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Global Public Goods

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A. Concept

1 The concept of *Global Public Goods* ('GPGs') has developed outside the realm of international law and is grounded in economic theory. Their distinctive global scope distinguishes GPGs from national public goods, such as national defence or domestic public infrastructure. Examples of GPGs include climate change mitigation, the eradication of infectious diseases (Brown Weiss (2019) Find it in your Library), the fight against → *terrorism*, and the provision of human rights (Kaul and Mendoza (2003) Find it in your Library).

2 The concept of *public goods* refers to those goods that possess the properties of *non-rivalry* and *non-excludability* (Samuelson (1954) Find it in your Library; Sandler (2004) Find it in your Library). Nonexcludability means that even if an individual or entity has neither paid for nor contributed to the provision of the good, consumption cannot be prevented (Nordhaus (2006) Find it in your Library; Olson (1965) Find it in your Library). Non-rivalry, on the other hand, implies that the consumption of the public good does not diminish the availability of the good for others (Kanbur, Sandler, and Morrison (1999) Find it in your Library). A classic example of a public good is the lighthouse: its use cannot be withheld, nor does use by one person reduce its availability to others. In addition, goods that exhibit both features are termed pure public goods, while those that feature only one are considered impure public goods (Kanbur, Sandler, and Morrison (1999)). Within the category of impure public goods, there are two subtypes: club goods, which are excludable but non-rival (such as paid streaming services), and common-pool resources, which are rival but non-excludable (such as → *fish stocks*).

3 While private goods are excludable and rival (e.g., cars or shoes), meaning they follow the logic of market forces of supply and demand (Summary (2018) Find it in your Library), public goods are at least partially removed from these market forces (Srinivasan (2007) Find it in your Library). Private goods are those that individuals or entities can own and derive profit from. Because private goods are excludable and rival, their consumption can hinder or diminish their availability to others. It is noteworthy that most goods are not inherently public but rather become public through political decisions. This is the case with the lighthouse example or the establishment of public parks. As Kaul and Mendoza point out, "[p]ublic" and "private" are in many—perhaps most—cases a matter of policy choice: a social construct' (Kaul and Mendoza (2003) 104).

4 Public goods face two significant challenges: externalities and free riding. Externalities refer to unintended effects of private actions that influence the availability or quality of these goods (Sandmo (2006) Find it in your Library). Free riding arises due to the non-excludable nature of the GPG, meaning that individuals or entities benefit from it whether they have contributed to the provision of the GPG or not. Consequently, public goods are prone to underproduction and thus need to be managed by public authorities to secure their provision for the benefit of all.

5 When the benefits of public goods extend beyond the frontiers of the state 'to all countries, people and generations' (Kaul, Grunberg, and Stern (1999) 11 Find it in your Library), and therefore, the benefits of the public good become global, it is regarded as a *Global Public Good*. Indeed, it has been acknowledged that

public goods can be considered global when they cover a rather large group of countries and when it is difficult or impossible to identify a geographically

restricted community of beneficiaries (Archibugi and Filippetti (2015) 491 Find it in your Library).

Accordingly, due to their global span, the provision of such goods cannot be left to the national level (Deneulin and Townsend (2007) Find it in your Library).

6 Scott Barrett distinguishes goods based on their mode of provision into three categories, namely: *single best effort*, the *weakest link*, and *aggregate effort* GPGs (Barrett (2007) Find it in your Library). These categories reflect the economic understanding of global public goods, which is also evident in the legal debate. The first category encompasses goods provided by a single actor or a group of actors, where the benefits of such provision produce a private gain to the actor providing the GPG and therefore do not depend on international cooperation. Their provision thus relies solely on a *single best effort*, for example, the generation of knowledge. The second category includes goods whose provision depends on the performance of the *weakest link* in the chain of actors, where the efforts of the majority can be undermined by the action of a single actor. A prime example is disease eradication, such as the campaign against smallpox. Finally, the third category consists of goods that require the collective effort of multiple actors, particularly those most powerful. These goods rely on and, therefore, require coordinated global action. A notable example is climate change mitigation.

7 In light of the growing number of global challenges across various domains and the inability of individual states to ensure essential public goods at the national level, the concept of global public goods has gained considerable attention in international governance and legal scholarship. Scholars from different areas have explored GPGs in international law with very different approaches. Many authors converge on the view that there is a duty to cooperate and to classify obligations relating to GPGs as *erga omnes* (→ *Obligations erga omnes*; → *Cooperation, International Law of*).

8 While international legal scholarship has engaged extensively with the concept of GPGs, international legal instruments addressing global challenges do not mirror this trend. Indeed, they have traditionally neither incorporated the concept nor framed issues explicitly as GPGs, with the notable exception of the World Health Assembly ('WHA') Resolution 'COVID-19 Response' issued in 2020 (see below para 28 et seq.). The legal implications of the concept of GPGs have thus not yet been clarified in international law and remain contested. In any case, the concept of GPGs provides an important analytical framework for examining the identification of, and challenges associated with, their provision.

B. Related but Distinct Concepts

9 The concept of GPGs is often confused with several other categories: for instance, with the concept of the *commons* (Hardin (1968) Find it in your Library; Ostrom (1990) Find it in your Library) or *global commons* (International Union for Conservation of Nature and Natural Resources (1980) Find it in your Library). The latter was introduced into international environmental discourse in the 20th century as a means to identify those regions that fall beyond national jurisdiction, such as → *outer space* or the deep seabed (→ *International Seabed Area*). The concept, therefore, has a strong geographical or spatial component that distinguishes it from GPGs that may, but do not necessarily, relate to a specific area. The main implication arising from the recognition of areas as 'commons' is that all states have access to the resources. However, distinctions apply as to the legal consequences arising from this concept's attributes.

10 The concept of *global commons* has evolved, in turn, into two key terms within the framework of international environmental law (→ *Environment, International Protection*), namely: the → *common heritage of mankind* ('CHM') and the *common concern of humankind* ('CCH'). The former was coined to designate areas beyond national jurisdiction, and it was first introduced into the outer space regime and the regulation of activities in the deep seabed under the United Nations Convention on the Law of the Sea (1982) ('UNCLOS'). CHM has its basis in the United Nations General Assembly Resolution 2749 (XXV): Declaration of Principles Governing the Seabed and the Subsoil Thereof, Beyond the Limits of National Jurisdiction (1970), which was adopted following the initiative of Malta and was later incorporated in Part XI UNCLOS to designate the 'Area' to be the 'common heritage of mankind' (→ *Law of the Sea*). The concept has been developed with the idea that the areas governed by the CHM shall be administered for the benefit of all → *state[s]* and as a means of redressing the inequitable exploitation of the resources beyond national jurisdiction by developed countries (Schrijver (2016) Find it in your Library; → *Equitable Utilization of Shared Resources*). Subsequently, it has also been applied in other contexts, such as technology, cultural property, or protection of the environment (Wolfrum (2009)).

11 In contrast, CCH encompasses those global issues that, because of their importance for humankind, are regarded as interests shared by all and therefore warrant protection and preservation extending beyond the present generation (Shelton (2009) Find it in your Library; Brown Weiss (2015) Find it in your Library). In that sense, it has a strong temporal or → *intergenerational equity* dimension. Based on the main features of CCH, the concept of GPGs aligns more closely with the CCH than with the CHM. While the principle of CCH arguably carries fewer direct legal implications than that of the CHM, it nonetheless entails recognition that certain matters, due to their importance and contribution to the benefit of humankind, must be safeguarded for the benefit of both present and future generations (Schrijver (2016)). This principle has been incorporated in the Preambles of both the Convention on Biological Diversity (1992) and the United Nations Framework Convention on Climate Change (1992), which govern the conservation of biological diversity and the protection of the atmosphere, although it is not explicitly defined in either instrument (→ *Biological Diversity, International Protection*; → *Atmosphere, International Protection*). The → *International Court of Justice (ICJ)* has recently confirmed the General Assembly's categorization of climate change as 'common concern of mankind, since climate is an essential condition which sustains life on earth' (UNGA, 'Resolution 43/53: Protection of Global Climate for Present and Future Generations of Mankind' (1988); *Obligations of States in respect of Climate Change* (Advisory Opinion) (2025) paras 58, 95).

12 Another closely related concept is that of *community interests* or collective interests. The central premise of this notion lies in its expression of certain fundamental values shared by the → *international community* (Simm (1994) Find it in your Library). Community interests are therefore not defined by specific attributes but rather by the significance of the underlying values and goods they embody. This concept has relevance for international law, particularly with regard to different conceptions of the international legal order, processes of law-making, methods of legal interpretation, and the hierarchy of norms (Feichtner (2007)).

13 Lastly, there is an overlap with the concept of *common goods*. Unlike public goods, common goods like fish stocks are rivalrous and susceptible to overconsumption. As argued by Ostrom, commons theory is closely linked to self-governance, community involvement and participatory approaches, and a preference for collective management (Ostrom (1990)). In this sense, the common good has been described not as merely the 'outcome of a collective action which makes everybody better off than if they acted individually, but [as] the good of that shared enterprise itself' (Deneulin and Townsend (2007) 25). This definition captures the essential distinction between common goods and GPGs. While

common goods depend upon and emerge from collective action, GPGs can be produced by different actors. Additionally, public goods and common goods theory diverge in terms of their spatial scale and group size, which in turn influence their governance models and institutional frameworks (Young (1989) Find it in your Library). As a result, while public goods theory typically favours top-down governance approaches, commons theory favours bottom-up and multi-level governance strategies (Brando and others (2019) Find it in your Library). Brando and his co-authors illustrate this with the example of forests, which can be regarded as both a common and a GPG, depending on the analytical perspective applied. Thus, the protection of forests as locally managed protected areas that directly benefit communities constitutes a common good, whereas their global contribution to carbon sequestration and climate regulation represents a GPG (ibid.).

14 While there are certain overlaps among these various approaches, the concept of GPGs follows a distinct logic. It is defined by specific characteristics—nonexcludability and non-rivalry—and by particular challenges associated with these features, namely externalities and free riding. At the same time, the examples illustrating these respective categories are often closely aligned or even identical in practice.

C. Development in International Legal Scholarship

1. Origin in the International Development Agenda

15 As noted above, the concept of GPGs is rooted in economics. However, it was the → *United Nations Development Programme (UNDP)* publications in 1999 (Kaul, Grunberg, and Stern (1999)), 2003 (Kaul and Others (2003) Find it in your Library), and 2006 (Kaul and Conceição (2006) Find it in your Library) that propelled the concept onto the international development agenda. Building on Samuelson's theory, the authors referred to the concept of GPGs as 'outcomes (or intermediate products) that tend towards universality in the sense that they benefit all countries, population groups and generations' (Kaul, Grunberg, and Stern (1999) 16).

16 Over the past few decades, the concept has become increasingly prominent in the policy discourse of international organizations, serving as a framework to promote international cooperation and mobilize financing in specific development areas. In this sense, the → *World Health Organization (WHO)*, the → *Food and Agriculture Organization of the United Nations (FAO)*, and the World Bank have acknowledged the GPGs framework (→ *World Bank Group*; → *International Bank for Reconstruction and Development (IBRD)*). Moreover, the European Union endorsed the concept in 2014 by establishing a financing instrument for development cooperation, which remained in place until 2020.

2. Reception in Different Legal Contexts

17 International legal scholars have primarily viewed the concept of GPGs as a valuable tool for understanding the collective interests of the international community (Morgera (2012) Find it in your Library; Villalpando (2010) Find it in your Library). State cooperation in the global challenges of the Anthropocene—in 'the emerging kaleidoscopic world' (Brown Weiss (2011) Find it in your Library)—implies that the community of states must manage and pursue a GPG in such a manner that ensures that all states can benefit.

18 The concept of GPGs has moved beyond its origins in economics and the development agenda, gaining significant traction within legal scholarship. However, there remains considerable divergence among scholars regarding the definition and core elements of the GPGs. For instance, Deneulin and Townsend (2007) conceptualize it in descriptive rather than normative terms, while Brando and others (2019) approach it prescriptively, emphasizing its legal and political implications. Despite these differing interpretations, legal scholarship has largely underscored the importance of framing issues of global

concern within a GPGs framework, as well as the role of international law in their provision. As Bodansky observes, '[s]ince global public goods cannot be adequately provided by the market, we need international institutions and international law to provide them' (Bodansky (2012) 652 Find it in your Library). This insight highlights the central role of international law and governance in ensuring the provision of GPGs. Similarly, Simma and Paulus contend that the international community serves as 'the repository of interests that transcend those of individual states *uti singuli*' (Simma and Paulus (1998) 268 Find it in your Library).

19 Several scholars have examined the categorization and normative dimensions of GPGs, focusing primarily on areas such as world heritage cultural sites (Francioni (2012) Find it in your Library), global environmental law (Morgera (2012)), and international investment and trade law (Mavroidis (2012) Find it in your Library; Choudhury (2013) Find it in your Library). In this regard, Morgera argues that GPGs have been identified by international law scholars 'as a useful concept for understanding the interests of the international community' and that, as such, they embody shared values of the global community, with the corresponding benefits typically being non-rival and non-excludable (Morgera (2012) 748).

20 Within the framework of the international protection of → *cultural heritage*, Francioni conceptualizes cultural heritage as a GPG. He reaches this conclusion by referring to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, whose preamble states that 'damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world' (→ *Cultural Property, Protection in Armed Conflict*). Following this reasoning, Francioni links the concept of world cultural heritage to the international community's interest in the management and protection of such cultural sites.

21 Within the field of global environmental law, Morgera argues that the recognition of environmental matters of common concern as GPGs stimulates interactions between international, national, and transnational law, particularly within the framework of → *common but differentiated responsibilities*. In this context, common but differentiated responsibilities provide a basis for the development of instruments and governance mechanisms that allocate rights and obligations of states in addressing environmental issues of common concern and for their integration into international environmental treaties. Consequently, Morgera considers these treaties to be the 'by-product of aggregate-efforts global public goods and a potential justification for single-best-effort global public goods' (Morgera (2012) 750).

22 Within the field of → *international economic law*, Choudhury interprets the concept of GPGs as a valuable framework for analysing the impact of international investment law, emphasizing that it extends beyond the private parties to an investment agreement (→ *Investments, International Protection*; → *Investments, Bilateral Treaties*). As Choudhury argues, these benefits include the establishment of a legal framework that facilitates foreign direct investment activity and enhances its predictability, as well as the creation of mechanisms that ensure that foreign direct investment yields benefits for both investors and host states. Building on this reasoning, Choudhury considers the system of international investment law itself to be a GPG, given that its use is non-rival and non-excludable. Accordingly, the author highlights that its utilization does not diminish the system's utility for other actors and that the outcomes of the system of international investment law—as a whole—benefit participants and non-participants alike and the world at large. Similarly, Mavroidis (2012) sees the → *World Trade Organization (WTO)* as a GPG. However, in contrast with Choudhury's position, which argues that the benefits extend beyond the contracting parties, Mavroidis maintains that only WTO member states can

benefit from the trade regime. Hence, the system of rules and procedures of the WTO confers advantages solely upon its members, meeting the criteria of being non-excludable and non-rival only within the organization's membership.

23 Furthermore, although some scholars argue that international law is essential for the creation and provision of GPGs (Bodansky (2012); Shaffer (2012) Find it in your Library), others contend that the existing international legal system or prevailing 'Westphalian approaches' of intergovernmental regulation (Petersmann (2012) Find it in your Library; Lamy (2012) Find it in your Library) are inadequate to effectively address the challenges arising from the under-provision of GPGs (→ *Westphalian System*). Building on this critique, Krisch proposes a 'turn to nonconsensual lawmaking mechanisms, especially through powerful international institutions with majoritarian voting rules' ((2014) 1 Find it in your Library; → *International Organizations or Institutions, Voting Rules and Procedures*).

24 As a corollary of the above, the concept provides a framework for analysing and developing legal instruments and governance mechanisms aimed at addressing matters of global concern. Indeed, the legal debate has benefited from the economic conceptualization of GPGs. Referring to the economic framework allows for a more nuanced understanding of how issues of global concern that benefit the entire international community are addressed, either through the collective efforts of the community of states (aggregate-effort GPGs) or by unilateral contributions towards the provision of the GPG (single-best-effort GPGs). As Morgera highlights, the intersection between economics and law also underscores the need to create incentives to overcome the challenges inherent in GPGs, namely free riding and externalities, which lead to their under-provision (Morgera (2012) 748). This approach is reflected in the design and regulation of modern multilateral environmental agreements ('MEAs') (→ *Environment, Multilateral Agreements*), such as the Montreal Protocol on Substances that Deplete the Ozone Layer (1987) ('Montreal Protocol') (→ *Ozone Layer, International Protection*) or the Paris Agreement under the United Nations Framework Convention on Climate Change (→ *Climate Protection Agreements*).

25 The Montreal Protocol provides a prominent example of how MEAs can address the challenge of free riding. Free riding often arises when asymmetric contributions occur, i.e., when certain states contribute significantly more than others, prompting some to reduce or withdraw their efforts. To overcome this inherent challenge, the Montreal Protocol adopted a dual strategy. First, industrialized states are required to cover the incremental costs associated with the implementation in → *developing countries*, through financial assistance complemented by the replenishment of the innovative Multilateral Fund for the Implementation of the Montreal Protocol. Furthermore, developing countries are afforded a distinct phase-out schedule while pursuing the same overarching global objective. These measures serve as incentives to encourage the participation of developing countries. Second, the Montreal Protocol also establishes trade restrictions on controlled substances (such as chlorofluorocarbons 'CFCs') and on products containing them. This regulatory framework has ensured a high degree of compliance (→ *Environmental Compliance Control*), which can be attributed both to the Protocol's legal and governance architecture (Sabel and Victor (2022) Find it in your Library) and to the availability of environmentally friendly alternatives to ozone-depleting substances (Young and Others (2021) Find it in your Library).

26 Likewise, the Paris Agreement requires each Party to prepare, communicate, and maintain successive Nationally Determined Contributions ('NDCs') aimed at achieving the long-term temperature goal. NDCs constitute the cornerstone of the agreement, encapsulating each country's efforts and ambitions to mitigate and adapt to climate change. At the same time, the agreement provides that developed countries should pursue economy-wide emission reduction targets, whereas developing countries are encouraged to

progressively move toward such targets in line with their national circumstances. This mechanism follows a similar approach to that established under the Montreal Protocol, seeking to address the challenges associated with the aggregate-effort GPG of climate change mitigation. However, unlike the Montreal Protocol, whose obligations are time-bound and legally specific, the architecture of the Paris Agreement is grounded in flexibility, relying primarily on pledges by parties through their NDCs to achieve the long-term temperature objective (ICJ *Obligations of States in respect of Climate Change* (Advisory Opinion), paras 234 et seq.).

D. Reference in International Legal Instruments and Implications

1. Incidental Provision of GPG

27 International law can implicitly provide and administer GPGs. Indeed, international law frequently contributes to their provision, though it does so without explicitly invoking the concept or specifying its defining elements. For example, binding resolutions of the Security Council (→ *United Nations, Security Council*), such as those against → *piracy*, serve to provide the GPG of safe water passages. Similarly, international environmental agreements promote a healthy environment or a stable climate, establishing corresponding state obligations. In addition, international treaties often create organizations that facilitate the provision of GPGs; for instance, the WTO contributes to the GPG of stable and predictable trading conditions for its members. The binding nature of such obligations arises not from the concept of GPGs itself, but from the legal force of the underlying instruments, for example, Security Council resolutions (such as Resolution 2565 (2021)) or treaty-based commitments. Consequently, the effect of GPGs is largely incidental, making it difficult to derive distinct legal consequences from the concept of GPGs.

2. Explicit Provision of GPGs

28 States can explicitly agree on the provision of GPGs through a binding legal instrument. To date, the international community has explicitly invoked the concept of GPGs on at least one occasion in such an instrument. In 2020, the WHA adopted Resolution WHA 73.1, ‘COVID-19 Response’, which recognized the ‘role of extensive immunization against COVID-19 as a *global public good* for health in preventing, containing and stopping transmission to bring the pandemic to an end’ (para 6) (emphasis added)).

29 This unprecedented resolution in the history of the WHO, and of international law more broadly, was adopted without objection. It therefore conveys the collective political recognition by WHO member states of immunization against COVID-19 as a GPG. Significantly, the reference to GPGs appears explicitly in the operative part of Resolution WHA 73.1 (para 6). From this it can be inferred that WHO member states understood that realizing immunization as a GPG requires addressing critical issues of access to and distribution of essential health technologies and products, such as vaccines as well as the knowledge necessary for their production once developed (von Bogdandy and Villarreal (2021) Find it in your Library).

30 By declaring immunization not only a public but also a *global* good, the WHA recognized that the exceptional circumstances of the pandemic required a coordinated global response. Because of this unique challenge, the GPG of immunization must be achieved through the collective action of the international community. Secondly, achieving immunization is inherently a *public* endeavour. Given the non-excludable and non-rival nature of public goods, their provision should fall under public responsibility to ensure that the benefits extend to and are guaranteed for all people. This is crucial because public goods are susceptible to under-provision due to externalities and free riding. While

COVID-19 immunization is considered the *good* at issue, this is not tangible in itself. Rather its ultimate realization depends on the generation and supply of *intermediate goods* (Kaul (2012) Find it in your Library)—such as vaccines, medical equipment, and research data—which, in turn, contribute to the provision of the *final public goods* (Kaul and Others (2003)). Consequently, the WHA's Resolution on COVID-19 constitutes a prime example of an international declaration which framed the requirement for an international decision to which it explicitly framed the collective response as a GPG (→ *Public Health, International Cooperation*).

31 The conceptualization of a good as a GPG and its explicit inclusion in a binding legal instrument raises the question of whether distinct normative implications arise compared to the incidental provision of a GPG. First, the deliberative decision to provide a GPG implies that states bear a duty to cooperate in achieving it. The duty to cooperate is enshrined in the Charter of the United Nations under Articles 1(3) and 2(5) and Chapter IX (→ *United Nations Charter, Interpretation of*) and was further developed in the → *Friendly Relations Declaration (1970)* (UNGA, 'Resolution 2625 (XXV): Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the UN Charter'). The ICJ recently confirmed the duty to cooperate with regard to climate change (*Obligations of States in respect of Climate Change* (Advisory Opinion) paras 140–42). Cooperation thus constitutes the essential mechanism for achieving objectives in relation to goods that require collective action (Brown Weiss (2019)). Consequently, the recognition of a GPG in a binding instrument serves to concretize otherwise abstract obligations to cooperate with respect to a specific GPG (Bäumler and Sarno (2022) Find it in your Library).

32 Second, the agreement to provide a GPG may hold significance for the interpretation of other agreements through the application of treaty interpretation techniques (→ *Interpretation in International Law*). This may be relevant when interpreting treaties in light of subsequent agreements and practice, as well as with regard to any relevant rules of international law applicable in the relation between the parties pursuant to Article 31 → *Vienna Convention on the Law of Treaties (1969)*.

33 Third, certain obligations might be regarded as *erga omnes* as they safeguard common interest owed to the international community as a whole (Bodansky (2012); Nollkaemper (2012) Find it in your Library). The → *obiter dictum* of the ICJ in the → *Barcelona Traction Case* recognized that there exist 'obligations of a State towards the international community as a whole' and as such, 'all States can be held to have a legal interest in their protection' (para 33).

E. Concluding Observations

34 The concept of GPGs is an economic notion that is related to but distinct from legal concepts such as the common concern of humankind. At the same time, it possesses multifaceted and unique characteristics that make it particularly suitable for analysing complex global challenges requiring a coordinated, multilevel response, such as those relating to health, the environment, and peace. Within these domains, the concept functions as a valuable analytical framework for examining issues of collective interest to the international community, the benefits of which can be realized only through joint action. Consequently, the provision of GPGs has increasingly been intertwined with global governance, and its growing recognition has attracted rising attention within international legal scholarship.

35 Beyond identifying and describing the constituent elements of the concept, its legal implications remain contested. Within the context of an explicit and deliberative decision to provide a specific GPG, the concept has the potential to serve as a framework for fostering collaborative efforts on a global scale aimed at addressing the challenges of externalities and free riding inherent in the non-excludable and non-rival nature of the GPG. By encapsulating the interests of the international community and recognizing that such goods cannot be achieved solely at the national level, the realization of GPGs may stimulate collective global action. Consequently, as the international community continues to confront pressing global challenges, this framework can function as a catalyst for enhanced cooperation in matters of common concern at the global level.

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