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RENFORCEMENT  
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# Comments on Scope & Definitions

## UNCTAD Scoping Study Biotrade / ABS

Dr. Hartmut Meyer

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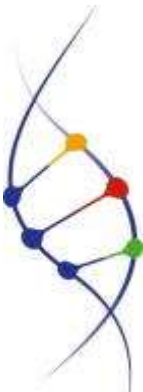
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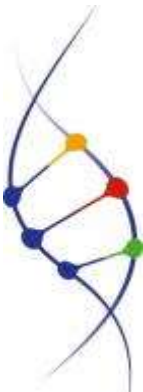
# Scope & Definitions



## The three basic element

- **Access** to **genetic resources** for **utilisation**
- Nagoya Protocol was negotiated to exclude trade in biological commodities from international ABS obligations
- National strategic decision necessary to determine which kind of activities are “ABS” and “biotrade”
- Scope and definitions needs to provide for legal certainty in differentiating between “ABS” and “biotrade”
- MAT for “first user” benefit sharing will only be triggered if activity is covered by all three elements
- Benefit sharing after third party transfer and change of intent need to be addressed in laws / contracts

# Genetic Resources



## Observations

Parties and stakeholders tried long to find interpretations of the CBD definitions to allow differentiation between ABS and biotrade based on definition of the material

- GTLE-1 in 2008 concluded that such interpretations or even revisions of the CBD definitions are neither helpful nor appropriate
- Instead, “typical uses” should be compiled to determine which activity is ABS and which not
- since GTLE-1 “typical use” includes biochemical – which is the major part of all “typical use”

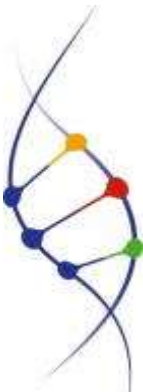
# Genetic Resources



## Definitions CBD Art. 2

- "*Biological resources*" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.
- "*Genetic resources*" means genetic material of actual or potential value.
- "*Genetic material*" means any material of plant, animal, microbial or other origin containing functional units of heredity.

# Genetic Resources



## Where is the “red line”?

Within definition of GR	Outside of definition of GR
complete organisms	extracts not containing nucleic acids (e.g. alcoholic extracts)
parts as leaves or organs	isolated biochemical compounds (e.g. flavours or colours)
powdered or dried material	
isolated nucleic acids (e.g. DNA-strands with encoded genes)	

# Utilisation

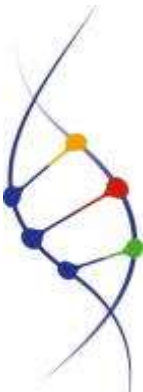


## Observations

- WGABS-9/2 in July 2010 developed a footnote text on "Utilization of genetic resources" based on the understanding developed at GTLE-I

"Utilization of genetic resources includes/means the conduct of research and development, on the genetic and biochemical makeup/composition of genetic material/ biological resources, including through the application of biotechnology as defined in Article 2 of the Convention, as well as subsequent applications and commercialization."

# Utilisation



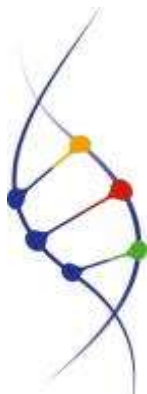
## Definitions NP Art. 2

(c) "Utilization of genetic resources" means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention.

(d) "Biotechnology" as defined in Article 2 of the Convention means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

(e) "Derivative" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

# Utilisation of Genetic Resources

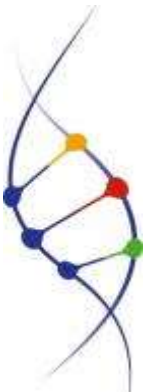


## Where is the “red line”?

Within definition of utilisation of GR	Outside of definition of utilisation of GR
using biochemical methods to analyse composition of a GR (e.g. characterisation of natural sweeteners in plants)	analysing physical properties of a GR (e.g. freezing resistance of bacteria for ex-situ conservation)
using genetic methods to analyse composition of a GR (e.g. decoding genes for enzymes)	undertaking classical breeding without biochemical genetic analyses (e.g. pollinating plants or inseminating animals)
using biotechnological methods to make or modify products or processes for specific use (e.g. developing industrial enzyme extracted from a GR)	analysing the composition of a biochemical compound / derivative



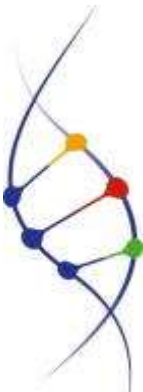
# Access



## Observations

- Understanding of access in the context of the two other elements will largely determine the temporal scope of a national ABS framework and its benefit sharing obligations
- Access is not a defined term of the NP
- Geographic scope is determined by CBD Art. 15 (Principle of sovereignty)
- Material and sectorial scope is determined by the definitions of genetic resource and utilisation, by the recognition of specialised instruments (Art. 4) and special circumstances (Art. 8)

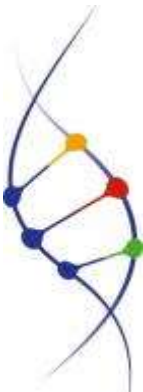
# Access



## Provisions in NP Art. 5

In the exercise of sovereign rights over natural resources, and subject to domestic access and benefit-sharing legislation or regulatory requirements, access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention, unless otherwise determined by that Party.

# Access to GR for Utilisation



## Where is the “red line”?

Within the scope of the NP	Outside the scope of the NP
access for utilisation in a member of the NP that is country of origin	access for utilisation in non-Parties
access for utilisation in a member of the NP that acquired the GR in accordance with the CBD	accessing GR for utilisation, stored in ex-situ collections, which were not acquired in accordance with the CBD
	any access for other purposes than utilisation as defined in the NP / national ABS framework
	purchasing GR, exported as commodities, in the export country for utilisation
	accessing information on GR and their composition

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# Thank you for your attention!

## Contact

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