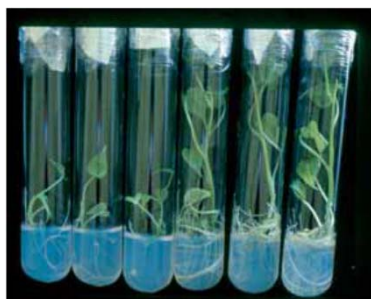




Towards Redesigning a Global Seed Commons

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Practicing the commons

Self-governance, cooperation and institutional change

10-14 July 2017
Utrecht, the Netherlands
XVI Biennial IASC-Conference

1. General context in food and agriculture
2. Objectives of my research
3. Assessing the International Treaty on PGRFA
4. Mobilizing the Theory of the Commons
5. Selected research results



1. General context

Flash history of the seed (plant genetic resources for food & agriculture)



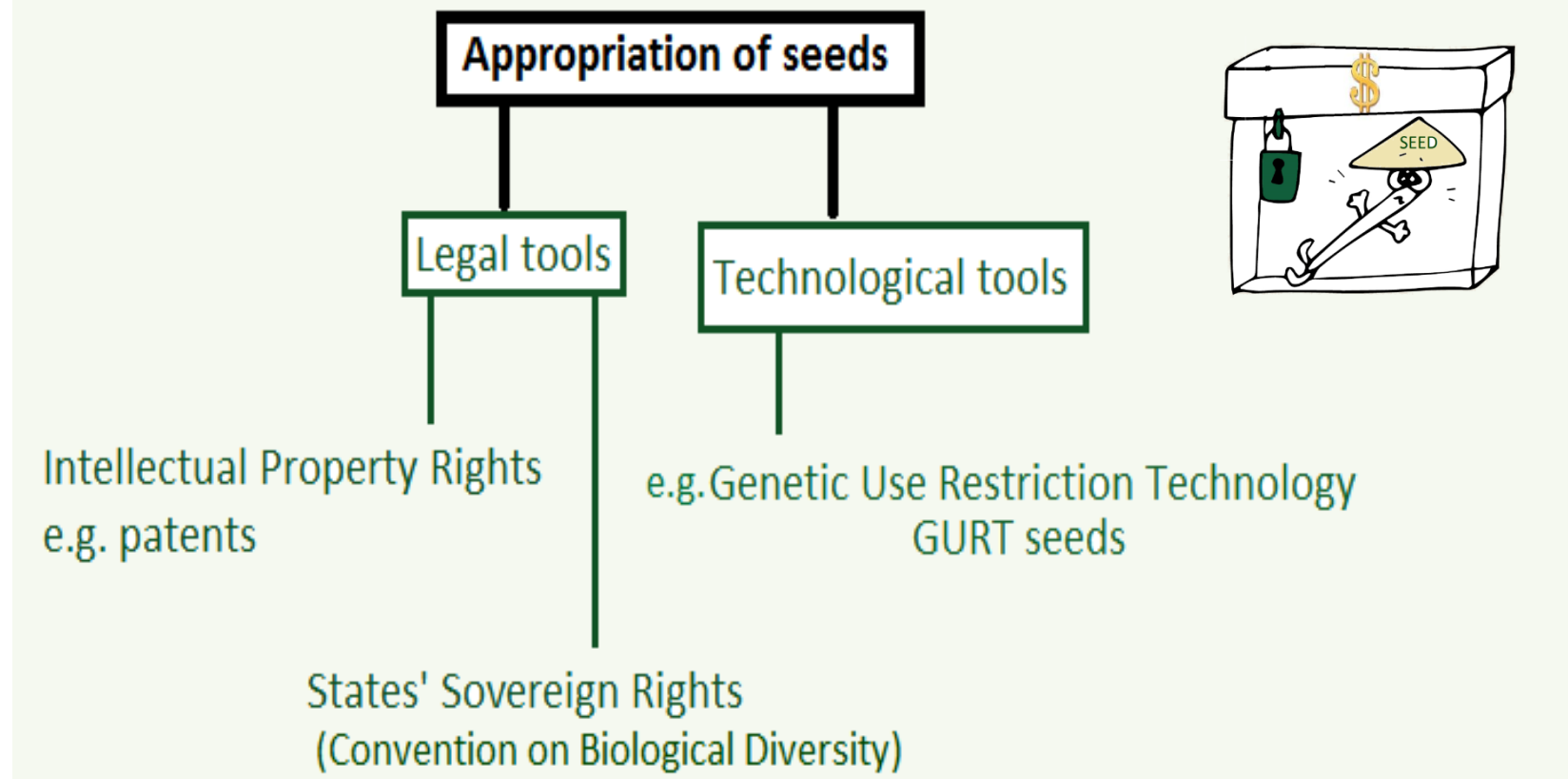
Since the beginning of agriculture, seed access, use and exchange has been unfettered

=> Diversity of seed varieties is the result of a long term collective management and exchange of seeds and knowledge

1. General context

Flash history of the seed management

Over the last decades, commodification of seeds has rendered access to seeds more and more difficult, leading to erosion of the diversity of seed varieties



2. Objective of the thesis

Contribute to increasing food security and promoting sustainable agriculture by addressing the issue of the governance of seed diversity

How?



Faculty of Law and Criminology
Center for Philosophy of Law



Faculty of Law
Centre for IT & IP Law

TOWARDS REDESIGNING THE PLANT COMMONS

A CRITICAL ASSESSMENT OF THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Christine FRISON

Dissertation presented in partial fulfillment of the requirements for the degree of Doctor in Law

Jury Members

Prof. em Dr. Marc Boes (KU Leuven), Chairmain
Prof. Dr. Philippe Cullet (SOAS University of London)
Prof. Dr. Tom Dedeurwaerdere (UCLouvain), Supervisor
Prof. Dr. Olivier De Schutter (UCLouvain), Supervisor
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Prof. Dr. Geertrui Van Overwalle (KU Leuven), Supervisor

September 2016



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



International Treaty on Plant Genetic Resources for Food and Agriculture



2. Objective of the thesis Assessing the Treaty



2. Objective of the thesis

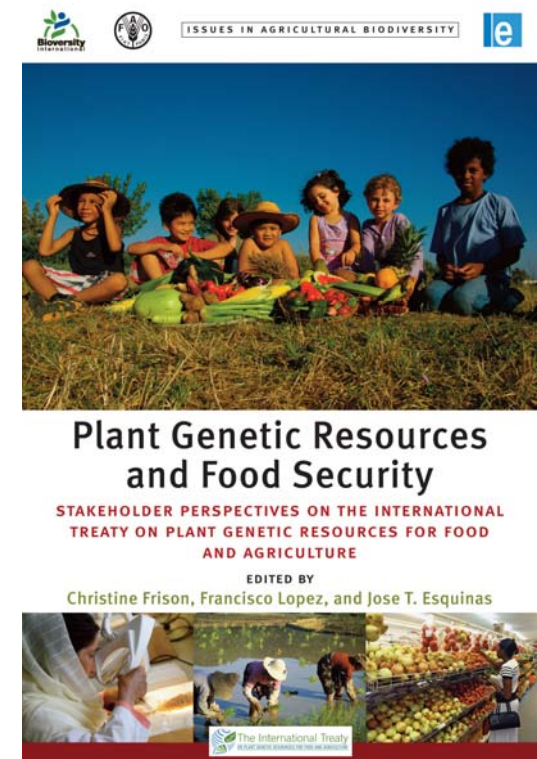
Innovative methodology

❖ Transdisciplinary methodology (beyond the law)

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- Legal interpretation of the Treaty
- Participatory observation of Treaty meetings over 12 years
- Stakeholder analysis of the Treaty to co-identify its dysfunction
- The theory of the Commons as theoretical framework for solutions



3. Assessing the International Treaty on Plant Genetic Resources for Food and Agriculture



+ Overall goals:
**Food Security &
Sustainable Agriculture**

+ Recognition of **Farmers' Rights** (Article 9)



3. Assessing the Treaty

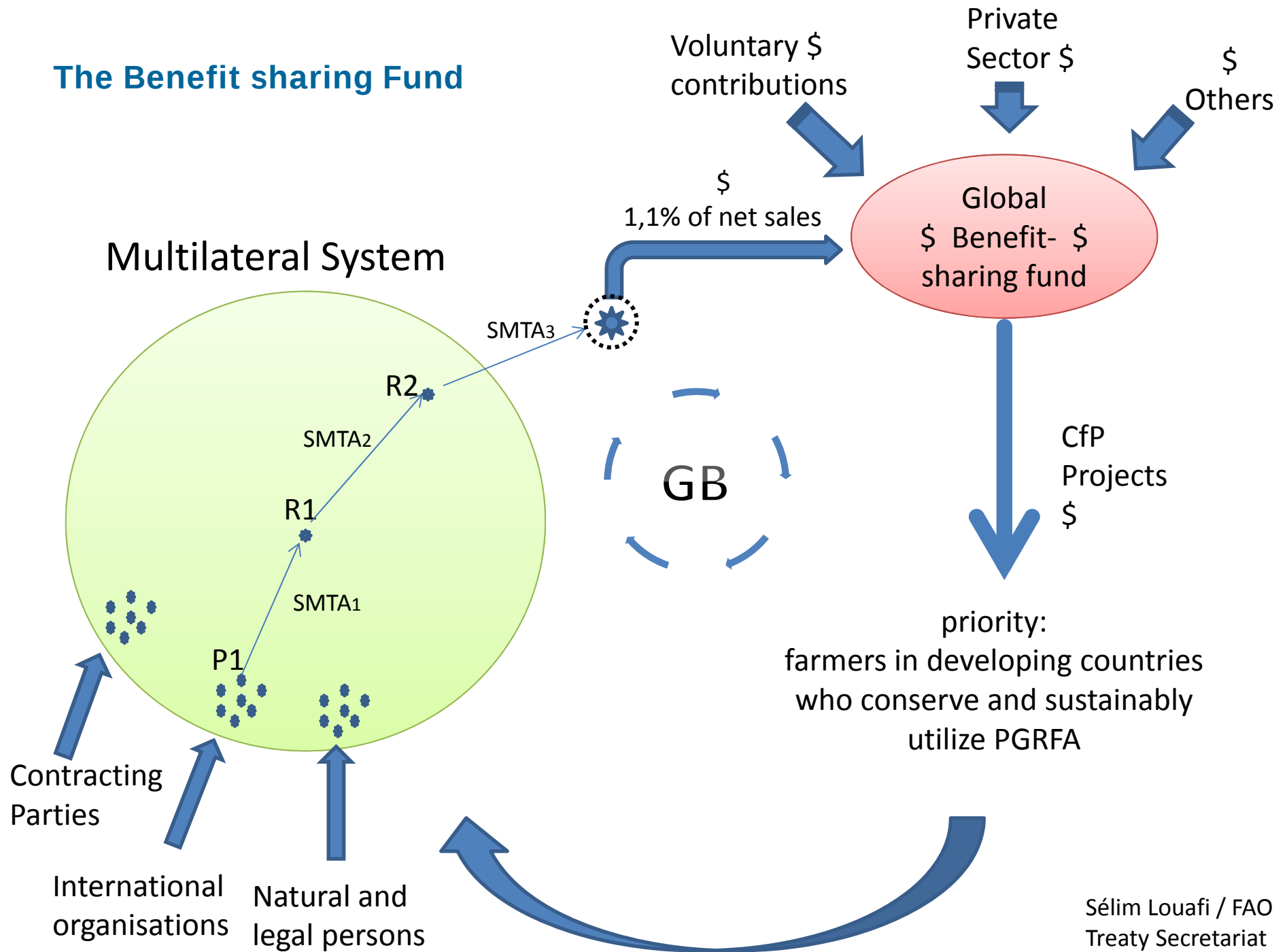
These objectives are to be reached through the establishment of the Multilateral System of Access and Benefit-sharing (MLS)

« **Global Seed Commons** » for food security and sustainable agriculture
= collectively (multilaterally) manage a common resource: seeds

1. Facilitated access through a **virtual common basket of seeds** and the use of a **standard access contract** (SMTA)
2. Aims at providing money to the **Benefit-sharing Fund** (BSF = collective trust account to fund farmers' projects for sustainable use of seeds)



The Benefit sharing Fund



3. Assessing the Treaty

“Why are current seed exchanges in the Treaty problematic?”

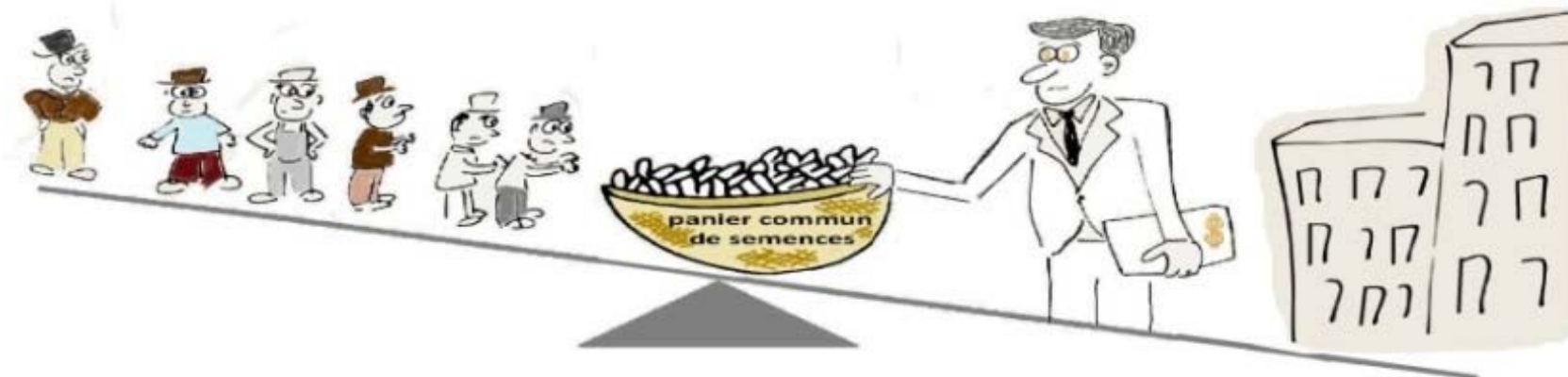
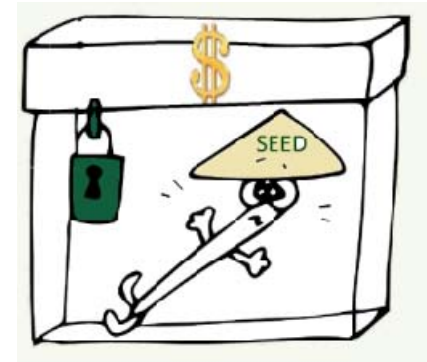
Treaty tools & instruments express an imbalance of rights

- **Farmers’ Rights are not recognized at the same level as IPRs** (building the funding strategy around IPRs de facto imposes the IPR system as being the “default ” system, which in turn fragilizes and marginalizes further farmers’ system)
- **Small-scale farmers are excluded from the governance of the MLS & from their ancestral role of innovators / no real recognition of their rights**
- **Need to rethink our way of apprehending seeds / nature => holistic approach**

3. Assessing the Treaty

Several Treaty constraints identified

- ❖ Seed hyper-ownership & 'over-IPRization' reinforcing enclosure of seeds
- ❖ Absence of participation of all stakeholders, in particular small holder farmers, in the multilateral governance
- This appropriation of seeds by a limited number of stakeholders leads to an imbalance of rights penalizing farmers and seed diversity



In 2013, the Governing Body of the Treaty decided to initiate a complex review process

- **Enhance the MLS:**

- Widening the list of seeds to be accessed through change
- Perception of seeds as exploitable resource
- SMTA (in particular the n
- Identifying countries' less

- **Review the Funding Strategy, stable & long-term funding**

- Review the attract RSF (to make it more
- long direct to dissociate funding
- sources of funding

BL seems to get entangled in increasing complexity

- simplify the system & **enhance its “commons” aspect**



4. Mobilizing the Theory of the Commons to overcome the identified problems?

Authors (Halewood *et al.*) have suggested that the MLS could be assimilated to a Global Crop Commons

Elinor Ostrom demonstrated that common property regimes are effective to manage common-pool resources, as alternative to private (the market) and public (the State) property regimes (Ostrom 1990)

Common property regime :“members of a clearly defined group have a bundle of legal rights including the right to exclude non-members from using that resource” (Hess and Ostrom 2003)

-> right to access, withdraw, alienate, manage and exclude (Schlager and Ostrom 1992)

4. Mobilizing the Theory of the Commons

Halewood applied Ostrom's 8 design principles to the Treaty = **deductive approach**

1. Clearly defined boundaries (i.e. effective exclusion of external unentitled parties);
 2. Congruence between appropriation and provision rules and arrangements;
 3. Collective-choice arrangements (i.e. allow most resource users to participate in and modify the operational rules);
 4. Effective monitoring (by monitors who are accountable to the appropriators);
 5. Graduated sanctions for appropriators violating community rules);
 6. Conflict-resolution mechanisms (cheap and of easy access);
 7. Nested enterprises (rights to organize (the self-determination of the community) recognized by higher-level/governmental authorities);
- Plus, for systems that are parts of larger systems:*
8. Nested enterprises (organization in the form of multiple layers of nested enterprises, with small local CPRs at the base level).

The deductive approach is useful but does not help in stepping outside the current appropriation paradigm

4. Mobilizing the Theory of the Commons

From an institutional to a political construct of the commons

- ❖ Mobilizing the theory of the commons with an inductive research approach: screening the results of the Treaty through the lens of the recent commons literature with an inductive approach allows for broadening the understanding of the common management of seeds under the Treaty and allows for stepping outside of the current appropriation paradigm.
 - Moving from Ostrom's institutional common-pool resources regime to the construction of a "political common" to be designed by society (Dardot & Laval 2014) => inalienability?
 - Mattei's Ecology of Law: a holistic approach to the seed-human relationship (Mattei 2015, Mattei 2008 & 2011)
 - From the management of a natural resource to "commoning" (Bollier 2014)

4. Mobilizing the Theory of the Commons

Identifying 6 underlying principles for a Global Seed Commons

Building on Halewood's work using more recent scholars (Mattei, Dardot & Laval, Bollier, etc.), I have identified 6 principles to be reflected in the Treaty's MLS, in order to build a Global Seed Commons:

1. **Sustainability** (Mattei 2011)
2. **Interdependence** (Rousseau 1755)
3. **Anti-commons** (Gordon 1954)
as main components of the use of seeds
4. **Pluralism** (Gordon 1954)
as main components of the use of seeds
5. **Community**: Stakeholder participation (De Angelis 2003)
6. **Equity, heterogeneity & complexity**: space for pluralism & dynamism (Louafi 2016)



Sculpture: Claude Spiege

5. Selected Research Results

Constraints categorized by Treaty topics

1. Sustainable agriculture & food security

2. Scope

3. Farmers' Rights

4. Facilitated access

5. Benefit-sharing / Benefit-sharing Fund

6. Information / knowledge

7. Third Party Beneficiary

8. Participation / governance



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5. Selected Research Results

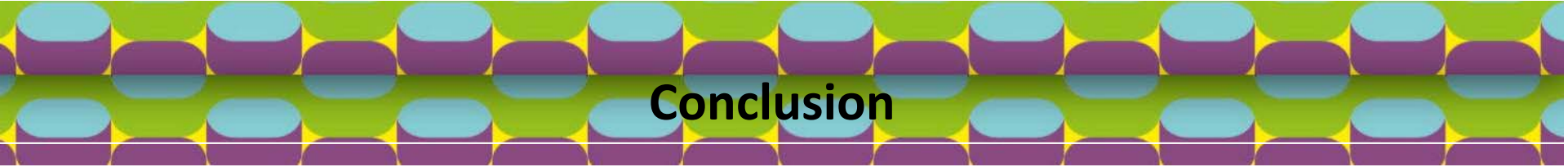
Recommendations for current Treaty review process

Treaty topics	Conceptual constraints	Recommendations
1. Sustainable agriculture & food security	Overall goals of Treaty not reached inter alia because not recognized as direct objectives	Formally recognize food & nutrition security and sustainable agriculture as direct objectives of the Treaty
2. Scope	Difference between scope of Treaty and scope of MLS leading to dysfunction	Harmonize the scope of the MLS with that of the Treaty to include all PGRFA Expand the Treaty boundaries to make it truly global
3. Farmers' Rights	No recognition of farmers' role in PGRFA management and of their associated rights at the international level in the same terms as IPRs	Formally recognize Farmers' Rights at the international law level Commit to implement these rights at the national level
4. Facilitated access	Facilitated access is absent for the ultimate beneficiaries i.e. farmers	Recognize a direct facilitated access to PGRFA for farmers Promote sui generis PVP systems to recreate effective farmers' exemption

5. Selected Research Results

Recommendations for current Treaty review process

5. Benefit-sharing/ Benefit-sharing Fund	Farmers are put in a passive situation of beneficiaries denying their de facto active role as main stakeholder in the food production chain	Benefits of the Treaty should reach all beneficiaries Reposition Farmers as active stakeholders in the Treaty, MLS and BSF management
6. Information / knowledge	Appropriation, Protection Availability mainly of one type of information of interest to breeders	Develop the GLIS keeping in mind the overall goals of the Treaty and the needs of smallholder farmers Seek means to turn the MLS into a space where traditional knowledge would be protected from misappropriation
7. Third Party Beneficiary	Preservation of MLS rights, but not preservation of all stakeholders' rights. Lack of system to balance powers	Advertise on the 3PB's role & procedures to the Treaty community and the public Deal with 3PB cases in a more transparent way Expand 3PB's mandate to compliance
8. Participation / governance	Governance of MLS remains at state level Lack of inclusion of all stakeholders at all levels Problem of trust	Allow all stakeholders to effectively participate in the global seed commons governance -> towards a "2.0 World Committee on Food Security"?



Conclusion

- Implementing Mattei's Ecology of the Law, we need to move outside of the current appropriation paradigm towards a more holistic approach to the human-seed relationship
- Using these 6 underlying principles, I suggest conceptual solutions to the identified Treaty dysfunction
- Doing so will re-equilibrate the balance of rights to enable Contracting Parties to reach the Treaty's overall goals of food security and sustainable agriculture





Conclusion: What's next?

- Forthcoming (2018-2021) post-doctoral research project to test the identified six underlying principles for a Global Seed Commons in case studies:
 - China Yuan-Yang province: local rice communities
 - IRRI, The Philippines: regional and international rice network
- Bring the results of these case studies and present them to the Treaty stakeholders, Rome, Italy



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Pieter Bruegel de Jonge - Zomer, oogst

Thank you!



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Follow me on https://www.researchgate.net/profile/Frison_Christine

Re-empower the custodians of seed diversity for the collective interest