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The Emerging Principle of Common Concern: A Brief outline.

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Abstract

The principle of Common Concern offers the potential to rebalance international law based upon territoriality, sovereignty and lacking appropriate international institutions able to produce global public goods. The principle should be designed to address, in the first place, responsibilities of States in dealing with Common Concerns, both at home and abroad. The principle should entail responsibilities comprising the authority to act extraterritorially while respecting existing international agreements, and which partly may also assume obligations to do so in the pursuit of global common concerns. The implementation of unilateral or concerted measures and policies relating to defined areas of Common Concern in particular by large powers and markets will be met with opposition, resistance and perhaps retaliation. Government will invoke traditional precepts of sovereignty and sovereignty over natural resources. Yet, taking seriously Common Concerns as a right and obligation to address these concerns beyond territorial jurisdiction has to take these tensions into account and channel them towards the establishment of global governance able to deal with these matters more effectively and based upon commonly agreed rules. The principle of Common Concern provides the incentives working towards agreed regimes. It allows both for bottom up and top down approaches. It is the combination of the two which will bring about progress in international law and relations in addressing Common Concerns of Mankind.

Key words: Common concern, public goods, multilevel governance

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The Principle of Common Concern: A Brief Outline

Thomas Cottier

I. Territoriality

Public international law of the Westphalian State system was essentially built upon the precepts of Roman law and the remnants of feudalism. It is founded on notions of contract, torts and property which civil and common law adopted and further developed. Public international law reflects these main institutions in manifold ways. It is particularly true for property rights. They provide the basis for state sovereignty, for territoriality and exclusiveness of territorial claims. The territories of the world are, with the exception of Antarctica, divided into national and sub national territories, similar to property rights allocated among private right holders within such territories. Over centuries, claims to land and resources were met by appropriation in conquest, war and settlement. The vast expanses of the sea, covering some seventy percent of the globe's surface, equally were exposed to similar claims of *mare clausum* and appropriation, but eventually resulted in the doctrine of freedom of the High Seas. The regime offered freedom of navigation and communication. It allowed for unlimited exploitation of living resources beyond territorial waters, but excluded under terms of *res nullius* territorial appropriations of the seabed. Territorial claims concerned the territorial sea, growing from three to thirty miles commensurate with the fire power of coastal batteries (canon ball rule) and in the 20th Century the Continental Shelf and the 200 mile Exclusive Economic Zone. Threats to natural resources, in particular fisheries, were met with the enclosure movement and thus again, appropriation and territorial allocation of resources. The 200 m EEZ was a reaction by coastal states to overfishing by large distant factory fleet. Perhaps, it was the first reaction in international law to the depletion of natural resources in the 1970s and 1980s. Up to this point in time, international law had developed and operated under the assumption of endless and bountiful resources. True, land was scarce and subject to war and defeat, even extinction of cultures. But full exploitation of land and resources on the basis of territorial jurisdiction of states was hardly met with limitations and not seen in any way conflicting with nature up to the point of depletion of fish stocks in the and global warming in the 1990s with the advent of the age of homocene. International law assumed that full sovereignty of natural resources by all the territorial states would undoubtedly result in higher welfare and would not produce imbalances or even destruction. There was plenty for all. It borrowed on future generations, ignoring long-term costs or without knowing them. Territorial allocation of exclusive rights over natural resources, both land and minerals, among States was considered the most appropriate regime for effective exploitation either by the State or licensed private, and often, foreign companies and investors. The process of decolonization further reinforced these assumptions. Newly independent states naturally were keen to exercise

full sovereignty over natural resources. It was an important part of freedom and independence. There was no need for Common Concerns, for shared responsibility in the exploitation of natural resources neatly allocated to nation states operating under exclusive jurisdiction. Eventually, efforts to establish the doctrine of Common Heritage of Mankind in response to depletion of biodiversity and the idea of joint management of natural resources largely failed. The doctrine entails a ban on appropriation, shared benefits, peaceful use, and exclusion of military activities and weapons of mass destruction, freedom of research, environmental protection and non-discriminatory treatment. It was partly realized in the 1967 Outer Space Treaty¹, banning nuclear weapons in space, the succeeding 1979 Moon Treaty² and the 1959 Treaty on Antarctica³. The concept of shared exploitation of natural resources in the deep seabed, in particular manganese nodules entered the 1982 United Nations Convention on the Law of the Sea⁴ with the Area, but remained without practical effect. The goal of access and benefit sharing under the Convention on Biodiversity⁵ perhaps is the most important field where the principle of common heritage had considerable influence, most recently in adopting the 2010 Nagoya Protocol⁶. Yet, realization of common heritage remains difficult, and even here, the principle of permanent sovereignty over natural resources prevailed and is firmly anchored in international law. Developing countries supported the doctrine as long it offered them better access to technology. Eventually, the interest to control natural resources and exploit them prevailed in all States alike.

The pattern of exclusive, national jurisdiction over natural resources translated into reinforcing the doctrine of national sovereignty and the principle of non-interference in domestic affairs. The two are mutually supportive and create tensions with international commitments made and goals of aspiration. While states increasingly pledged to observe universal human rights, they at the same time stressed their prerogatives of non-interference and protection of domestic affairs. Still today, the lack of effective international enforcement of human rights and the difficulties to effectively prosecute war criminals by international courts recall how strong the international community still is rooted in concepts of exclusive national jurisdiction.

II. Public Goods

Territorial allocation of jurisdiction thus reinforced sovereignty of states and proved a more or less successful model for states to pursue their national

¹ United Nations Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, Resolution adopted by the General Assembly, 2222 (XXI), 1967.

² United Nations Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, Resolution adopted by the General Assembly, 34/68, 1979.

³ The Antarctic Treaty, Washington DC, adopted December 1, 1959, entered into force, June 23, 1963.

⁴ United Nations Convention on the Law of the Sea of 10 December 1982.

⁵ Convention on Biological Diversity (CBD), Rio de Janeiro, adopted June 5, 1993, entered into force December 29, 1993.

⁶ The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, Nagoya, adopted October 29, 2010.

interests in the organization of the exploitation of natural resources and the production of domestic common public goods at large. Territoriality is one of the conditions, albeit not a sufficient one, to produce such goods. Unlike private goods, public goods are available to all and consumption does not diminish the asset (non-excludable and non-rivalrous). There is a close connection between territorial jurisdiction and the production of public goods. Ideally, jurisdiction is built around the need to produce appropriate public goods. Local, regional and national governments are assigned to produce appropriate products on their respective levels. While national and social security may be a matter for central government, communication to and from a remote village will mainly be in the hand of that commune and its inhabitants. The same is true for traditional commons and grazing rights. These are public goods of a local dimension. Others are of a regional dimension, such as a common market. On the other side of the spectrum, we are able to identify global public goods in which all mankind shares a common interest. The preservation of international peace, legal security in international relations (the rule of law), legally secured market access rights and non-discrimination, the protection of global commons, the protection from genocide and from hunger, are goods and values shared by all of mankind. Yet, the production of these goods and values largely lack appropriate institutions on the global level. While the preservation of world peace is institutionally allocated to the UN Security Council and may be accompanied with harsh sanctions, both militarily and economically, and market access and non-discrimination is subject to international dispute settlement and enforcement, other public goods are neither produced nor protected by appropriate international institutions. This is particularly true for global commons and basic human rights.

The depletion of fish stocks both within and outside the EEZ and global warming due to unrestricted greenhouse gas emissions under exclusive national jurisdiction and the sheer absence of jurisdiction over the High Seas and the global atmosphere, as well as continued gross violations of human rights witness the absence of appropriate public goods, their production and management, on appropriate levels of government. The tragedy of the global commons is essentially due to the absence of appropriate governance structure effectively dealing, in particular with fisheries or global warming. The sum of national jurisdictions around the world does not produce the commonly aspired goals. It allows for too much free riding. Jurisdictions are able to benefit from efforts made by others without participating in burden sharing. In doing so, States are able to point to permanent sovereignty over natural resources, exclusivity of jurisdiction and to the principle of non-interference. They are responsible within the realm, and not beyond. They may pursue the tripartite goals of sustainable development at home, but will not be able to realize them in a broader, global context. The fine balance of economic, social and ecological goals calls for a global approach taking into account the needs of other countries and continents alike. It cannot be achieved in a contained jurisdiction. Agriculture is an example in point. The pursuit of sustainable

production at home cannot ignore the balance and needs in other parts of the world.

The lack of appropriate institutions to bring about these public goods on the international level leaves them largely unattained. It is in the logic of focusing on local regional and national public goods by government that global public goods are neglected and largely left to the realm of rhetoric in the field of environmental and human rights law. The same is true partly of international economic law. Territorial jurisdiction preempts the production and protection of global public goods. We largely lack an appropriate framework in addressing them.

III. Multilevel Governance

The logic of producing and managing public goods on appropriate levels of government thus does not stop at the nation state. What is appropriate within the State is equally appropriate beyond its bounds. The production of global and transnational public goods was at first assigned to intergovernmental cooperation. States work together in producing such goods by creating and operating international organizations and shared treaties. The story is well known, from early organizations to the League of Nations and the United Nations and its specialized organizations; from GATT to the WTO and the Bretton Woods Institutions of the World Bank and the International Monetary Fund. More advanced structures translated powers to supra national organizations. The advent of the European Union is the most important example of transgressing the nation state in a post-nation state era. Certain tasks were assigned to the Union, fully or partly, with a view to produce regional public goods enhancing welfare throughout Europe. The establishment of a single market by far amounts to the most important achievement and public good in that respect. In other areas, the goals remain to be achieved. Today, the financial and debt crisis shows that the public good of financial and monetary stability yet remains to be achieved by the design of new and reformed institutions. The Euro is subject to insufficient institutions which need to be further developed as a consequence of the crisis. The European Central Bank needs developing into a lender of last resort in order to support governments against destructive speculation of financial markets. Regional public goods often develop in a process of crisis and response. They take time to build. The same holds true for the global level of governance. The idea of allocating appropriate powers to different layers of government is of equal, if not greater, importance on the global level. An integrated world economy characterized by extensive division of labour, mutual independence of states and companies alike calls for appropriate layers of governance and institutions able to produce the public goods securing and stabilizing such interdependence. These institutions partly exist. To a large extent they still are inexistent within the framework of international organizations. The United Nations Security Council assumes important functions in times of crisis and threat to international peace. As to other field of policy making, the UN is strongly involved in preparatory work but has largely left leadership to

informal groupings, in particular the G-20. The multilateral trading system of the WTO today amounts to the most advanced institutions offering legal security and high levels of compliance with rules agreed to. International trade, for obvious reasons, depends upon legal security and the interest to produce and protect this public good is widely shared. The WTO, despite inadequate decision-making and increasing preferentialism, has remained attractive, mainly for its institutions and system of legal dispute resolution and implementation. Again, the financial crisis of 2007 to 2010, and the current public debt crisis shows that appropriate and sufficient global institutions are missing not only on the regional, but also on the global level in producing the public good of financial stability. The taming of global financial markets and of speculation calls for appropriate instruments of governance. They need to go beyond soft law commitments under Basel III accords⁷ of the International Bank of Settlement. The IMF is not sufficiently equipped to deal with conflicts relating to exchange rates and implied support of export industries by means of devaluation. There is no global authority managing competition of different currencies within the global monetary system. Strong deficiencies equally exist in the field of human rights and environmental protection. The international Human Rights system is unable to protect civilians from massive and arbitrary prosecution even in constellations of failed states and revolution. The institutions to deal with global warming depend upon voluntary commitment and compliance. The United Nations Framework Convention on Climate Change (UNFCCC)⁸ is not equipped to stabilize increasing temperatures which are likely to be of detrimental impact on vulnerable regions, in particular mountains and coastal regions. It invites to free-riding and lacks incentives to join the effort.

The need to strengthen global governance in order to secure global public goods is obvious. Appropriate instruments to deal with finance, monetary, affairs, human rights and environmental issues need to be created. This may be done by international organizations, supranational organizations, informal networks or de facto governance exercised by a number of states, such as the G-20 working in cooperation with existing organizations. The doctrine of multilevel or multilayered governance assists in bringing about appropriate solutions, transgressing the fundamental and traditional divide between domestic and international law. As much as public goods are produced on the local, regional and national level, as much is it a matter of producing global public goods on the global level of governance. There is no inherent and fundamental difference between all these layers of government and governance which excludes to venture into limited and well defined areas of delegated powers to global governance structures. Harmonization of law may be brought about locally as much as globally. It is an incremental and arduous process.

⁷ Basel Committee on Banking Supervision, Basel Committee on Banking Supervision, International Framework for Liquidity Risk Measurement, Standards and Monitoring (Basel III), December 2012.

⁸ The United Nations framework Convention on Climate Change (UNFCCC), Rio de Janeiro, adopted May 9, 1992, entered into force March 21, 1994.

The challenge is less in finding appropriate instruments, but to overcome deep seated perceptions of exclusive domestic and territorial jurisdiction of States described above. The transfer of power to shared institutions is resisted as a matter of principle and considered contrary to what people call *realpolitik* – despite the fact that this type of *realpolitik* is unable to deal effectively with very real threats to human life and existence and the impossibility of states to deal with these problems appropriately on their own. The process of bringing about appropriate institutions will depend upon appropriate incentives and trade offs in relinquishing traditional domains and perceptions of sovereignty.

IV. Common Concern revisited

The concept of Common Concern was introduced to foster international cooperation and shared responsibility in combating global warming and addressing the challenges of climate change. The UN Framework Convention on Climate Change expresses its tasks in terms of Common Concern of Mankind. Because climate inherently is a global public good vital for mankind, international efforts at cooperation are considered vital under the auspices of the doctrine of Common Concern. The framework invited States to participate, to share the global effort. It resulted in the Kyoto Protocol⁹ with its principles of shared but differentiated responsibility, the absence of the United States and commitments for emerging and developing economies. It resulted in extensive free-riding as key States continue to abstain from international commitments after negotiations to find agreed benchmarks, goals and instruments have largely failed up to day. The concept of Common Concern, as originally understood, failed to overcome the legacy of territoriality, sovereignty, reflecting the deficiency of the present international framework.

It is here that we need to revisit the original idea of Common Concern and ask to what extent it entails normative elements yet to discover and to develop. We need to ask to what extent Common Concern can otherwise serve the undisputed need to produce global public goods in an integrated world economy than by merely calling for appropriate international institutions. We need to ask to what extent Common Concern can serve as an incentive to bring about such goods and institutions in the end of the day. We need to link Common Concern with traditional precepts of territoriality, State responsibility and explore its potential as principle and tool of unilateral policy of States in building global structures of multilayered governance. It is submitted that Common Concern, if properly developed, assumes an important role in fermenting new global structures.

The need to create pressing public goods and to manage them properly despite the large absence of common institutions begs the question of the responsibility of states and international actors. The cleavage between evident

⁹ The Kyoto Protocol to the United Nations Convention on Climate Change, Kyoto, adopted December 11, 1997, entered into force February 16, 2005.

needs and current global instruments requires revisiting traditional territorial foundations of international law laid in, and for a, very different world more than 200 years ago. Global challenges, in particular famine, genocide, other gross human rights violations, global warming cannot wait the advent of new international institutions. They need, in the first place, to be dealt with by States in the absence of appropriate international structures. Looking away in the face of such challenges not only impairs the fate of others, but will eventually fall back on all. Common Concerns of this type therefore are basic and fundamental concerns which affect the very livelihood and existence of mankind, the nature and balance of this globe, and the values to which we pledge in our legal orders. They do not allow shedding responsibility behind traditional concepts of state sovereignty and territoriality. They also trigger some kind of responsibility outside territorial jurisdiction since they are matters of Common Concern. And by doing so, they in return will provide incentives to work towards enhanced structures of global governance. In developing a doctrine of Common Concern, we need to distinguish Common Concerns and the principle of Common Concern, the latter providing the basis for defining appropriate rights and obligations.

A. Realm of Common Concerns

Common Concerns are matters which affect the international system as a whole in terms of stability and viability of the entire globe. They are not isolated and remote, but affect all in one way or the other, materially or morally directly or indirectly, sooner or later. It is not possible to define Common Concerns all for once at all and in advance. Many of them are known, and others may arise tomorrow. New problems and challenges may yet arise in the course of globalization and technological advance. They may be recognized in treaty law, such as global warming. They may eventually be recognized as a matter of customary international law in the process of claims and response. A subject of international law may call upon a concern to be common, and it may be accepted, or refuted, as such based upon expression and conduct by governments. Today, Common Concerns are mainly recognized in environmental law. They entail global warming, the depletion of biodiversity and of fish stocks in the High Seas in response to the tragedy of the global commons. Common Concerns, however, are not limited to the environment and ecological balance. The stability of the international financial, monetary and trading system and the protection of basic human rights are Common Concerns of equal importance and should be recognized as such. While it started with climate change and environmental law. The concept of Common Concern is much broader in scope and affects all vital interests to humankind throughout the body of international law.

B. The Principle of Common Concern

Next to identifying proper areas of Common Concern we shall need to explore the normative content of the concept. It is submitted that international law should recognize and develop the principle of Common Concern of Mankind as a responsibility of States. Responsibility entails the duty to address and respond to challenges in the realm of Common Concerns. As a principle, if

offers broad guidance while leaving details to further specifications which may vary from field to field. It complements the principles of self-determination and of permanent sovereignty over natural resources. It does not replace it as the principle of common heritage of mankind intended to. The principle of Common Concern does not displace the fundamental precepts of sovereignty and territoriality of the nation state. It adds an additional lawyer defining additional and new responsibilities beyond the proper territorial realm of states.

1. RESPONSIBILITIES AT HOME

Common Concern primarily entails responsibilities to act within a given jurisdiction. States are entitled, but also obliged to primarily address Common Concerns as defined by the international community within their own boundaries. National efforts at abating global warming therefore emanate from this principle independently of treaty obligations, as much as efforts to stop depletion of fisheries within their own territorial waters and the exclusive economic zone. Other than the principle of permanent sovereignty, the principle of Common Concern not only authorizes, but obliges governments to take action in addressing the Common Concern within their own jurisdictions and territories.

2. RESPONSIBILITIES ABROAD

The principle, however, also authorizes to take action in relation to facts relating to the Common Concern produced outside the proper jurisdiction of a State. Extraterritorial jurisdiction of States, under the traditional international law as expounded in the 1927 Lotus rule¹⁰ and mainly expounded in competition law and policy, requires sufficient attachment to the territory of the State. Rights and obligations relating to Common Concerns go beyond the traditional precepts of territoriality. While today action can be defended if the nexus to the own territory is sufficient, Common Concern does not require such linkages but depends upon examination whether the measure and action is able to support the attainment of a Common Concern. Territoriality often will be a matter of practical expediency, as states are largely depended upon attachment to their territory one way or the other in implementing laws and measures. The crucial point is not whether a foreign measure negatively affects persons and resources within a given jurisdiction, but whether it affects the attainment of the Common Concern. Common Concern thus goes beyond traditional precepts of international law and attachment to a particular jurisdiction. For example, anti-trust action against companies abroad can be taken to the extent that conduct of these companies negatively affects markets and prices within the jurisdiction. It is submitted that the principle of Common Concern transgresses these limitations and allows, in principle, action to be taken if the conduct abroad has detrimental effects within the realm of the Common Concern as defined by the international community. For example, governments are authorized to take appropriate action against highly polluting means of production bluntly ignoring the Common Concern

¹⁰ See Permanent Court of International Justice, *S.S. Lotus (Fr. v. Turk.)*, 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7).

of global warming. Likewise, governments are authorized to take action in response to blatant and systematic neglect of the Common Concern of protecting fundamental human rights and lives.

While Common Concern provides the foundations of authorization to act, the most difficult question relates to the problem to what extent the principle also entails obligations to act. There is a fundamental difference between authorization and obligation to act. While the former leaves the matter in the discretion of government, the latter compels to engage and take necessary steps. Evidently, a principle of Common Concern entailing obligations to assume responsibility would be much stronger, but also conflicting with traditional foundations and precepts of international law and life. Such obligations are gradually emerging in one area which is of key importance to Common Concern.

The emerging responsibility to protect civilians in civil strife has been increasingly accepted. Unilateral and unauthorized air strikes by the US, unauthorized by the UN Security Council, preventing genocide were mainly considered unlawful in Kosovo in March 1999. The intervention in Libya from March to October 2011 by Nato Forces amounts to the first case applying the doctrine of Responsibility to Protect (R2P). The doctrine of R2P can and should be considered to be part of the emerging principle of Common Concern. The protection of fundamental rights, in particular the right to life of civilian population amounts to a Common Concern which arguably not only authorizes, but as a matter of principle obliges States to intervene within the realm of the Common Concern. Obviously, the step to an obligation, as opposed to the right to intervene, is a major step. Intervention is notoriously controversial in politics, and an obligation to intervene facilitates decision-making at home in view of state responsibility assumed. It facilitates coordination among States in bringing about an international relief operation. The main challenge amounts to equal treatment of comparable constellations. It will be argued that an obligation to act needs to be applied consistently, and cannot be subject to opportunism and unequal treatment. Yet, the impossibility to save lives in one instance should not imply that lives in other instances cannot be saved. It will be a matter of taking into account all pertinent factors in assessing the obligation and the make a determination on a case by case basis.

We are about to enter new frontiers of international law guided by the principle of Common Concern. To what extent obligations to act and address Common Concerns outside of domestic jurisdiction can be extended to other areas than humanitarian intervention and the immediate protection of human lives requires a full debate and discussion. The principle is unlikely to call for a uniform and single answer to this question. This is true not only for the fundamental question of obligation, but also for the terms of authorization for taking unilateral action. The principle of Common Concern as a principle therefore will depend upon further specification of rules and scope for action. These rules vary from field to field. They will partly be framed by existing

treaty obligations. Partly they may be subject to the process of customary law. Today, the scope of Common Concern is still largely undefined and therefore depends upon positive law.

3. RESPECTING EXISTING OBLIGATIONS

The extent to which trade measures can be taken in response to Common Concerns therefore depends on the remedies available in WTO law or bilateral agreements, unless other and different rules are defined. Assuming Common Concern responsibilities abroad typically works with and through trade instruments addressing the methods of production of a good or service. They are subject to most favored nation treatment outside of customs union and free trade agreement. They need to respect national treatment and thus the fundamental principles of non-discrimination and transparency. Labeling of products, both voluntary and mandatory, are important tools to allow consumer to make their own decisions in an informed manner. Products supporting and considering Common Concern may obtain preferential treatment in terms of tariffs and import regulation. It may obtain support research and development assistance. The crucial point is here that States are not only authorized to use WTO rights, but are under an obligation to do so in addressing the Common Concern at stake. In the context of climate change, Members of the WTO thus would find themselves under an obligation to adopt appropriate measures addressing polluting ways of production, or those degrading the biosphere, in terms of tariff and non-tariff policies within the bounds of WTO law. It will be argued that recourse to such measures having extraterritorial effect will amount to imperialism and protectionism in disguise mainly in support of domestic industries competing in new technologies. Such motives cannot be excluded. There is a thin line between the protection of Common Concerns and the protection of purely economic interests. There is little doubt that Common Concern will trigger economic protectionism, and it is matter of assessing the merits of a claim. The difficulty to distinguish legitimate and illegitimate measures, however, does not allow refuting the concept of Common Concern. Drawing a line is an ordinary operation to be undertaken in other constellations and part of the normal business in the operation of international trade regulation. It is not unique to Common Concern but of a general nature. It can be properly handled by WTO dispute settlement if need be. Similar constraints to Common Concern policies may be operational under other existing treaty regimes in different fields of international law. The principle of Common Concern thus will be contained by treaty law. And this prospect in return, also provides an incentive to further developing appropriate structures of global governance in the end of the day.

V. Conclusion

The principle of Common Concern offers the potential to rebalance international law based upon territoriality, sovereignty and lacking appropriate international institutions able to produce global public goods. The principle should be designed to address, in the first place, responsibilities of

States in dealing with Common Concerns, both at home and abroad. The principle should entail responsibilities comprising the authority to act extraterritorially while respecting existing international agreements, and which partly may also assume obligations to do so in the pursuit of global common concerns.

The implementation of unilateral or concerted measures and policies relating to defined areas of Common Concern in particular by large powers and markets will be met with opposition, resistance and perhaps retaliation. Government will invoke traditional precepts of sovereignty and sovereignty over natural resources. Yet, taking seriously Common Concerns as a right and obligation to address these concerns beyond territorial jurisdiction has to take these tensions into account and channel them towards the establishment of global governance able to deal with these matters more effectively and based upon commonly agreed rules. The principle of Common Concern provides the incentives working towards agreed regimes. It allows both for bottom up and top down approaches. It is the combination of the two which will bring about progress in international law and relations in addressing Common Concerns of Mankind.