

# International Environmental Law and the Emerging Concept of Common Concern of Mankind

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24/09/2007

# Agenda

- Territoriality of International Law
- The Impact on WTO
- Areas of Break-Down
- Responses in Environmental Law
- Global Commons
- The Principle of Common Concern
- Impact on Trade Regulation?

# Territoriality

- The Westphalian State System
  - Sovereignty and Accountability
  - Territorial Jurisdiction (land, Continental Shelf EEZ)
  - Permanent Sovereignty over Natural Resources
  - Jurisdiction to Regulate, Adjudicate and Enforce related to Impact on Territorial Jurisdiction

# Impact on WTO Law

- Customs Territory and Membership
- Trade Regulation based upon Territorial Concepts
- Jurisdiction defined based upon Impact on Territory
  - Impact on Products, Domestic Market Regulation and Population
  - Requirements on Process and Production Methods (PPMs) controversial

# Areas of Breakdown

- Internet Jurisdiction (domain names, fraud, criminal offenses)
- Jurisdiction on High Seas and State Responsibility over Natural Resources (Area)
- Jurisdiction over Space
- Arctic Claims
- Responsibility for transboundary Resources (living, non-living, air)
- Tragedy of Global Commons

# Responses in Environmental Law

- Transboundary Responsibility (Trail Smelter)
- Obligations Ergo Omnes
- The Doctrine of Common Heritage of Mankind
  - Shared Responsibilities, Benefit and Administration
  - Redistribution and Equity
  - Impact of Permanent Sovereignty
- The Doctrine of Global Commons and Common Concern

# Global Commons

- From *res nullius* and Non-appropriation to shared Jurisdiction and Responsibility
  - Antarctica
  - Deep Sea Resources (Manganese Nodules)
  - Migratory Species
  - Endangered Species
  - Biodiversity
  - Atmosphere and Climate
- Treaty based: Absence of Customary Law

# Concept of Common Concern

- Content of the Concept
- Question of Responsibilities
  - *Erga Omnes* Character
  - Differentiated Responsibility
- Regulation of Domestic Matters
- Sovereign Rights
- Climate Change as a Common Concern

# Impact on Trade Regulation ?

- Progressive Liberalisation and Sustainable Development
- MFN and Reciprocity
- Jurisdiction to Regulate, Adjudicate and Enforce in areas of global concern and global commons
- Relationship to MEAs, Coherence
- Product Standards (TBT/SPS), Labeling
- Production and Process Methods (PPMs)
- Subsidies and Taxation
- Environmental Goods and Services (EAs)
- Intellectual Property and Access to Information (Technology, Know-how)
- Differentiation of Responsibility and Graduation (S+D)