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Reactions and Relationships

**International Undertaking (1983)**
FAO-agriculture - food security; Farmers’ Rights; Access terms back and forth through resolutions

**International Treaty (2004)**
MLS; Farmers’ Rights

**CBD (1992)**
UNEP-Environment - conservation; Indigenous and local communities; Access and Benefit Sharing PIC/MAT bilateral

**Nagoya Protocol (2014)**

**UPOV (1961)**
Harmonized standards; decreasing flexibility for members

**WTO-TRIPS (1994)**
Global IP standards through trade rules

**Review of MLS**
Ongoing report due to Governing Body meeting in Oct 2015

Strengthening and broadening of intellectual property rights
Graham: what are we trying to achieve and for whose benefit?

- With a disjointed international legal landscape let’s add:
  - Not only who benefits but who loses?
  - Who is harmed?
  - At what cost to individuals, local communities and the global community as a whole?
  - And what do we do about it? The job of public policy is to regulate and provide in and for the public interest…
Sustainable Development Goal 2:

- **End hunger, achieve food security and improved nutrition, and promote sustainable agriculture.**
The international legal architecture of relevance to genetic resources, indigenous and local communities is larger than what we are considering...

- To address food security, the role of ILCs and GR and the inequities identified in Graham’s presentation we must consider:
  - The World Trade Organization, in particular the Agreement on Agriculture and the TRIPS Agreement;
  - Human Rights Council Open-ended Working Group negotiating Declaration on Rights of the Peasant;
  - Human Rights Council’s open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.
The big question....

- *If* we can identify and fill the gaps, possible conflicts and means of reconciliation amongst the current international legal architecture, *would this be sufficient* to ensure a fair, equitable and secure global food system?
Major challenge to change

- Power imbalance which is growing with industry consolidation...
Instruments or provisions within instruments generally fall into three categories; those that:

- Promote technology development through IP and trade as a means to achieve food security (WTO AoA and TRIPS, UPOV);
- Are in part, trying the right the imbalance between ‘technology rich’ and ‘biodiversity rich’ countries and for ILCs within these countries (CBD, IT and NP);
- Are primarily aimed at supporting and protecting human rights (UN Declaration on the Rights of Indigenous Peoples).
Category One: Market-based and transactional

- World Trade Organization Agreement on Agriculture: objective to create a fair and market-oriented agricultural trading system;
- World Trade Organization TRIPS Agreement: establishes minimum standards for IP protection with aim of incentivizing and facilitating the flow of results of innovation.
Category Two: establishing a means to reap benefits

- Relates to the provisions on access and benefit sharing through CBD Article 15; the Nagoya Protocol; and the International Treaty’s Articles 10-13 establishing the Multilateral System of Access and Benefit Sharing for Annex 1 crops.
Category three: Securing Human Rights

- The UN Declaration on the Rights of Indigenous Peoples
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- Perhaps occupies a middle ground;
- Re-thinking intellectual property; particularly around traditional knowledge;
- Focus on helping to stop granting of bad intellectual property rights (patents or more?) and supporting the ABS systems created under the CBD, NP and ITPGRFA
Conclusions

- Expand consideration to other treaties and instruments, particularly economic instruments such as the WTO AoA and TRIPS;
- Look beyond objectives and beneficiaries instrument by instrument to their effect on one another;
- Find better means to raise understanding and coordination amongst instruments, including the possibility of a neutral forum;
- Understand power imbalances and empower the public sector to regulate in the public interest.