

# Marcin Janik

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## Public goods in administrative space – an outline of problematic aspects

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## **PUBLIC GOODS IN ADMINISTRATIVE SPACE – AN OUTLINE OF PROBLEMATIC ASPECTS<sup>1</sup>**

### **1. ADMINISTRATIVE SPACE – THE GIST OF THE MATTER**

It seems that nowadays there is a sufficiently high amount of global or transnational administration to make it possible to identify a complex “administrative space”, a concept embracing not only states, but also business entities and NGOs (Chiti, Mattarella 2011: p. 13). The term “administrative space”, as a typical homonym, is also used to identify the model of public administration. However, it should be noted right away that this model is sometimes a normative (prescriptive) model and at other times a descriptive model, though it can also be an analytical model that can be used to verify the theoretical hypothesis. Still, in each case it applies to administrative convergence, meaning a convergence going towards universal (common or similar) administrative solutions in place of previous administrative differences. Administrative space or administrative convergence is, therefore, an opposition of idiosyncratic administrative systems of states, in which the structure of public administration, its forms and standards of action, are presented as having been derived from history, identity, and tradition.

The subject of looming administrative space has two competitive hypotheses in the related literature – on the one hand a global convergence hypothesis, while on the other an institutional robustness hypothesis (Supernat, 2005: p. 78). The first of these has its basis in the Anglo-Saxon concept of New Public Management (NPM), which constitutes a paradigmatic departure from the classic public management and assumes that administrative convergence does not have a merely European scope, but a global one (Pollitt, 2002: p. 471). Also those in favour of the New Public Management emphasise that this concept is not a temporary trend but a necessary change, signifying progress towards public administration development. What is more, this change is perceived as a transferring element from government to governance, or governance without government, which is supposed to occur in individual states as well as their organisations (Peters, 2003: p. 113). On the other hand, the institutional robustness hypothesis assumes that both convergent hypotheses overestimate the scope and pace of administrative convergence, and that for some time in the future, different types of public administration models will exist in Europe and in other parts of the world (Kassim, 2003: p. 162).

The competitiveness of the hypotheses outlined above calls for questions about the scope and conditions of administrative convergence. The possibility of the most progressed convergence is indicated by the old and often cited idea whereby there is a sin-

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gle best way of organising public administration. Representatives of this idea can be found among theorists as well as practitioners of administration, all seeking and suggesting universal organisational solutions that, thanks to their effectiveness, are supposed to spread all over the world, regardless of national contexts. It has, of course, its determined opponents among the supporters of the situational approach whereby the administrative structure is determined by variables of different forms, defining: goals, values, strategies, and processes. If the latter are correct, then there is no common unification of public administration that is possible in the foreseeable future.

It should be noted that convergence (global or regional) can occur either from the attractiveness of a certain model solution, or from its imposition. Convergence by attractiveness means learning and voluntarily imitating those administrative solutions that are perceived as best, either worldwide or in a European context (Griffin, 1999: s. 352). A shared model can also loom in the process of shared research work or be the consequence of the fact, that each individual state, when facing the same challenges, adopts the same solutions independently. The perceived superiority of a certain solution can be based upon its technical-functional properties and high relative efficiency. It can also be developed from normative attractiveness, meaning that, because of the adopted solution, it is perceived as a more rational and modern solution. In other words, convergence around proper structures, forms, processes, and practices can take place, as long as a specific administrative solution reaches administrative hegemony (Izdebski, Kulesza, 1999: s. 153).

## 2. THE CONCEPT OF “PUBLIC GOODS”

The concept of public goods is extremely difficult to submit to description or assessment. Additionally, in literature, there are other synonymous terms apart from public goods, such as common goods, collective goods or common concerns of mankind. (Supernat, 2011: p. 151; Boć, 2011: p. 151).

Negative definitions, which treat public goods as an elimination of public evil, also emerge. Apart from this semantic problem, there is another one, related to the fact that public goods are not always tangible. Certain parts of public goods take the form of laws and institutions, which provide utility or fulfil needs. They are not a commodity in a sense of goods and services. With this meaning in mind, the elimination of “public bad” signifies the non-utility of such things as illness or pollution of the environment.

The modern theory of public goods derives from the views of Austro-German economical tradition from the late XIX century. The on-going discussion at that time revolved around the question of the state's role in the process of providing public goods. The leading representatives were A. Wagner, who began this debate, along with his successors: E. Lindhal and K. Wicksell (Mazzola, 1994: p. 98). In its current form, the concept of public goods is, however, primarily connected with the beliefs of P.A. Samuelson who, in his article from 1945 entitled “The Pure Theory of Public Expenditure”, included the analytical bases of the public goods theory.

There is a classic economical definition that is predominant among the presented views, which says *“all enjoy [collective consumption goods] in common, in the sense that each individual's consumption of such a good leads to no subtraction from any other in-*

*dividual's consumption of that good*" (Samuelson, 1954: p. 387). In light of the definition mentioned above, a pure public good must possess two qualities.

First of all, it should not be excludable, i.e. when the good has already been provided, no one can be excluded from deriving benefit from it. This characteristic is related to the problem of determining the optimal amount of public goods.

Secondly, a public good should not be a rival in consumption, which means that consumption by an individual does not mitigate the amount available for others. R. Kanbur, T. Sandler and K. Morrison accurately observe that, "*when benefits are non-rival, it is inefficient to exclude anyone*" (Kanbur, Sandler, Morrison, 1999: p. 61).

It is hard to impeach the view that, in practice, public goods rarely fully authorise the features mentioned above. Many goods may be *quasi-public* or public as well as private, in a sense they are either non-excludable or non-rival, but they do not accumulate both of these features. In the case of a purely public good, access to its benefits cannot be constrained to anyone, and the benefits derived from some individuals do not reduce the amount of benefits available to others. As an example, we can use benefits provided by health safety programmes funded from public sources. They have qualities of a public good, because the marginal cost of including another person is low, and including all citizens in a vaccination programme is beneficial to the whole society. Therefore, remembering that, in principle, it is not possible to exclude someone from participating in these programmes; the alternative regulation by an appropriate system of prices would be unfeasible.<sup>2</sup>

An obvious circumstance worth noticing is that a significant amount of public needs and "common concerns" find their formal expression in a specific set of international legal instruments, identifying individual types of benefits giving rise to international public goods (Kanbur, Sandler, Morrison, 1999: p. 61). It is this way because the present international law applies to issues concerning international society as a whole, and therefore describes values that are increasingly public, and correspond with it (Supernat, 2005: p. 79).

One of the more important problems related to the globalisation of public goods applies to collective interest building mechanisms in the context of global management. Because of that, there are two main problems that should be tackled in the conducted analysis. Firstly, the issue of the existence of a global society must be considered, and in this context the existence of space where it is accepted on a global level that common goods occur. Secondly, it is important to answer the question of the hierarchy of public goods, and relations between global public goods and local goods (regional, national, private).

The starting point of any analysis set in this manner should be the answer to the question about the essence of global public goods. At the offset it should be noted that the concept of global public goods is not clearly defined. Ideas abound in literature saying that the consensus is limited only to what is the stake in each case. One of the authors claimed, quite authoritatively, that each single word – "global", "good", and "public" can be questioned (Morrissey, teVelde, Hewitt, 2002: s. 31).

A key problem faced by the supporters of global public goods is the answer to the question of how far does the globalisation of a good reach. Should the term "global" be

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<sup>2</sup> In literature, the most commonly referred to example is the lighthouse: no ship can be excluded from the benefits of reading its indications.

understood broadly and be related to benefits that are completely global? Perhaps, on the contrary, a more specific approach would be more appropriate.

Talking about global public goods makes sense only when one takes into consideration the spatial range in which measurable benefits occur. Benefits may range from truly global, through community, down to local level. Some authors indicate that using the term “global” for benefits that reach beyond national borders does not mean that they can cover the whole world. For this reason, besides global public goods, regional public goods, which benefit the population of neighbouring countries, are also distinguished along with national public goods, which mainly benefit a specific population (Brousseau, Dedeurwaerdere, Siebenhüner, 2012: p. 19).

It is justified here to ask a question: what spatial criteria should be accepted, in order to distinguish global, regional and local public goods? In literature it has been postulated that this transnational characteristic should contain more than two states, with at least one placed beyond traditional regional groupings (e. g. Europe, Sub-Saharan Africa or South-East Asia) (Woodward, Smith, 2003: p. 5).

However, public goods shared between two or three closely neighbouring countries are seen as local or regional public goods. An example of this category of goods could be common actions aimed at not only diminishing disease reservoirs, but also gaining control over cross-border spreading.

It is indicated in many studies that there is a close relationship between basic public goods at a national and international level. For example, the provision of health as a basic public good refers to an international as well as a national level. If this basic public good is provided at every national level simultaneously, then an international public good is also provided. The only difference will be the appearance of an additional element at a global level in the form of co-ordination. On the other hand, if certain countries do not provide the good at a national level, it will result in the reduction or prevention of providing a given public good at an international level. Hence we distinguish a category of “collective goods”, which includes a collective effort, indicating that the amount of available protection for each country depends on the sum of protective actions undertaken by individual countries. To simplify, it is usually given that provision at a national level is binary, meaning that a good is either provided or not (Barrett, 2002: p. 53).

It should be indicated that since there is no established global society, recognised as such by all of its members, then defining a good as a global public good can neither be the effect of agreements between those interested, nor the result of an aggregation process of their intent. For this reason, the concept of global public goods rather resembles a consensus between external factors existing among societies, and the strategy of promoting one's own interests (Olson, 1996: p. 63).

### **3. MANAGING PUBLIC GOODS IN ADMINISTRATIVE SPACE**

There are many controversies related to the provision of public goods. In literature it is possible to see a whole array of different conceptions about the provision of public goods in an administrative space. Their common feature is making the assumption that traditional public-economic theories of public good provision are overly simplified, because they are essentially focused on a national level, and are therefore not able to take into account the various transitory politics of public goods.

Certain views, stating that many goods ought to be provided on levels that are neither national nor global, are formulated more and more often. Going beyond the national stage escalates many problems related to the effective provision of public goods. Above all, the number of entities involved in administering public matters has become so large that what is already considered as a very complex scene, is proving to be a real “thicket” at higher levels, with all sorts of entities, starting with countries and traditional international organisations, ending with various private entities, performing public functions.

In addition, a fundamental change in the way of providing public goods has recently been observed. In many countries, a transformation took place in managing public goods by entrusting the provision of many of them to private entities, either in a pure, albeit regulated, market context, or by using third sector institutions not focused on profit, or even by external contracting within the framework of which public authorities delegate the provision of services for a certain period of time, retaining supervisory powers and final responsibility.

The accepted solutions presuppose a certain normative perspective that provides an answer to the question: what is the acceptable and desired scope of state intervention in cases that, at least in theory, should be an effect of market governance and social interactions.

From a cursory analysis, one can already see that a division of tasks between specialised institutions, as well as between them and institutions with more general expertise, causes the fragmentation of approaches related to managing public goods. It is not about the appearance of significant differences in the catalogue of public goods, because all international public actors, whether they are states or international organisations, agree with their basic list and none of them would confess publicly that counteracting climate change or fighting diseases is not a substantial cause. However, the meaning attributed to each public good changes on different levels. The lack of explicit knowledge about collective preferences has many causes, such as a lack of explicit knowledge about directions of effective development, a cognitive lack of collective preferences, or a complex combination of the decision process. Other important issues related to the availability of public goods are connected with the heterogeneity of benefits and contributions between interested parties (Brousseau, Dedeurwaerdere, 2012: p. 23).

Relevant to the conducted analysis are the ideas of S. Barrett, who mentions, among the main difficulties in the process of providing international public goods, the lack of a hierarchical structure and the lack of mechanisms that are able to enforce agreements in order to provide public goods while at the same time reducing free riding (Barrett, 2002: p. 56).

Studies conducted by E. Ostrom have shown that local societies are able to overcome their free riding tendencies. The conducted analysis indicates that free riding at a local level is less severe than assumed by the theory of collective actions, increasing hope that the same effect will be reached at an international level. It is a result of an assumption given by J.M. Baland and J.P. Platteau (1996) that a co-managing approach is predominant at a local level, where local societies co-operate with the state in order to create and maintain a proper catalogue of public goods. However, as noted by these authors, the assumption mentioned above is strongly limited at an international level.

To conclude this part of considerations, one could discover, that local public goods are provided in a vertical or hierarchical system. International public goods have to be

provided by a horizontal system of international relations. In the opinion of some authors, the indicated difference is essential and determines the need to use other types of institutions in order to have an influence on the provision of regional and global public goods. Nevertheless, local and international public goods can be equivalent to each other, or they could complement one another. Prevention and fighting against infectious diseases at a local level is an addendum to the global public good. The opposite situation is also possible, where a transnational public good is provided in an insufficient amount. In this case, certain countries may undertake actions heading toward the reduction of negative consequences. For example, if a vaccination against AIDS is not available, the state places emphasis on preventive treatment and education about the disease. The positive effect of such actions will not only be an increase in awareness amongst people, but also a reduction in risk, which in turn will reduce the negative results of failures in providing transnational public goods.

#### **4. GLOBAL ADMINISTRATIVE LAW**

The difficulties introduced above, concerning the identification and effective management of public goods at an international level, are the subjects of intensified analysis in legal literature. An important position in this debate is taken by the theory of global administrative law. The concept of global administrative law comes from two observations. Firstly, as mentioned before, in today's globalising world (global administrative space) there are many public entities, private or public-private, with all the features of administrative entities, and those taking part in decision processes that are significant to countries, individuals, business organisations and non-governmental organisations (Supernat, 2011: p. 160). Theorists of global administrative law have distinguished five types of those global institutional administrative solutions (Kingsbury, et. al. 2005: p. 15). Apart from administration by formal international organisations, they have indicated: administration conducted by informal transnational networks, administration conducted by domestic regulators in the framework of network treaties or other regimes of co-operation, administration as a part of hybrid public-legal arrangements, and finally administration by purely private entities equipped with regulatory functions (Kingsbury, et. al. 2005: p. 16).

Secondly, global administrative entities are insufficiently responsible, because on the whole they are not concerned with domestic legal requirements imposed on public entities. It is this way because global entities are either entities of international law (international law does not include regulations corresponding exactly with regulations in domestic law, imposing requirements of responsibility, rationality, lucidity and lack of discrimination on public entities), or they are admittedly entities of domestic law, but belonging to the international network in which legal functioning cannot be subjected to domestic law. In addition, some global administrative entities are private or semi-public, and thus are not affected by domestic or international obligations related to public entities (Supernat, 2011: p. 162).

This gives rise to the question of what is, under these circumstances, the contribution of global administrative law in defining and administering global public goods. The answer to this question has to take into account the fact that the domain of global administrative law concerns procedural rather than material issues (della Cananea, 2011:

p. 162). The aim of global administrative law comes down to an assurance that global entities will subordinate to proper procedures and control mechanisms. The theory of global administrative law, however, is not related to what should be done by global entities, what goals should they achieve or what values should they serve. The potential contribution of global administrative law theory in the subject of identifying global public goods has been limited to the improvement of legislative procedures, used to determine ways of achieving goals of global administrative entities. It is about the fact that the choice of these goals is not usually performed by those entities, and therefore it seems that global administrative law is not able to significantly contribute to the determination of criteria used to identify global public goods.

However, on the other hand, the achievements of global administrative law may turn out to be quite useful at the stage of providing global public services. It is this way because the main effort of the theory of global administrative law is directed towards defining the best procedural solutions. In this way, it could significantly contribute to the improvement of providing public goods.

To conclude this part of deliberations, it should be noted that conducting public matters in an international sphere increasingly requires complex relations between two or more tiers of administration. This results in the allocation of roles between different tiers of public action, which means that, among other things, the fact that the identification and provision of public goods on the international arena is never an obligation of only one institution on one level, but always consists of several institutional levels along with complex relations. Under these circumstances, a simple introduction of procedures used on one institutional level does not guarantee the rationality of identification and provision of public goods on the international arena.

## CONCLUSIONS

The foregoing deliberations lead to several possible conclusions. First of all, it should be noted that public goods have long been an element of the economic analysis of politics at a national level (Connolly, Munro, 1999: p. 36). However, the globalisation process was the reason why many issues once confined to domestic politics have been moved to a level where these issues have a global impact and reference. As a result, one can accept that part of the assumptions concerning national conception of public goods provision currently has a purely historical quality. In view of the arisen doubt towards the adequacy of the appointed concept, a problem appears in relation to the provision of regional and global public goods. A particular role in this area is ascribed to networks, which can not only assist co-ordination and co-operation in the area of global public good production, but also help in understanding and expressing preferences and guarantee a fair form of division. It is worth noting that the network is characterised by flexibility, the ability to self-organise, and by an orientation focused on unveiling problems. It is fully given by W. Reinicke, who emphasises that *“networks relate to supranational issues, which cannot be solved by any other group”* (Reinicke, 2000: p. 24). As a final word, the role of global administrative law should be indicated, which for the time being does not concentrate on norms of substantive law, but on the usage of principles, process regulations, rules of inspection and other mechanisms related to responsibility, lucidity and the assurance of lawfulness in global administration.



## BIBLIOGRAPHY

- Barrett S.: *Supplying International Public Goods: How Nations Can Cooperate*, [in:] *International Public Goods: Incentives, Measurement and Financing*, ed. M. Ferroni, A. Mody, Boston, Dordrecht, London, Washington D.C. 2002.
- Boć J.: *From reflections about common good*, [in:] *New research problems in the theory of administrative law*, ed. J. Boć, A. Chajbowicz, Wrocław 2009.
- Brousseau E., Dedeurwaerdere T., Siebenhüner B.: *The Challenges in Governing Global Public Goods*, [in:] *Reflexive Governance for Global Public Goods*, London 2012.
- Brousseau E., Dedeurwaerdere T.: *Global Public Goods: The Participatory Governance Challenges*, [in:] *Reflexive Governance for Global Public Goods*, ed. E. Brousseau, T. Dedeurwaerdere, B. Siebenhüner, London 2012.
- Chiti E., Mattarella R.G.: *EU and Global Administrative Organizations*, [in:] ed. E. Chiti, R.G. Mattarella, *Global Administrative Law and EU Administrative Law. Relationship, Legal issues and Comparison*, London–New York 2011.
- Connolly S., Munro A.: *Economics of the Public Sector. Europe*, Prentice Hall 1999.
- della Cananea G.: *The Genesis and Structure of General Principles of Global Public Law*, ed. E. Chiti, R.G. Mattarella, *Global Administrative Law and EU Administrative Law. Relationship, Legal issues and Comparison*, London–New York 2011.
- Griffin R.W.: *Management*, Houghton Mifflin Company, Boston–New York 1999.
- Izdebski H., Kulesza M.: *Public Administration. General issues*, Warsaw 1999.
- Kanbur R., Sandler T., Morrison K.: *The Future of Development Assistance: Common Pools and International Public Goods*. Policy Essay No 25, Washington D.C. 1999.
- Kassim H.: *The European Administration: between Europeanization and Domestication*, [in:] *Governing Europe*, ed. by J. Hayward and A. Menon, Oxford University Press, Oxford 2003.
- Kingsbury B., Krish N., Stewart R., Wiener J.: *The Emergence of Global Administrative Law*, *Law and Contemporary Problems* 2005, No 68.
- Mazzola U.: *The Formation of the Prices of Public Goods*, [in:] *Classics in the Theory of Public Finance*, ed. R.A. Musgrave, A.T. Peacock, London 1994.
- Mody A.: *Global Public Policies and Programs: Implications for Financing and Evaluation*, *Proceedings from a World Bank workshop*, Washington D.C., J. Sachs, A New map of the World, *The Economist*, June 24 2000.
- Morrissey O., teVelde D.W., Hewitt A.: *Defining International Public Goods: Conceptual Issues*, [in:] *International Public Goods: Incentives, Measurement and Financing*, ed. M. Ferroni, A. Mody, Boston, Dordrecht, London, Washington D.C. 2002.
- Olson M.: *The Logic of Collective Action*, Cambridge, Massachusetts: Harvard University Press 1965.
- Page E.C.: *Europeanization and the Persistence of Administrative Systems*, [in:] *Governing Europe*, ed. by J. Hayward and A. Menon, Oxford University Press, Oxford 2003.
- Peters B.G.: *Dismantling and Rebuilding the Weberian State*, [in:] *Governing Europe*, ed. by J. Hayward and A. Menon, Oxford University Press, Oxford 2003.
- Pollitt C.: *Clarifying convergence. Striking similarities and durable differences in public management reform*, *Public Management Review* 2002, No 4.
- Reinicke W.: *Walking the talk: Global Public Policy in Action*, [in:] Ch. Gerrard, M. Ferroni, Samuelson P.A.: *The Pure Theory of Public Expenditure*, *Review of Economics and Statistics*, vol. 36, No 4. Nov. 1954.
- Supernat J.: *Public goods and administrative law in the age of globalization*, *Administracja* 2011, z. 4.

- Supernat J.: *Public goods and administrative law in the age of globalization*, Administracja 2011, No 4.
- Supernat J.: *European administrative space – selected issues*, [in:] *Europeanization of Polish administrative law*, ed. Z. Janku, Z. Leoński, M. Szewczyk, M. Waligórski, K. Wojtczak, Wrocław 2005.
- Woodward D., Smith R.D.: *Global public goods and health: Concepts and issues*, [in:] *Global public goods for health. Health economic and public health perspectives*, ed. R.D. Smith, R. Beaglehole, D. Woodward, N. Drager, Oxford 2003.
- Zacher M., Sutton B.A.: *Governing Global Networks: International Regimes for Transportation and Communications*, Cambridge University Press 1996.