

refused to sign the Convention. The US delegation also claimed that the Convention would take away American jobs though how this would happen was never explained.

II. An Overview of the Convention

The conservation and sustainable use of biological diversity and the problems relating to climate change and global warming are among the most important issues facing the world at the present juncture. The destruction of habitats is causing thousands of species to become extinct every year and the consequent loss of biological diversity has emerged as a major factor in what might become an irreversible climate change. Biological diversity, therefore, needs to be conserved and used in a sustainable manner so that mankind can derive optimum benefit from the world's genetic resources.

The international community has already enacted several instruments to protect biological diversity, but they have proved to be inadequate. It is, therefore, essential to supplement such action by a global Convention which would enable the present generation to discharge its responsibility to future ones by preserving their heritage.

Responding to these concerns, the Convention on Biological Diversity evolves a broad legal framework pooling together a wide range of actions at national and international levels for conservation and sound use of biological diversity that have hitherto been taken on a piecemeal basis. The Convention consists of a Preamble, 42 articles and two annexes. Annex I sets out an indicative list of categories of biological resources which are relatively more important for conservation and sustainable use. The Contracting Parties are required to identify and monitor these resources for purposes of *in situ* and *ex situ* conservation and sustainable use. Part one of Annex II lays down the procedure for arbitration of disputes which may arise between the Contracting Parties over the interpretation and application of the Convention. Part two of Annex III sets out the procedure for settling such disputes through conciliation.

Fundamental norms and principles

The Preamble provides the *raison d'être* for laying down a comprehensive legal regime for the conservation and sound use of biological diversity at national and international levels. This it proceeds to do, firstly, by recognizing certain fundamental premises and then by developing norms and principles based on those premises which are later spelt out in the substantive provisions

of the Convention. The fundamental premises recognized in the Preamble are that:

- biological diversity, the sum total of life's variety on this planet, is important for evolution and for maintaining life-sustaining systems of the biosphere;
- Conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population;
- biological diversity is being significantly reduced by certain human activities;
- since loss of biological diversity is irremediable, it is vital to anticipate, prevent and attack the causes of significant loss or reduction of biological diversity;
- lack of scientific certainty should not be used as a reason for deferring action aimed at minimizing or avoiding the threat of damage to or loss of biological diversity;

- substantial investments are required to conserve biological diversity;
- and special provision is needed to meet the needs of the developing countries including the provision of new and additional financial resources and appropriate access to relevant technologies.

The basic principles and norms formulated in the Preamble are:

- that conservation of biological diversity is a common concern of mankind;
- that although States have sovereign rights over their biological resources, they are nevertheless responsible for conserving and using them in a sustainable manner;
- that the fundamental requirement for the conservation of biological diversity is the *in situ* and *ex situ* conservation of ecosystems and natural habitats;
- that the provision of new and additional financial resources and appropriate access to relevant technologies is vital to meet the needs of the developing countries;
- and that biological diversity should be conserved and sustainably used not only for the benefit of the present generation but also for future generations.

In the light of the foregoing, the objectives set forth in Article 1 of the Convention are:

- (i) the conservation of biological diversity for the present and future generations;

- (ii) the sustainable use of its components;
- (iii) fair and equitable sharing of the benefits of research in biotechnology;
- (iv) appropriate transfer of relevant technologies taking into account the intellectual property rights; and
- (v) appropriate funding.

The mode and manner in which these objectives are to be pursued are spelled out in the relevant provisions of the Convention.

Definitions

Article 2 enumerates the definitions of the terms used in the Convention. This is essential to impart clarity and avoid any ambiguity in the Convention regime. The terms defined include 'biological diversity', 'biological resources', 'biotechnology', 'country of origin of genetic resources', 'country providing genetic resources', '*in situ* conservation', '*ex situ* conservation', 'habitat', '*in situ* conditions', 'protected areas', 'regional economic integral organization' and 'sustainable'. It is also clarified that the term 'technology' in the context of this Convention includes biotechnology. It should be pointed out that these definitions are a result of very painstaking efforts of the Working Group entrusted with the task of elaborating the definitions. While not perfect, the definitions offer an adequate basis for the Convention.

General Obligations

Articles 3 through 14, 22 and 26 frame the general obligations of the Contracting Parties. Article 3 explicitly recognizes the sovereign right of States to exploit their resources pursuant to their environmental policies, but invests them with the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. The use of the term 'control' connotes that even if such an activity is pursued outside a national jurisdiction, but is one over which a State has control, that State would be responsible if the activity causes damage to the environment of areas beyond its national jurisdiction.

Article 4 on Jurisdictional Scope was inserted in the Convention at the fifth and final session of the INC. It provides that subject to the rights of other States (which may or may not be the Contracting Parties) each Contracting Party shall apply the provisions of the Convention (i) in the case of its biological resources, within the limits of its national jurisdiction; and (ii) in the case of processes and activities carried out under its jurisdiction

or control, within the areas of its national jurisdiction as well as beyond the limits of its national jurisdiction. The Contracting States are thus obligated to exercise territorial as well as extra territorial jurisdiction.

Article 5 obligates the Contracting Parties to cooperate with each other either directly, or where appropriate, through competent international organizations in areas beyond their national jurisdiction or on other matters of mutual interest in the context of conservation and sustainable use of biological diversity.

Article 6 obligates the Contracting Parties to develop their national strategies, plans or programmes or adapt their existing strategies, plans or programmes for the conservation and sustainable use of their biological diversity. It also obligates them to integrate the conservation of biological diversity with their relevant programmes or policies.

Article 7 requires the Contracting Parties to identify and monitor through sampling or other techniques components of biological diversity important for conservation and sustainable use and processes and categories of activities likely to have a significant adverse impact on the conservation and sustainable use of biological diversity and to deduce data therefrom for purposes of *in situ* and *ex situ* conservation. An indicative list of categories of biological resources which are relatively more important for conservation and sustainable use is set out in Annex I of the Convention.

Article 8 lays down the fundamental obligation of the Contracting Parties to conserve their biological resources *in situ*. The various modalities suggested for this purpose include:

- (i) establishment of a system of protected areas;
- (ii) regulation or management of biological resources important for conservation within or outside the protected areas;
- (iii) protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (iv) development of areas adjacent to the protected areas with a view to enhancing the protection of those areas;
- (v) rehabilitation and restoration of degraded ecosystems and recovery of threatened species;
- (vi) management and regulation of risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts;
- (vii) Control or eradication of those alien species which threaten ecosystems;

- (viii) promoting the wider application of the knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity;
- (ix) enactment of necessary legislation or administrative regulations for the protection of threatened species;
- (x) regulation and management of those processes and activities which are likely to have a significant adverse impact on biological diversity and;
- (xi) cooperation amongst the Contracting Parties for providing financial support to developing countries to enable them to carry out *in situ* conservation.

Article 9 requires the Contracting Parties to adopt measure for the *ex situ* conservation of components of biological diversity for the primary purpose of complementing *in situ* measures. *Ex situ* conservation consists in the conservation of components of biological diversity outside their natural habitats. The measures enumerated include:

- (i) *ex situ* conservation of components of biological diversity, preferably in the country of origin of such components;
- (ii) establishment and maintenance of facilities for *ex situ* conservation of and research on plants, animals and micro-organisms, preferably in the country of genetic resources;
- (iii) recovery and rehabilitation of threatened species and their re-introduction into their natural habitats; and
- (iv) surveillance over biological resources from natural habitats from *ex situ* conservation purposes so as not to threaten ecosystems and *in situ* populations of species.

The Contracting Parties are required to cooperate with each other in order to provide financial and other support for the establishment and maintenance of *ex situ* conservation facilities in developing countries.

Article 10 requires the Contracting Parties to integrate the conservation and sustainable use of their biological resources into their national decision-making processes; to adopt measures aimed at checking or minimizing adverse impacts on their biological diversity; to protect and encourage customary use of the biological resources in accordance with traditional cultural practices; to support local populations to take remedial action in degraded areas; and to encourage cooperation between governmental authorities and private sector for promoting sustainable use of biological resources.

Article 11 obligates the Contracting Parties to adopt effective social and economic measures to encourage conservation and sustainable use of biological diversity. The article enjoins the Contracting Parties, taking into account the special needs of the developing countries, to establish research and training programmes for the identification, conservation, management and sustainable use and development of biological diversity and its components. Article 13 requires the Contracting Parties to promote general awareness about the importance of and the measures required for the conservation and sustainable use of biological diversity and to cooperate with other States and international organizations in developing public awareness programmes with respect to conservation and sustainable use of biological diversity.

Article 14 obligates the Contracting Parties to monitor environmental impact assessment of their proposed projects or programmes that are likely to have significant adverse effects on biological diversity, whether within or outside the limits of their national jurisdiction and to take appropriate measures to avoid or minimize the adverse effects. Where such projects or programmes are likely to significantly affect adversely the biological diversity of other States, the concerned Contracting States is required to avoid or minimize the adverse effects through conclusion of bilateral or multilateral arrangements with the affected State or States. However, where the danger or damage to the environment of other States is imminent or grave, the Contracting State concerned is required to notify immediately the potentially affected State or States and to initiate the necessary action to prevent such danger or damage. Significantly, the Article has left the question of liability and compensation for damage to the biodiversity of other States to be decided on by the Conference of the Parties, the apex body designed to administer the Convention.

Article 22 deals with the question of relationship of this Convention with other existing international conventions in the field of conservation of biological diversity. It states that the convention does not affect the rights and obligations of any Contracting Party under existing Conventions except where those rights and obligations would cause a serious damage or threat to biological diversity.

Article 26 requires the Contracting Parties to submit reports to the Conference of the Parties on the actions taken by them for the implementation of the Convention and their effectiveness in meeting the objectives of the Convention.

Access to Genetic Resources and Transfer of Technology

The provisions of the Convention which address these crucial issues are contained in Articles 15 to 19. Article 15 regulates access to genetic resources of which the developing countries are the main repository and which had hitherto been relatively free. Recognizing the principle of sovereignty of States over their natural resources, this article invests the national governments with the authority to determine access to their genetic resources. It also frames the complementary rule that access, where granted, shall be on mutually agreed terms and subject to the prior informed consent of the Contracting Party providing the genetic resources unless otherwise determined by that Party. Subject to these overriding principles, the Contracting Parties are required to create conditions to facilitate access to genetic resources by the other Contracting Parties and not to impose restrictions that run counter to the objectives of the Convention. It also obligates the Contracting Parties to carry out scientific research based on genetic resources provided by other Contracting Parties with their full participation, and where possible in those countries; it also requires the Contracting Parties to share in a fair and equitable way the results of such scientific research and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing those resources. Such sharing is required to be on mutually agreed terms.

Article 16 is another key provision of this Convention. It, first of all, recognizes that both access to and transfer of technology among the Contracting Parties are essential elements for the attainment of the objectives of the Convention. With this premise, it frames a number of obligations for the Contracting Parties in the context of access to and transfer of technology. It obligates each Contracting Party to undertake to provide and/or facilitate access for and transfer to other Contracting Parties technologies relevant to the conservation and sustainable use of biological diversity. Such access and transfer are to be effected under fair and most favourable terms, including on concessional and preferential terms where mutually agreed, and where necessary, in accordance with the financial mechanism envisaged by Articles 20 and 21 of this Convention. However, in the case of technology protected by patents and other intellectual property rights, such access and transfer are to be provided on terms which are consistent with those rights. But for Contracting Parties, which are developing countries, and which provide genetic resources, the access to and transfer of relevant technologies is to be facilitated on mutually agreed terms, notwithstanding the protection of the intellectual property rights. It also obligates the Contracting Parties to encourage their private sector to facilitate access to, joint development and

transfer of technology for the benefit of both governmental institutions and the private sector of developing countries. It also requires the Contracting parties to cooperate with a view to ensuring that patents and other intellectual property rights which have an influence on the implementation of the Convention do not run counter to the objectives of the Convention.

Article 17 which is closely connected with both Articles 15 and 16, enjoins the Contracting Parties to facilitate continuing exchange of information from all publicly available sources relevant to conservation and sustainable use of biological diversity taking into account the special needs of the developing countries. Article 18 obligates the Contracting Parties to promote international technical and scientific cooperation in the context of conservation of biological diversity, and where necessary, through appropriate international and national institutions. In particular, it enjoins the developed country Parties to promote such cooperation with the developing country Parties so as to enable the latter to implement the Convention *inter alia*, through the development and implementation of their national policies. It also mandates the Conference of the Parties, at its first meeting, to consider establishment of a clearing-house mechanism to promote and facilitate such cooperation.

Article 19 is addressed to the handling of biotechnology and distribution of its benefits. It requires the Contracting Parties to take appropriate measures to provide for the participation of other Contracting Parties, especially the developing countries, in biotechnological research activities, which provide the genetic resources for such research, and where feasible, in those countries. It also obligates the Contracting Parties to provide access on mutually agreed terms to developing country Parties to the results and benefits arising from biotechnologies based on genetic resources provided by them. The Contracting Parties are further obligated to ensure that any natural or legal person under their jurisdiction or control who intends to introduce in another Contracting State genetically modified organisms which may have an adverse impact on the biological diversity or environment in that country, to obtain an advanced informed agreement of that Contracting State and to make available to the latter all information about the safety regulations.

Financial Resources and Funding Mechanisms

Article 20, 21 and 39 are the key provisions of the Convention related to financial resources and the funding mechanisms. Article 20 deals with the question of financial resources to be provided by each of the Contracting Parties; Article 21 lays down the procedure for establishing a financial facility able to provide financial assistance to the developing country Parties

on a grant or concessional basis. Article 39 provides for interim financial arrangements for the period between the entry into force of the Convention and the first meeting of the Conference of the Parties or until the Conference decided the designation of a financial facility.

Paragraph (1) of Article 20 requires each Contracting Party to provide financial support and incentives for the national activities aimed at conservation of biological diversity in accordance with its national plans, priorities and programmes. Paragraph (2) obligates the developed country parties to provide new and additional financial resources to enable the developing country parties to meet the agreed incremental costs to them for fulfilling their obligations under the Convention. The term "agreed" signifies that the incremental costs will be *agreed* between the concerned developing Party and the financial mechanism contemplated by Article 21 taking into account the policies, strategies and priorities and the eligibility criteria of each developing country party. An indicative list of such incremental costs is to be established by the Conference of the Parties at its first meeting. Further, a list of developed country Parties and other Parties which would voluntarily assume the obligations of the developed country Parties (presumably countries in Eastern Europe undergoing transition to a market economy) is also to be established at the first meeting of the Conference of the Parties. Paragraph (3) envisages a framework for direct financial cooperation between the developed country and developing country Parties related to the implementation of the Convention. Paragraph (4) makes the extent of compliance by the developing country Parties of their obligations under the Convention contingent upon the extent of implementation of the commitments of the developed country Parties related to financial resources and transfer of technology. It is further clarified that compliance by the developing country Parties of their obligations under the Convention will also depend upon the state of their economic and social development and eradication of poverty which are recognized as their first and overriding priorities. Paragraphs (5), (6) and (7) require the Contracting Parties to give special consideration to the special needs and peculiar situation of the least developed countries, small island States and other developing countries such as those with arid and semi-arid zones, coastal and mountainous areas.

Article 21 contemplates the establishment of a financial mechanism to provide financial support to developing country Parties on a grant or concessional basis to enable them to meet their obligations under the Convention. While the proposed mechanism will function under the supervision of and be accountable to the Conference of the Parties, its operations will be carried out by an institutional structure as may be decided

upon by the Conference of the Parties at its first meeting. The proposed mechanism is required to operate within a democratic and transparent system of governance. The Conference of the parties has also been empowered to decide on the eligibility criteria and guidelines relating to access to and utilization of the financial resources at its first meeting. The scale of contributions to the proposed fund will also be worked out by the Conference of the parties after taking into account the need for predictability, adequacy and timely flow of funds in accordance with the amount of resources needed and the importance of burden-sharing among the contributing Parties. The Conference of the Parties is also authorized to review the effectiveness of the proposed mechanism including the criteria and guidelines after two years of the entry into force of the Convention and thereafter on a regular basis. The Contracting parties are enjoined to consider strengthening existing financial institutions to provide financial assistance for the conservation and sustainable use of biological diversity.

Since the proposed arrangements for financial resources and funding mechanism contemplated in Articles 20 and 21 are expected to take shape only after the first meeting of the Conference of the Parties, Article 39 institutes interim financial arrangements for the period between the entry into force of the convention and the first meeting of the Conference of the parties which is to take place not later than one year after the entry into force of the Convention or until the Conference of the Parties designates an institutional structure. Article 39 designates the Global Environmental Facility of the UNDP, UNEP and the World Bank to function as the financial facility for the interim period provided it is fully restructured in accordance with the requirements laid down in Article 21.

Institutional Measures

Articles 23 through 32 and 40 deal with the institutional measures for the Convention itself. These provide for the establishment of the Conference of the parties as the apex body to administer the Convention with the help of a subsidiary body on scientific, technical and technological advice and a secretariat. Article 23 establishes the Conference of the parties as an apex body to keep under constant review the implementation of the Convention. The first meeting of the Conference is to be convened by the Executive Director of the UNEP not later than one year after the coming into force of the Convention. Thereafter, the ordinary meetings of the Conference will be held at regular intervals as determined by the Conference at its first meeting. The Conference will adopt by consensus rules of procedure for itself and for any subsidiary body it may establish as well as financial rules for the

funding of the Secretariat. At each ordinary meeting, it shall adopt a budget for the financial period until the next ordinary meeting.

Article 24 establishes a secretariat to service the Conference of the Parties. It will be designated by the Conference of the Parties at its first meeting from amongst the existing competent international organizations. Under Article 40, an interim secretariat is to be provided by the Executive Director of the UNEP for the period between the entry into force of the Convention and the first meeting of the Conference of the Parties.

Article 25 provides for the establishment of a subsidiary body for the provision of scientific, technical and technological advice to the Conference of the Parties and its other subsidiary bodies which may be created in the future. This body, which is open to participation by all Contracting Parties, will comprise government representatives competent in the relevant fields of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work. Its functions, terms of reference, organization and operations can be further elaborated by the Conference of the Parties.

Article 27 lays down the dispute settlement mechanism in relation to the Convention. In the event of a dispute arising between the Contracting Parties concerning the application or interpretation of the Convention, the concerned parties are required to seek solution of the dispute through negotiation, and failing that, through mediation by a third party. In case the dispute is not resolved by these methods, the Contracting parties are then given the option to either agree on arbitration or reference to the International Court of Justice. However, if the Contracting Parties do not so opt, the dispute is required to be submitted to conciliation. The rules of procedure for arbitration and conciliation are set out in Annex II of the Convention.

Article 28 relates to the adoption of Protocols to the Convention. Article 29 lays down the procedure for amending the Convention and its Protocols. Article 30 deals with the adoption and amendment of the Annexes to the Convention. The Annexes are restricted to procedural, scientific, technical and administrative matters. Article 31 invests each contracting Party to the Convention or any Protocol with one vote. Regional economic integration organizations are permitted to be parties to the Convention with a number of votes equal to the number of their constituent member States which are themselves Contracting Parties to the Convention or any Protocol. Such organizations are precluded from voting if their Member States excuse their voting and *vice versa*. Article 32 deals with the relationship between the Convention and its Protocols. States and regional economic integration organizations can only become parties to a Protocol if they become Contracting Parties to the Convention.

Final Provisions

Articles 33 to 38 and 41 and 42 are in the nature of Final Provisions dealing with signature; ratification, acceptance or approval; accession; entry into force; reservations; withdrawals; depositary; and authentic texts which are fairly standard. The Convention requires 30 ratifications/accessions for its entry into force. Reservations to the Convention are not permitted.

III. General Observations

Although the Convention on Biological Diversity seems to have received worldwide affirmation as is evident from the fact that it has been signed by 157 countries, its success and effectiveness will depend on the actual implementation of the crucial provisions of the Convention such as those related to access to genetic resources (Article 15), access to and transfer of technology (Article 16) and financial resources and a funding mechanism (Articles 20 and 21).

There is an intrinsic interlinkage between access to genetic resources, transfer of technology and financial assistance to the developing countries to enable them to carry out their obligations under the Convention. The value of genetic resources depends on the technology to use them. Although genetic resources, for the most part, are concentrated in the developing countries, the technologies to exploit them are mainly with the industrialized countries which are protected by intellectual property rights. In view of the obstacles posed by the intellectual property regimes to the diffusion of technology, which in the context of this Convention, would mainly be biotechnology, a suspicion lurking in the minds of the developing countries has been that the developed countries wanted them to conserve their genetic resources without giving them any corresponding financial or other compensation. It is for this reason that the developing countries insisted during the negotiations on a trade-off with the developed countries in the INC negotiations so that in return for providing access to this resource, they are able to secure access to relevant technologies. This would enable them to build their own capability to maintain *in situ* collections, including the use of technologies such as cryogenics (freezing techniques) and biotechnology. Biotechnology is a fast-growing research-intensive industry born of scientific advances in genetic engineering dating from 1973. These advances have made it possible to create in a laboratory new organisms that can be used to make commercial products ranging from improved medicines, to better strains of crops, and to bacteria for use in pest control. Biotechnology has immense potential for contributing to improved health

care, food production, environmental problems and industry in developing countries.

It was in response to these concerns of the developing countries that the text of Articles 15 and 16 were revised to reflect those concerns. Thus, Article 15 invests the national governments with the authority to determine access to their genetic resources and to provide access only on mutually agreed terms and with their prior informed consent, unless waived by them. It also requires the Contracting parties to carry out scientific research based on the genetic resources provided by the other Contracting Parties with their full participation and where, feasible, in their own countries. It also requires the Contracting Parties to share in a fair and equitable way the results of such scientific research and the benefits accruing from the commercial exploitation of genetic resources with the Contracting Parties providing those resources. This sharing has to be on mutually agreed terms.

What causes some concern, however, are some of the provisions in Article 16 on transfer of technology. Those provisions, *inter alia*, provide that in the case of technology protected by patents and other intellectual property rights, the transfer of technology is to be effected in conformity with those rights. This has been modified somewhat in the case of the Contracting Parties providing the genetic materials by the provision that such transfers will be effected on mutually agreed terms notwithstanding the protection of intellectual property rights. This would necessarily imply that even in the case of Contracting Parties supplying the genetic materials, only those technologies would be transferred over which the Governments would be having ownership rights or control, but this would not be possible in case of those technologies which are in the hands of private owners and are protected by intellectual property rights⁴.

According to the *Global Biodiversity Report* prepared by the World Resources Institute and other world conservation organizations, finding patentable products is not a quick process. A rule of the thumb in screening samples is that only one out of 10,000 actually leads to a marketable product. The right to own and license genetic materials developed from discoveries is imperative since without the guarantee of exclusive use, nobody would commit the amount of money—on an average about US \$ 100 million—required to bring each biotechnologically created drug in the market.

Against this, it can be contended that the experience of the developing countries, which have been the main repository of the genetic materials, has

been that most of them have been unfairly denied compensation for genetic substances found within their territory. A frequently cited example is *Vincristine*, a cancer drug with a multi-million dollar market developed from rosy periwinkle of Madagascar which received none of its profits. It is, therefore, justly argued by these countries that without some right to the profits from products developed from their genetic resources they will have few incentives to continue protecting biologically diverse areas.

Since biotechnology industry continually needs samples of genetic materials found in biologically diverse developing countries, which provide the basis for genetically engineered products, it has been suggested that the biotechnology firms in the industrialized countries would find it advantageous to join with biodiverse countries for a regular source of new genetic samples. In this context, the World Resource Institute has recommended the two-year agreement between Costa Rica's National Biodiversity Institute (INBio) and the US pharmaceutical giant *Merck and Company* as the model for similar agreements with other developing countries. INBio was established in 1989 to catalogue and manage Costa Rica's remarkable biodiversity. Under the Agreement, Merck is paying US \$ 1 million during the next two years for the opportunity to examine the plants and other species that INBio is collecting. INBio prepares from the samples chemical abstracts that are sent to Merck's laboratories. INBio is reported to receive an unspecified amount of royalties (1 to 3 per cent) from the sales of any products developed from the genetic materials of these samples. Merck is also donating equipment to INBio and training the Institute's scientists.

Even if INBio receives only 2 per cent of royalties from the pharmaceuticals developed from Costa Rica's biodiversity, it would take only 20 drugs for INBio to be able to earn more funds than Costa Rica currently gets from coffee and banana, its two major exports. The INBio-Merck Agreement the only one of its kind in the developing world, and because of its success it is likely to be followed in other developing countries. Mexico has already set up its own Commission on biodiversity and both India and Kenya are examining the possibilities. (U.S. Information Service, New Delhi. *Economic News from USA* August 1992). Thus, for a share of reasonable profits and access to technologies, it would be in the interest of developing countries to seek such agreements with the biotechnology firms in the industrialized countries.

Although in the Biodiversity Convention, developing countries have somewhat succeeded in limiting the impact of intellectual property rights on the transfer of technology including biotechnology, they should equally be cautious and concerned about the developments taking place in the

4. It may be pointed out that U.S. Biotechnology industry has grown from 1 firm in 1976 to more than 1,100 today with revenues reaching US \$ 5,800 million (*Economic News from USA*, June 1992).