Intellectual Property and TK and TCEs : Work on *Sui Generis* Instruments at the International Level

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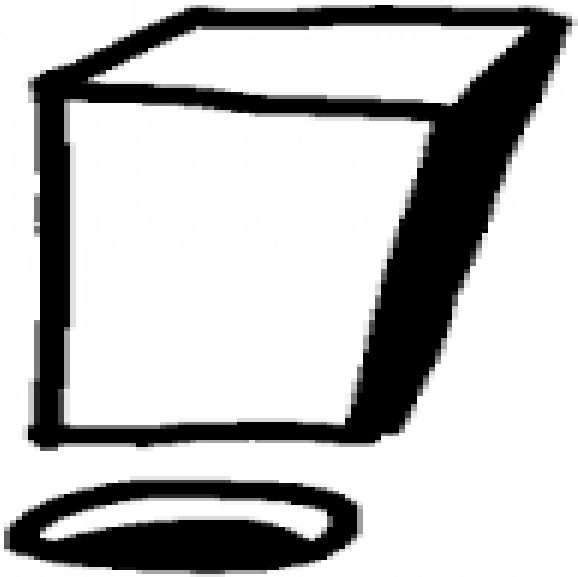


- **Legislative vs. practical options**
- **IP vs. non-IP options**
- **‘Positive’/‘Defensive’**
- **More effective use of existing IP system vs. new *sui generis* norms**
- **National vs. international**

WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

IGC mandate 2016-2017: ". . . reaching an agreement on an international legal instrument(s), without prejudging the nature of outcome(s), relating to intellectual property which will ensure the balanced and effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs). . ."

IGC 29 (GRs)
Feb 2016

Seminar
May 2016

IGC 30 (GRs)
May-June 2016

IGC 31 (TK)
Sept 2016

Seminar (TK)
Nov 2016

IGC 31 (TK)
Nov-Dec 2016

- **The first four sessions 2001 and 2002: analysis, exchange of practical experiences, policy debate and practical outcomes; frustration emerges at slow progress on an international legal instrument(s)**

- **IGC 5, July 2003: the first crisis and a new mandate for 2004-2005**

- **The strengthened 2004-2005 mandate: IGCs 6 to 8; efforts to "accelerate" the IGC's work; first appearance of draft "articles" on TK and TCEs**

- **IGCs 9 to 14 (2006 to 2009): the IGC treads water; frustration grows; attention turns to improving the methodology of the IGC; IGC 14 fails to agree on a mandate for 2010-2011**

- **The 2009 General Assembly, the new IGC mandate and the launch of "text-based negotiations"**

- **The IGC's most productive phase (IGCs 15 to 19): the intersessional working groups and other procedural innovations enable substantive progress; a mandate for 2012-2013 agreed**

- **2012-2013: a new mandate; Ambassador McCook becomes IGC Chair; attempts to begin real "text-based negotiations"; further procedural innovations**

- **2014-2015: an amended mandate; IGCs 26 to 28; some progress on GRs but little on TK and TCEs; the IGC does not meet in 2015**

- **New mandate agreed in late 2015; IGC meets again in February 2016**

Evolutions of the IGC: 2001 to 2016

From “non-normative” (2001 to 2009) to “normative” (from 2010), including “binding” and “non-binding” issue

Tri-angulating “objectives and principles”, “substance/content” and “process”

Balancing “separate but equal” treatment and “cross-cutting issues”

Significance

- **For indigenous peoples, local communities and other beneficiaries:**

  New collective rights

- **For international IP policy development:**

  A profound re-imagining of the IP system

  First developing country-led normative process of this breadth and complexity

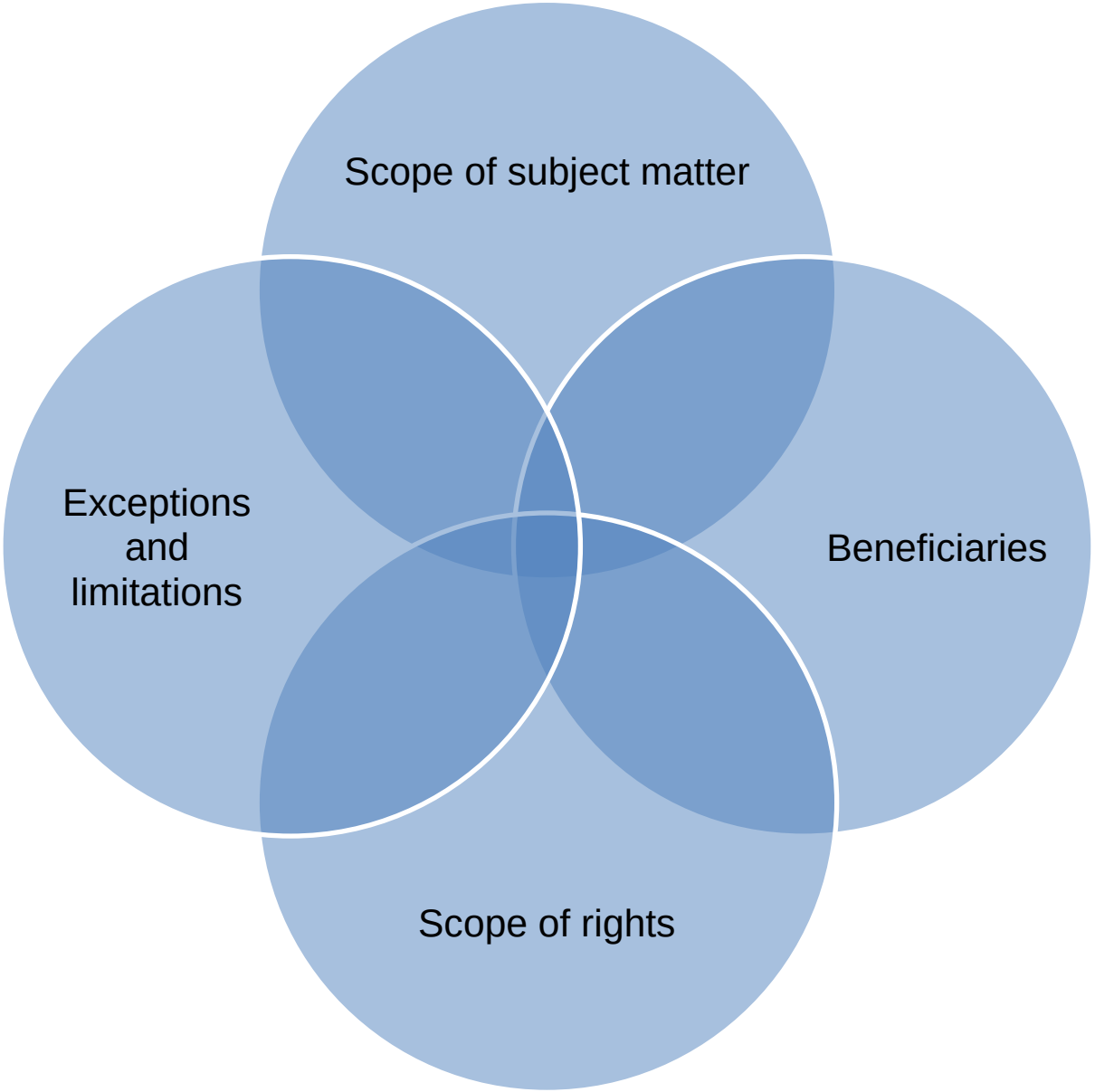
  Squarely in line with Development Agenda

Challenges

- **Substance**
  - **Complex menu of issues**
  - **Little experience at national/regional level**
  - **Interface with other instruments and processes**

- **Process**
  - **Diverse demandeurs, diverse objectives**
  - **Over-negotiated mandates - unstable platform**
  - **Trust deficit – role of plenary**
  - **Methodology: “all or nothing”/consensus”/“negotiation”**

Current texts on TK and TCEs



How, if at all, to protect “publicly available” traditional knowledge

Nature of TK → Nature of rights ↓	Secret	Closely held	Publicly available	Widely diffused
Exclusive property rights				
Moral rights				
Unfair competition				
Compensation/ Benefit-sharing				

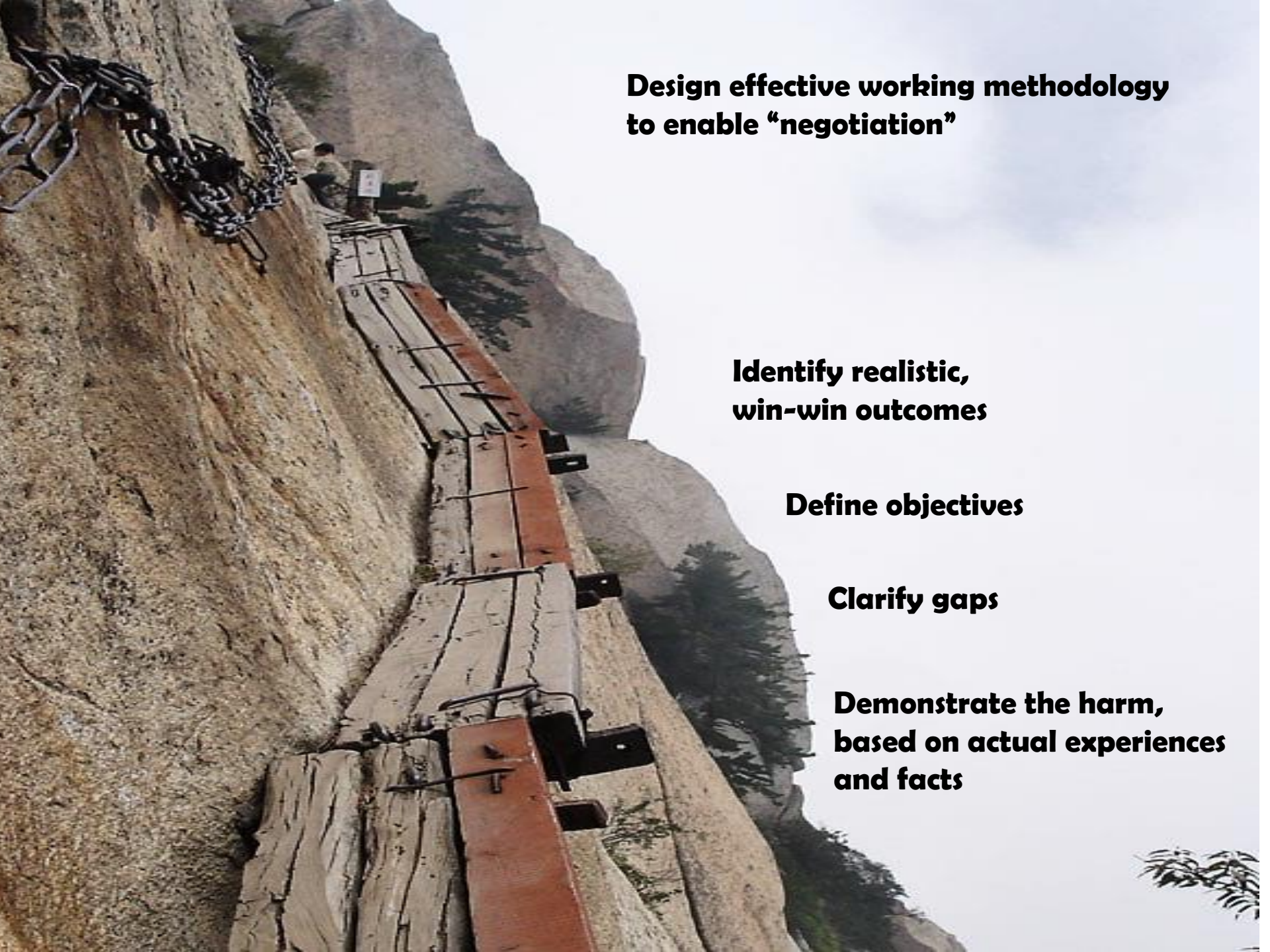
Seminar on IP and Genetic Resources:
May 26 and 27, 2016

IGC 30 (genetic resources):
May 30 to June 3, 2016

- Consolidated document
- Outstanding/pending issues
- Proposed recommendations
- “Experiences”

Questions and comments?

Source: AAAS TEK-PAD



Design effective working methodology to enable "negotiation"

Identify realistic, win-win outcomes

Define objectives

Clarify gaps

Demonstrate the harm, based on actual experiences and facts

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Access all resources: www.wipo.int/tk/en

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