good involved)

- scarce goods (no one is excluded, but the good only exists in limited quantities, thus there is competition for the good)
  This can be illustrated by the following chart:

PRIVATE AND PUBLIC GOODS:

	Competitive	Non-competitive
Exclusive	PRIVATE GOODS	CLUB GOODS
Non-exclusive	SCARCE GOODS	PURE PUBLIC GOODS

IS IT POSSIBLE TO MENTION SOME EXAMPLES OF PUBLIC GOODS?

There are not many examples of "pure" public goods. The classic example is security - one fine day you may hope that both peace and security can be expanded into being global public goods. In the real world, there are far more examples of "impure" public goods. Among scarce goods, exhaustible natural resources are a typical example. In principle, they can be consumed by all, but they only exist in limited supply so one should protect these goods because of their scarcity. There are also many club goods, but you must be a "club member" in order to consume them. Danish citizenship rights are an example of a club good.

The UN system delivers global public goods. These benefits, however, can come in the shape both of scarce goods and club goods, depending on the nature of the services, e.g. security, health, working conditions, etc.

As the examples demonstrate, public goods can be natural as well as man-made; also, you can differentiate between national, regional, and global public goods. The different levels of abstraction and varieties of goods often make it difficult to discuss global public goods.

IS THERE ALSO SUCH A THING AS PUBLIC EVILS?

As a point of departure, public goods are value neutral ("a service or product.") UNDP has introduced a pedagogical differentiation between public "goods" and public "evils." Public goods should be promoted, public evils should be

reduced. Examples: clean environment – polluted environment; human rights – the absence of human rights.

It is possible to view the EU as a textbook example of a regional public good. Yet some will argue that the EU is a regional evil! Thus the UNDP's pedagogical discrimination between goods and evils is actually tantamount to politicization of the concept. It is useful to emphasize this, since political choices will always be involved. The crucial point is to look at the benefits that come from any given public good.

WHO CONSUMES PUBLIC GOODS?

Everybody does. At least in principle. You must take into consideration the limitations inherent in scarce goods and club goods.

WHO PRODUCES THE PUBLIC GOODS?

Apart from the public goods afforded by nature, public goods have traditionally been produced by the public sector and this, presumably, will also be the case in the future. But from time to time, they may also be produced by private enterprise. For instance, the public good "freedom of expression" is very much ensured by the privately owned free media.

What is crucial about public goods is that the public have access to these goods; who produces them is less essential.

WHAT IS THE PRICE OF PUBLIC GOODS? AND WHO SHOULD PAY?

The price of public goods cannot be fixed by the market (through supply and demand). The individual consumer will not be motivated to pay because of the possibility of consuming free of charge (you can be a so-called "free rider.") Therefore, there has to be a political consensus that everybody pays collectively (for instance, through taxes).

However, the price of public goods can, to a certain extent, be fixed by looking at market prices, for instance by adding all the costs incurred in producing any given public good (raw materials, wages, etc.) Yet, in the final analysis, the price will be determined politically.

WHAT ARE THE OBJECTIVES?

In general, the main tasks are:

- defining the fitting global public goods;
- realizing global public goods;
- financing global public goods.

Here, in the first place, you should not underestimate the question of definition; i.e. zeroing in on and agreeing upon what is relevant. There is no general agreement regarding what is or should be global public goods. In other words, we are talking about a political choice: which specific public goods do we want?

In the second place there is no standard model as regards actual implementation; two fundamentally different approaches, however, should be mentioned. One is "bottom-up" (creating public goods locally, then spreading them regionally and globally: eventually, the sum of local public goods will finally constitute one global public good. For example, the association "from the bottom" of democracies in Europe has eventually led to the regional good known as the European Union.) The other approach is "top-down" (defining global public goods in an international organization – for instance, the UN – and implementing these globally. Here, the nation states will of course constitute important agents of implementation, but the process has been initiated "from the top.") This being said, it should be added that the task or challenge still remains to integrate the different levels.

In the third and final place, with regard to financing, the Topin-tax has been mentioned as a possibility. Add to this the fact that economists are searching for possibilities of creating economic incentives to produce public goods. Financing can also be brought about if the affluent countries decide to defray a major part of the financing costs, thereby accepting developing countries as *de facto* free-riders. An important awareness about the latter method of financing comes from realizing that *global public goods are a benefit to all, including those of us living in the affluent parts of the world.*

IS THERE A CONNECTION BETWEEN GLOBAL PUBLIC GOODS AND HUMAN RIGHTS?

Global public goods do partly coincide with human rights. The two concepts

mutually support each other and share the same points of origin in the history of Western philosophy. Both concepts are universal and there is an agreement between (some) global public goods and the texts of the human rights conventions. Some global public goods, however, are more comprehensive than the human rights (not all global public goods are human rights, but all human rights are global public goods.)

In a practical/political sense, global public goods can be a less controversial way of establishing human rights (a lever). For example, the discussion about global public goods can contribute towards furthering economic, social, and cultural rights.

WHY IS IT SO DIFFICULT TO USE THE CONCEPT OF GLOBAL PUBLIC GOODS?

One of the greatest problems inherent in global public goods lies in usage of the term itself. You can, of course, claim that global public goods have a self-evident legitimacy for the solution of many global problems, but this lies on an abstract level. When delving into substance, people have a tendency to revert to the usual categories (i.e. they continue along familiar lines of argument in their respective professional discussions.) So what use, then, is a concept like global public goods?

An example: *Peace and Security*

Peace and security is a global public good. Most will agree on this. But in the discussion regarding how to provide peace and security, one tends to move within known analytic categories like international law, the UN Charter, military alliances, conflict prevention, democracy and human rights, and so on.

Here, economists will counter that it is essential to move from a discussion of static organizational structures, alliances, etc. – on to a discussion of the dynamics and flow of the services provided and which constructive and/or destructive consequences they will entail in the future. The concept of public goods suggests the need to focus on economic incentives and their built-in dynamics: you need a case-by-case focus.

Thus, although global public goods can at first seem a fairly abstract phenomenon, it is in reality a concept focusing especially on hands-on aspects.

WHERE CAN I LEARN MORE ABOUT GLOBAL PUBLIC GOODS?

Two of the most seminal international works are Inge Kaul et al. (eds.): *Global Public Goods: International Cooperation in the 21st Century*, Oxford University Press, New York 1999, and Inge Kaul et al. (eds.): *Providing Global Public Goods: Managing Globalization*, Oxford University Press, New York 2003. Also, you may refer to www.undp.org and www.undp.dk .

Appendix 3

PAUL A. SAMUELSON: "THE PURE THEORY OF PUBLIC EXPENDITURE", *REVIEW OF ECONOMICS AND STATISTICS*, 36(4), (1954)

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THE PURE THEORY OF PUBLIC EXPENDITURE

Paul A. Samuelson

1. *Assumptions.* Except for Sax, Wicksell, Lindahl, Musgrave, and Bowen, economists have rather neglected the theory of optimal public expenditure, spending most of their energy on the theory of taxation. Therefore, I explicitly assume two categories of goods: ordinary *private consumption goods* $(X_1, \cdots, X_n)$ which can be parcelled out among different individuals $(1, 2, \cdots, i, \cdots, s)$ according to the relations $X_j = \sum_1^s X^i_j$; and *collective consumption goods* $(X_{n+1}, \cdots, X_{n+m})$ which all enjoy in common in the sense that each individual's consumption of such a good leads to no subtraction from any other individual's consumption of that good, so that $X_{n+j} = X^i_{n+j}$ simultaneously for each and every ith individual and each collective consumptive good. I assume no mystical collective mind that enjoys collective consumption goods; instead I assume each individual has a consistent set of *ordinal preferences* with respect to his consumption of all goods (collective as well as private) which can be summarized by a regularly smooth and convex utility index $u^i = u^i(X^i_1, \cdots, X^i_{n+m})$ (any monotonic stretching of the utility index is of course also an admissible cardinal index of preference). I shall throughout follow the convention of writing the partial derivative of any function with respect to its jth argument by a j subscript, so that $u^i_j = \partial u^i / \partial X^i_j$, etc. Provided economic quantities can be divided into two groups, (1) *outputs* or goods which everyone always wants to maximize and (2) inputs or factors which everyone always wants to minimize, we are free to change the algebraic signs of the latter category and from then on to work only with "goods," knowing that the case of factor inputs is covered as well. Hence by this convention we are sure that $u^i_j > 0$ always.

To keep production assumptions at the minimum level of simplicity, I assume a regularly convex and smooth production-possibility schedule relating totals of all outputs, private and collective; or $F(X_1, \cdots, X_{n+m}) = 0$, with $F_j > 0$ and ratios F_j/F_n determinate and subject to the generalized laws of diminishing returns.

Feasibility considerations disregarded, there is a *maximal* (ordinal) *utility frontier* representing the Pareto-optimal points — of which there are an $(s-1)$fold infinity — with the property that from such a frontier point you can make one person better off only by making some other person worse off. If we wish to make normative judgments concerning the relative ethical desirability of different configurations involving some individuals being on a higher level of indifference and some on a lower, we must be presented with a set of ordinal interpersonal norms or with a *social welfare function* representing a consistent set of ethical preferences among all the possible states of the system. It is not a "scientific" task of the economist to "deduce" the form of this function; this can have as many forms as there are possible ethical views; for the present purpose, the only restriction placed on the social welfare function is that it shall always increase or decrease when any one person's ordinal preference increases or decreases, all others staying on their same indifference levels: mathematically, we narrow it to the class that any one of its indexes can be written $U = U(u^1, \cdots, u^s)$ with $U_j > 0$.

2. *Optimal Conditions.* In terms of these norms, there is a "best state of the world" which is defined mathematically in simple regular cases by the marginal conditions

$$\frac{u^i_j}{u^i_r} = \frac{F_j}{F_r} \qquad \begin{matrix}(i = 1, 2, \cdots, s;\ r, j = 1, \cdots, n) \text{ or} \\ (i = 1, 2, \cdots, s;\ r = 1;\ j = 2, \cdots, n)\end{matrix} \qquad (1)$$

$$\sum_{i=1}^{s} \frac{u^i_{n+j}}{u^i_r} = \frac{F_{n+j}}{F_r} \qquad \begin{matrix}(j = 1, \cdots, m;\ r = 1, \cdots, n) \text{ or} \\ (j = 1, \cdots, m;\ r = 1)\end{matrix} \qquad (2)$$

$$\frac{U_i u^i_k}{U_q u^q_k} = 1 \qquad \begin{matrix}(i, q = 1, \cdots, s;\ k = 1, \cdots, n) \text{ or} \\ (q = 1;\ i = 2, \cdots, s;\ k = 1).\end{matrix} \qquad (3)$$

Equations (1) and (3) are essentially those given in the chapter on welfare economics in my *Foundations of Economic Analysis*. They constitute my version of the "new welfare economics." Alone (1) represents that subset of relations which defines the Pareto-optimal utility frontier and which by itself represents what I regard as the unnecessarily narrow version of what once was called the "new welfare economics."

The new element added here is the set (2), which constitutes a pure theory of government expenditure on collective consumption goods. By themselves (1) and (2) define the $(s-1)$-fold infinity of utility frontier points; only when a set of interpersonal normative conditions equivalent to (3) is supplied are we able to define an unambiguously "best" state.

Since formulating the conditions (2) some years ago, I have learned from the published and unpublished writings of Richard Musgrave that their essential logic is contained in the "voluntary-exchange" theories of public finance of the Sax-Wicksell-Lindahl-Musgrave type, and I have also noted Howard Bowen's independent discovery of them in Bowen's writings of a decade ago. A graphical interpretation of these conditions in terms of *vertical* rather than *horizontal* addition of different individuals' marginal-rate-of-substitution schedules can be given; but what I must emphasize is that there is a different such schedule for each individual at each of the $(s-1)$fold infinity of different distributions of relative welfare along the utility frontier.

3. *Impossibility of decentralized spontaneous solution.* So much for the involved optimizing equations that an omniscient calculating machine could theoretically solve if fed the postulated functions. No such machine now exists. But it is well known that an "analogue calculating machine" can be provided by competitive market pricing, (a) so long as the production functions satisfy the neoclassical assumptions of constant returns to scale and generalized diminishing returns and (b) so long as the individuals' indifference contours have regular convexity and, we may add, (c) so long as all goods are private. We can then insert between the right- and left-hand sides of (1) the equality with uniform market prices p_i/p_r and adjoin the budget equations for each individual

$$p_1X^i_1 + p_2X^i_2 + \cdots + p_nX^i_n = L^i \qquad (i = 1, 2, \cdots, s), \qquad (1)'$$

where L^i is a lump-sum tax for each individual so selected in algebraic value as to lead to the "best" state of the world. Now note, if there were no collective consumption goods, then (1) and (1)′ can have their solution enormously simplified. Why? Because on the one hand perfect competition among productive enterprises would ensure that goods are produced at minimum costs and are sold at proper marginal costs, with all factors receiving their proper marginal productivities; and on the other hand, each individual, in seeking as a competitive buyer to get to the highest level of indifference subject to given prices and tax, would be led as if by an Invisible Hand to the grand solution of the social maximum position. Of course the institutional framework of competition would have to be maintained, and political decision-making would still be necessary, but of a computationally minimum type! namely, algebraic taxes and transfers $(L^1, \ldots L^s)$ would have to be varied until society is swung to the ethical observer's optimum. The servant of the ethical observer would not have to make explicit decisions about each person's detailed consumption and work; he need only decide about generalized purchasing power, knowing that each person can be counted on to allocate it optimally. In terms of communication theory and game terminology, each person is motivated to do the signalling of his tastes needed to define and reach the attainable-bliss point.

Now all of the above remains valid even if collective consumption is not zero but is instead *explicitly set* at its optimum values as determined by (1), (2), and (3). *However no decentralized pricing system can serve to determine optimally these levels of collective consumption.* Other kinds of "voting" or "signalling" would have to be tried. But, and this is the point sensed by Wicksell but perhaps not fully appreciated by Lindahl, now it is in the selfish interest of each person to give *false* signals, to pretend to have less interest in a given collective consumption activity than he

really has, etc. I must emphasize this: taxing according to a benefit theory of taxation can not at all solve the computational problem in the decentralized manner possible for the first category of "private" goods to which the ordinary market pricing applies and which do not have the "external effects" basic to the very notion of collective consumption goods. Of course, utopian voting and signalling schemes can be imagined. ("Scandinavian consensus," Kant's "categorical imperative," and other devices meaningful only under conditions of "symmetry," etc.) The failure of market catallactics in no way denies the following truth: given sufficient knowledge the optimal decisions can always be found by scanning over all the attainable states of the world and selecting the one which according to the postulated ethical welfare function is best. The solution "exists"; the problem is how to "find" it.

One could imagine every person in the community being indoctrinated to behave like a "parametric decentralized bureaucrat" who *reveals* his preferences by signalling in response to price parameters or Lagrangean multipliers, to questionnaires, or to other devices. But there is still this fundamental technical difference going to the heart of the whole problem of *social* economy: by departing from his indoctrinated rules, any one person can hope to snatch some selfish benefit in a way not possible under the self-policing competitive pricing of private goods; and the "external economies" or "jointness of demand" intrinsic to the very concept of collective goods and governmental activities makes it impossible for the grand ensemble of optimizing equations to have that special pattern of zeros which makes *laissez-faire* competition even *theoretically* possible as an analogue computer.

4. *Conclusion.* To explore further the problem raised by public expenditure would take us into the mathematical domain of "sociology" or "welfare politics," which Arrow, Duncan Black, and others have just begun to investigate. Political economy can be regarded as one special sector of this general domain, and it may turn out to be pure luck that within the general domain there happened to be a subsector with the "simple" properties of traditional economics.

Appendix 4

ABOUT THE AUTHORS

Erik André Andersen

Cand. Scient. (M.Sc.), Ph.D. Analyst at the Danish Institute for Human Rights, formerly Project Manager there. Previously Senior Researcher at the Copenhagen Peace Research Institute, and Research Fellow, Associate Professor and Head of the Information Centre on Eastern Europe, University of Copenhagen.

Peder Andersen

Cand. Oecon. (M.Sc. in Economics), lic. oecon. (Ph.D.). Head of Department of Economics, University of Copenhagen. Previously Head of the Secretariat of the Danish Economic Council, Associate Professor at the Institute for Economics, Aarhus University and Head of Research at the Danish Ministry of Fisheries. Has written articles and books covering a wide array of economic subjects, mainly in the areas of resource economy, environmental economy, and regulation. Has been a member of the Danish Social Science Research Council and the Steering Group for Evaluation of the Social Sciences.

Christian Friis Bach

Agricultural Graduate from The Danish Royal Veterinary and Agricultural University, Ph.D. in International Economics. International Director in Dan Church Aid. Previously Associate Professor of International Economics and Development Economics at The Royal Veterinary and Agricultural University and chairman of Mellemfolkeligt Samvirke (Danish Association for International Co-operation).

Diego Bang

Cand. pæd. (MA, Pedagogical Theory). Since 2004, Head of Education at the Independent Pedagogical Institute, an umbrella organization for national associations of independent schools. Formerly Principal of the independent elementary school Humlebæk Lille Skole (1978-1994) as well as Head of Education at the Danish Institute for Human Rights.

Ellen Bangsbo

Anthropologist, specializing in education and rights (Asia). Member of the Board of KULU – Women and Development 2001 – 2004. Member of the work group on global public goods and health.

Jannik Boesen

Cand. scient. pol. (M.Sc., Political Science). Senior Researcher at the Danish Institute for International Studies, and previously at the Centre for Development Research. Has worked with water management for the World Bank and Danida. Publications include (with P. Stone): *Improving Water Management in Sub-saharan Africa through International Capacity Building*, World Bank 1995.

Hans Henrik Brydensholt

Judge at the International Criminal Tribunal for the Former Yugoslavia. Formerly judge at the Eastern High Court, Copenhagen (1980-2002) and Director-General of the Danish Prison and Probation Service (1971-1980). Has published books on social and political issues as well as articles and contributions to publications on legal, management and development assistance subjects, including the efforts by Nordic countries towards developing administrative and legal procedures in foreign countries ("Det 36. Nordiska Juristmötet," Helsinki, 2002).

Ib Bygbjerg

Professor, Dr. med. at the Department for International Health, Institute of Public Health, University of Copenhagen. Member of the Council for International Development Cooperation, chairman of the work group on global public goods and health.

Poul Birch Eriksen

Journalist, Guest Researcher at the Department of International Health, Institute of Public Health, University of Copenhagen. Secretary for the work group on global public goods and health.

Rikke Ishøy

Cand. jur. (Master of Law). Consultant in International Law at the Danish Red Cross since 2003. Formerly legal coordinator for the International Red Cross Delegation in Israel in the occupied territories and the autonomous regions. Author of a manual on international humanitarian law.

Anders Jerichow

Foreign policy editor at Danish daily *Politiken*. Author of a number of books on the Middle East, development, and human rights. Formerly foreign news editor at *Weekendavisen* and *Politiken*; editor-in-chief of *Aktuelt*. President of Danish National PEN.

Henrik Brade Johansen

Cand. polit. (MA, Political Science). Chief consultant at COWIconsult since 1992. Formerly Secretary General of Danish Amnesty International (1984 – 1992); employed at the Danish Ministry of the Environment (1975 – 1984). Has worked for three years as an environmental attaché for the UN Environmental Programme in Nairobi. Works with strengthening public administration, civil society organizations and human rights as well as corporate social responsibility.

Helle Bank Jørgensen

Cand. merc. aud. (MA, Business Economics and Auditing), CPA. Since 2000, partner at PricewaterhouseCoopers, primarily in charge of advising European companies regarding corporate social responsibility, value accounting, and sustainability. Member of the Council for International Development Cooperation.

Rikke Frank Jørgensen

Cand. mag. (MA), European Master in Human Rights. Ph.D.-candidate at the Danish Institute for Human Rights. Previously Senior Adviser the same place, specializing in human rights issues arising from the information society. Participated in the 2003 UN world summit on the information society (WSIS) as an adviser for the Danish delegation and as coordinator for the global civil society's work groups on human rights.

Jens Kvorning

Cand. merc. (MA, Business Economics) from Copenhagen Business School. Senior consultant at the Danish Federation of Small and Medium-Sized Enterprises since 1985 where he develops methods to utilize the competences of Danish small and medium-sized companies in developing countries by establishing cooperation with third world companies. Previously with Construction Export Consult (Byggeeksportrådet) and with Rambøll & Hannemann. Member of the Council for International Development Cooperation.

Lene Lange

Professor, dr. scient. Head of Research at Novozymes A/S. Personal member and Vice Chair of the Council for International Development Cooperation and member of the work group on global public goods and health.

Poul Erik Lauridsen

Agricultural Graduate. Programme Coodinator at CARE Danmark. Previously researcher at the Danish Institute for International Studies and at the Centre for Development Research. Has worked with water management in development projects in Thailand, Malaysia, and Bolivia.

Henrik Lindholt

M.Sc. (Computer Science). Information, communications and technology specialist at the Danish Institute for Human Rights. Developer and web editor of the National Human Rights Institutions Forum (2001 – 2004); has developed web based Content Management Systems for national human rights institutions in Malawi, Rwanda, Mongolia, Kazakhstan, Nepal, and Sri Lanka.

Lone Lindholt

Master of Law, Ph.D. Senior analyst, former team leader for Civil Society and at present for Education and Academia, International Department of the Danish Institute for Human Rights. Formerly senior researcher at the Faculty

of Law, University of Copenhagen. Works with research, analysis, education and project work on human rights in developing and transitional societies in Africa and Asia.

Birgit Lindsnæs

M. Sc. Director of the International Department at the Danish Institute for Human Rights since 1991. Deputy Director from 1993 to 2006. Previously with the Danish Red Cross, Institute for Anthropology at the University of Copenhagen, and Danish Amnesty International. Chairman of the Board for International Service for Human Rights in Geneva and Chair of the work group on global public goods and human rights. Has authored several articles and co-editor of two books on *National Human Rights Institutions* (in English and Arabic) and *The Role of Voluntary Organisations in Emerging Democracies*.

Bjørn Møller

Cand. Mag. (MA), Ph.D. From 1985 to 2002, Senior Research Fellow at the Copenhagen Centre for Peace and Conflict Research (COPRI); from 2003 at the Danish Institute for International Studies. External Lecturer at the Institute of political science and the Centre of African Studies, University of Copenhagen. Has authored numerous articles, three books and edited seven anthologies.

Rie Odgaard

MA in Anthropology. Project Senior Researcher at the Department for Development Research, the Danish Institute for International Studies. Has published, inter alia, "Scrambling for Land in Tanzania: Processes of Formalisation and Legitimisation of Land Rights," in: T.A. Benjaminsen and Christian Lund (eds.): *Securing Land Rights in Africa*, Frank Cass, London 2003.

Hans-Otto Sano

MA, Ph.D. Head of research department at the Danish Institute for Human Rights. Previously Research fellow, at the Nordic Africa Institute, Uppsala and at the Centre for Development Research as well as Associate Professor, Institute of Development Studies, University of Roskilde. Member of the

Board and the Scientific Advisory Committee for the Rehabilitation Centre for Torture. Among his publications: *Good Governance*, Kluwer 2002 (ed. with Gudmundur Alfredsson), and *Human Rights in Turmoil*, Martinus Nijhoff Publishers 2007 (ed. with Stéphanie Lagoutte and Peter Scharff Smith).

Esben Sønderstrup

Department Head, International Health, Carl Bro International A/S. Member of the work group on global public goods and health.

Uffe Torm

Department Head at Dansk Missionsråds Udviklingsafdeling (Development department of Danish Mission Council). Member of the Council for International Development Cooperation. Member of the work group on global public goods and health.

Peter Wivel

Has studied Classical Philology at the University of Copenhagen. Formerly editor-in-chief of Danish dailies *Information*, *Weekendavisen*, and *Berlingske Tidende*; now Berlin correspondent for *Politiken*. Chairperson of the Council for International Development Cooperation.

Kristine Yigen

Cand. Scient. Adm. (MA, Public Administration). Project manager at the International Department of the Danish Institute for Human Rights. Formerly with UNDP in South Africa and the South African Human Rights Commission and Human Rights Adviser to the Cambodian Ministry of the Interior.

Appendix 5

MEMBERS OF THE WORKING GROUPS UNDER THE DANISH COUNCIL FOR INTERNATIONAL DEVELOPMENT COOPERATION CONCERNING GLOBAL PUBLIC GOODS AND HUMAN RIGHTS, TRADE AND HEALTH RESPECTIVELY

1. GLOBAL PUBLIC GOODS AND HUMAN RIGHTS

- ***Chairperson:*** Birgit Lindsnæs - Danish Institute for Human Rights
- Erik André Andersen - Danish Institute for Human Rights
- Hans Henrik Brydensholt - Former High Court Judge
- Birgitte Husmark - Woman's Council in Denmark
- Anders Jerichow – Politiken (Danish daily)
- Henrik Brade Johansen - COWI A/S
- Helle Bank Jørgensen - PricewaterhouseCoopers
- Jens Kvorning - Danish Federation of Small and Medium-Sized Enterprises
- Lisbeth Arne Pedersen - Danish Institute for Human Rights
- Tove Søvndahl Pedersen - Greenland Home Rule
- Stig Rée - Copenhagen Business School
- Peter Wivel, Politiken, Chairperson of the Council for International Development Cooperation

2. GLOBAL PUBLIC GOODS AND TRADE

- ***Chairperson:*** Christian Friis Bach - Consultant
- Mette Bloch Hansen - KULU -Women and Development
- Jens Kvorning - Danish Federation of Small and Medium-Sized Enterprises
- Niels Lund - Danish Youth Council
- David Madié - personal member
- Hans Peter Slente - Confederation of Danish Industries

3. GLOBAL PUBLIC GOODS AND HEALTH

- ***Chairperson:*** Ib Bygbjerg, University of Copenhagen
- Ellen Bangsbo, KULU -Women and Development
- Poul Birch Eriksen, University of Copenhagen
- Jens Kvorning, Danish Federation of Small and Medium-Sized Enterprises
- Lene Lange, Novozymes A/S, Deputy Chairperson of the Council for International Development Cooperation
- Esben Sønderstrup, Carl Bro International A/S
- Uffe Torm, Danish Mission Council

Appendix 6

PROGRAMME FOR THE SERIES OF SEMINARS ABOUT GLOBAL PUBLIC GOODS, HUMAN RIGHTS AND DEVELOPMENT (JANUARY-FEBRUARY 2004)

Global Public Goods, Human Rights and Development

Series of Public Seminars
2004

The Danish Institute
for Human Rights

1. Global Public Goods and Human Rights – An Introduction
Tuesday 13 January 2004,
3 PM – 5 PM
Chairperson: Anders Jerichow
Presentations: Birgit Lindsnaes, Stig Rée, Peter Wivel, Lone Lindholt
Opponents: Jannik Boesen, Morten Kjaerum

2. Peace, Stability and Security
Tuesday 20 January 2004,
3 PM – 5 PM
Chairperson: Peter Wivel
Presentations: Erik André Andersen , Bjørn Møller
Opponents: Jens Elo Rytter, Anders Wivel

3. Trade and the Companies' Social Responsibility
Tuesday 27 January 2004,
3 PM – 5 PM
Chairperson: Anders Jerichow
Presentations: Christian Friis Bach, Henrik Brade Johansen, Helle Bank Jørgensen, Jens Kvorning
Opponents: Mette Morsing, Stig Rée

4. God Governance, Corruption, Rule of Law and Access to Information
Tuesday 3 February 2004,
3 PM – 5 PM
Chairperson: Birgit Lindsnaes
Presentations: Hans-Henrik Brydensholt, Anders Jerichow, Hans Otto Sano, Kristine Yigen
Opponents: Jesper Højbjerg, Sune Skadegård Thorsen

5. Education and Equal Access to Global Public Goods for Vulnerable Groups
Tuesday 10 February 2004,
3 PM – 5 PM
Chairperson: Anders Jerichow
Panel: Diego Bang, Rie Odgaard, Kristine Yigen
Opponents: Birgitte Husmark, Anette Faye Jacobsen, Marianne Nørregaard

6. Health and Water
Tuesday 17 February, 2004
3 PM – 5 PM
Chariperson: Peter Wivel
Presentations: Jannik Boesen, Poul Birch Eriksen
Opponents: Bjørn Møller, Jesper Heldgaard

7. Development Aid in Relation to Global Public Goods
Tuesday 24 February 2004, 3 PM – 5 PM
Chairperson: Morten Kjaerum
Panel: Christian Friis Bach, Henrik Brade Johansen, Birgit Lindsnæs
Opponents: Peter Wivel, Anders Jerichow

The Series of Public Seminars was held at the Danish Institute for Human Rights, Wilders Plads 8H, 1403 Copenhagen K.
www.humanrights.dk

Contact Person: Erik André Andersen (Phone: +45 32 69 88 81, e-mail: eaa@humanrights.dk)

Appendix 7

ACRONYMS FOR INTERNATIONAL ORGANIZATIONS INCLUDING NGO'S AND CONVENTIONS

ACHPR	African Commission or Convention on Human and Peoples' Rights
AI	Amnesty International (NGO)
AMU	Arab Maghreb Union
APEC	Asia-Pacific Economic Cooperation
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
AU	African Union (formerly OAU, Organization of African Unity)
CADS	Convention Against Discrimination in Education
CAT	Convention Against Torture
CCPR	Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CESCR	Covenant on Economic, Social and Cultural Rights
CIC	Copenhagen Informal Consultation (concerning water supply, 1991)
CIS	Commonwealth of Independent States (= SNG)
CRC	Convention on the Rights of the Child
CTC	Counter Terrorism Committee
Danida	Danish International Development Assistance
DFID	Department for International Development (UK)
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	United Nations Economic and Social Council
ECOWAS	Economic Community of West African States
EES	European Employment Strategy
EU	European Union
EUSC	European Union Scientific Committees
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
GAVI	Global Alliance for Vaccines and Immunization
GC15	General Comment no. 15 (UN's Committee for Economic, Social and Cultural Rights – on the right to water)
GEF	Global Environment Facility
IACHR	Inter-American Commission on Human Rights
IAEA	International Atomic Energy Agency
ICANN	Internet Corporation for Assigned Names and Numbers

ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICG	International Crisis Group (NGO)
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IFAD	International Fund for Agricultural Development
IFOR	Implementation Force (international peacekeeping force in Bosnia and Herzegovina)
IGAD	Intergovernmental Authority on Development (consisting of 7 East African countries)
ILO	International Labour Organization
ILO 169	ILO Convention on Indigenous and Tribal Peoples
IMF	International Monetary Fund
IMO	International Maritime Organization
IPCC	Intergovernmental Panel on Climate Change
ISWF	International Shared Waters Facility
ITU	International Telecommunication Union
LC Courts	Local Committee Courts
MERCOSUR	Mercado Común del Sur (South American Common Market)
MSF	Médicins Sans Frontières (NGO)
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
OAS	Organization of American States
ODECA	Organización de Estados Centroamericanos (Organization of Central American States)
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PMC	Private Military Companies
PRSP	Poverty Reduction Strategy Programmes
PSDP	Public Sector Development Programme
SADC	Southern African Development Community
SFCG	Search for Common Ground (NGO)
SFOR	Stabilization Force (international peacekeeping force in Bosnia and Herzegovina)
SICA	Sistema de la Integración Centroamericana (Central American Integration System)
SNG	Sojuz Nezavisymych Gosudarstv' (= CIS)

TWM	Transboundary Water Management
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCCD	United Nations Convention to Combat Desertification
UNCHS	United Nations Conference on Human Settlements
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDCP	United Nations Drug Control Programme
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNFPA	United Nations Population Fund
UN-Habitat	UN Human Settlements Programme
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDIR	United Nations Institute for Disarmament Research
UNIDO	United Nations Industrial Development Organization
UNIFEM	United Nations Development Fund for Women
UNITAR	United Nations Institute for Training & Research
UNPROFOR	United Nations Protection Force (UN-led force to supervise the ceasefire in Croatia)
UNRISD	United Nations Research Institute for Social Development
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNU	United Nations University
UPU	Universal Postal Union
USAID	US Agency for International Development
WFP	United Nations World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WSIS	World Summit on the Information Society
WTO	World Trade Organization

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