

[TRANSLATION -- TRADUCTION]

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

*Preamble*

The Government of the Republic of Austria and the Government of the People's Democratic Republic of Algeria (hereinafter referred to as the "Contracting Parties"),

Desiring to create favourable conditions for greater multisectoral economic cooperation,

Recognizing that the promotion and protection of investments may strengthen the willingness to undertake such investments and make an important contribution to the development of economic relations,

Convinced that the promotion and protection of investments will help to stimulate the liberalization of capital and flows of investments and technology between the Contracting Parties in the mutual interest of their economic development and prosperity, subject to the rules and regulations of international law to which the two Parties subscribe,

Have agreed as follows:

*Article 1. Definitions*

For the purpose of this Agreement:

1. The term "investor" means:

(a) any natural person holding the nationality of one of the Contracting Parties in accordance with its applicable law; or

(b) any enterprise constituted or organized under the applicable law of a Contracting Party, making or having made an investment in the territory of the other Contracting Party.

2. The term "investment" means every kind of asset in the territory of one Contracting Party, owned or controlled, directly or indirectly, by an investor of the other Contracting Party, including:

(a) movable and immovable property and any other property rights such as leases, mortgages, liens or surety;

(b) the shares, debentures and bonds or any other form of participation in a company;

(c) monetary claims and any claims to performance pursuant to a contract having economic value;

(d) intellectual property rights as defined in the international agreements to which the Contracting Parties have subscribed, in particular copyrights, patents, patents of models

and designs, registered designs, trade names, trade and business secrets, technical processes, know-how;

(e) concessions or permits granted by law or by contract, including those relating to research, cultivation, extraction and exploitation of natural resources, or to pursuit of an economic activity.

3. The term "enterprise" means any legal person constituted in accordance with the applicable law of a Contracting Party, whether private or public or controlled, including corporations, trusts, partnerships, the sole proprietorships, branches, joint ventures and associations.

4. The term "returns" means the amounts yielded by an investment and, in particular, profits, interest, capital gains, dividends, royalties, license fees and other fees.

5. The term "territory" means, in addition to land and maritime territory, the various zones of maritime space, on which the Contracting Parties exercise jurisdiction and sovereign rights relating to the exploration, exploitation, conservation, prospecting and management of natural resources, of the seabed, its subsoil and overlying waters, in accordance with their national legislation and international law.

#### *Article 2. Promotion and admission of investments*

1. Each Contracting Party shall, according to its laws and regulations, promote and admit investments by investors of the other Contracting Party.

2. Changes in the form in which the returns are invested or reinvested shall not affect the standing of the investment as defined by article 1 (2) of this Agreement, provided the change in question is in accordance with the law and the jurisdiction of the Contracting Party in whose territory the investment has been undertaken.

#### *Article 3. Treatment and protection of investments*

1. Each Contracting Party shall accord to investments by investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

2. A Contracting Party shall not impair by unreasonable or discriminatory measures the management, exploitation, maintenance, use, enjoyment, sale and liquidation of an investment by an investor of the other Contracting Party.

3. Each Contracting Party shall accord to investors of the other Contracting Party, and their investments on its territory, treatment no less favourable than it accords to its own investors and their investments, or to the investors of a third Party and their investments.

4. No provision of this Agreement shall be construed as to oblige a Contracting Party to extend to the investors of the other Contracting Party and to their investments the present or future benefit of any treatment, preference or privilege resulting from:

(a) Membership of a free trade area, customs union, common market, economic community or any multilateral agreement on investment;

(b) Any international agreement, international arrangement or any other arrangement in the fiscal sector.

*Article 4. Expropriation and compensation*

1. Investments made by the investors of each of the Contracting Parties shall not be nationalized or expropriated, or subjected to measures of equivalent effect to a nationalization or expropriation (hereinafter referred to as “expropriation”), on the territory of the other Contracting Party, except for a purpose which is in the public interest, according to a legal procedure, on a non-discriminatory basis, and accompanied by payment of prompt, adequate and effective compensation in accordance with paragraphs 2 and 3 of this article.

2. Such compensation shall be at least equal to the market value immediately before the expropriation was decided upon or became public knowledge, whichever is the sooner, and shall be paid without delay. Such compensation shall earn interest at the normal commercial rate from the date of the expropriation until the date of payment.

3. The investor affected by the expropriation shall be entitled, under the law of the Contracting Party deciding upon the expropriation, to prompt review of its case including the valuation of its investment by a court or any other competent judicial authority of the Contracting Party, in accordance with the provisions of paragraph 1 of this article.

*Article 5. Compensation for losses*

1. An investor of a Contracting Party who has suffered a loss relating to its investment in the territory of the other Contracting Party, due to war or any other armed conflict, revolution, revolt, insurrection, riots, civil disturbance, state of emergency or similar event, shall receive from the latter Contracting Party as regards reparation, restitution, indemnification, compensation, or any other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own investors or to the investors of any third State.

2. Without prejudice to paragraph 1 of this article, the investors of a Contracting Party who, in any of the events referred to in the aforementioned paragraph, suffer losses in the territory of the other Contracting Party resulting from a requisitioning or damage caused to their investments by the latter's authorities, shall receive prompt and adequate compensation for their losses suffered during the period of requisition or resulting damage caused to their property.

*Article 6. Transfers*

1. Each Contracting Party shall ensure that all payments relating to an investment made by an investor of the other Contracting Party can be freely transferred without delay into and out of its territory. Such transfers shall include, in particular:

- (a) the initial capital and additional amounts needed to maintain or develop an investment;
- (b) returns;
- (c) payments made under a contract including a loan agreement;
- (d) proceeds from the sale or liquidation of all any part of an investment;

- (e) payments of compensation under articles 4 and 5;
- (f) payments arising from the settlement of the dispute.

2. Each Contracting Party shall also ensure that any such transfer can be made in a freely convertible currency at the rate of exchange prevailing in the market on the date of transfer in the territory of the Contracting Party from which the transfer is made.

3. In the absence of a foreign exchange market, the exchange rate to be used is the most recent rate of conversion of currencies into special drawing rights.

#### *Article 7. Subrogation*

If a Contracting Party or an institution designated thereby makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment made by an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize, without prejudice to the rights of the investor of the former Contracting Party, referred to in article 10 of this Agreement, the assignment of any right or claim of such investor to the former Contracting Party or its designated institution, and the right of the former Contracting Party or its designated institution to exercise by virtue of subrogation any such right and claim through subrogation in the same conditions as the transferor.

For the transfer of payments due to the respective Contracting Party, articles 4, 5 and 6 of this Agreement are applicable.

#### *Article 8. Other obligations*

1. If the laws of either Contracting Party, or obligations under international law, entitle investments by nationals or enterprises of the other Contracting Party to treatment more favourable than is provided for by this Agreement, the more favourable treatment shall prevail.

2. Each Contracting Party shall observe any obligation it may have entered into, in relation to the investments of nationals or enterprises of the other Contracting Party on its territory.

#### *Article 9. Denial of benefits*

Subject to notification and prior consultation with the Contracting Party of the investor, a Contracting Party may deny the benefits of this Agreement to an investor and its investments if an investor of a non-Contracting Party owns or controls the investor in question, and if this investor has no substantial industrial or commercial activity in the territory of the Contracting Party under whose law it is constituted or organized.

#### *Article 10. Settlement of disputes between an investor and the Contracting Party*

1. Any dispute between one of the Contracting Parties and an investor of the other Contracting Party, in relation to investments under this Agreement shall, as far as possible, be settled amicably through negotiations between the Parties to the dispute.

2. If a dispute cannot be settled amicably within four months from the date of notification of the dispute, it may, at the request of the investors be submitted to:

- (a) the competent jurisdiction of the Contracting Party involved in the dispute;
- (b) international arbitration:

(i) at the International Centre for Settlement of Investment Disputes (hereinafter referred to as "the Centre") created by the Convention of a Settlement of Investment Disputes between States and Nationals of other States, which was opened for signature in Washington, DC., on 18 March 1965 (the ICSID Convention);

(ii) by an ad hoc arbitral tribunal established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL);

(iii) at the International Chamber of Commerce (ICC);

(iv) under any other form of dispute settlement or common agreement among the Contracting Parties in dispute.

3. Each Contracting Party shall thus give its unconditional consent to submit the dispute to the conciliation or international arbitration procedure. In giving such consent, the Contracting Parties renounce the right to demand that domestic administrative and judicial remedies be exhausted.

4. The Contracting Party that is party to the dispute may at no time in the arbitration procedure claim immunity or declare that the investor has received indemnification covering all or part of the eventual loss or damage through an insurance contract.

5. The arbitral tribunal shall settle the dispute in accordance with the domestic law of the Party in whose territory the investment was made, including rules relating to conflicts of law, other commonly accepted principles of international law in this Agreement and all other agreements on investment concluded between the investor and the Party concerned.

6. The arbitral ruling issued in the framework of this article shall be binding on the Parties to the dispute and shall be enforceable in the territories of the Contracting Parties. Each Contracting Party shall ensure effective enforcement on its territory of arbitral rulings issued under this article, and without delay apply any arbitral ruling issued in a procedure to which it was party to the dispute.

7. No Contracting Party may pursue, through the diplomatic channel, a dispute that has been submitted to international arbitration, unless the other Contracting Party fails to respect or enforce the arbitral ruling issued by the aforementioned arbitral tribunal.

#### *Article 11. Settlement of disputes between the Contracting Parties*

1. Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement shall, as far as possible, be settled amicably through negotiations between the Contracting Parties.

2. If a dispute cannot be settled within six months from the date on which a Contracting Party requested negotiations pursuant to paragraph 1 of this Article, the dispute may, at the request of either of the Contracting Parties, be submitted to an arbitral tribunal.

3. The arbitral tribunal mentioned in paragraph 2 of this article shall be constituted for each specific case, as follows: each Contracting Party shall appoint a member, and the two members thus appointed shall jointly appoint a citizen of a third State who, following approval by the two Contracting Parties, shall be appointed President. The members of the tribunal shall be appointed within two months following the date on which one of the Contracting Parties informs the other of its intention to submit the dispute to arbitration.

4. In the event of failure to meet the deadlines mentioned in paragraph 3 of this article, and in the absence of any other agreement, either of the Contracting Parties may request the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a citizen of one of the Contracting Parties or is prevented from fulfilling that function, the Vice-President will be requested to make the necessary appointments. If the Vice-President is a citizen of one of the Contracting Parties or is also prevented from filling the said function, the next most senior member of the International Court of Justice who is not a citizen of one of the Contracting Parties shall be invited to make the necessary appointments.

5. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall establish its own procedures and will rule on the dispute on the basis of this Agreement and principles of international law accepted by the two Contracting Parties.

6. The arbitral tribunal shall make his decision by a majority of votes, and such decision shall be final and binding on both Contracting Parties.

7. Unless the tribunal provides otherwise in the light of particular circumstances, the expenses of the arbitral procedure, including the arbitrators' fees, shall be shared equally between the Parties.

#### *Article 12. Application of the Agreement*

1. This Agreement shall apply to investments made by the investors of one of the Contracting Parties on the territory of the other Contracting Party, in accordance with its current legislation, either before or after its entry into force.

2. This Agreement shall not apply to disputes that have been settled prior to entry into force of this Agreement.

#### *Article 13. Consultations*

1. Each Contracting Party may propose to the other Contracting Party consultations on any matter relating to this Agreement. These consultations shall be held at the place and at a time agreed upon through the diplomatic channel.

2. Each Contracting Party shall publish or make available to the other Contracting Party its laws, regulations, procedures and administrative and judicial decisions of general application, together with the international conventions that could affect the functioning of this Agreement.

*Article 14. Final provisions*

1. The Contracting Parties shall notify each other, through the diplomatic channel, when their respective constitutional formalities for the entry into force of this Agreement have been completed. The Agreement shall enter into force on the first day of the third month following the date of the second of the two notifications.

2. This Agreement shall remain in force for initial period of 10 years, and shall remain in force thereafter unless one of the Contracting Parties decides to terminate by giving 12 months' notice in writing to the other Contracting Party.

3. The two Parties may mutually consent to make amendments to this Agreement. Any such amendment shall enter into force under the same terms and conditions governing the entry into force of the Agreement itself.

4. Investments made before the termination of this Agreement shall continue to enjoy protection from these provisions for a further period of 15 years from the date of termination of this Agreement.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in Vienna, on 17 June 2003 in two original copies in German, Arabic and French, each of the three texts being equally valid. In the event of differences of interpretation, the French version shall be taken as the reference text.

For the Government of the Republic of Austria:

MARTIN BARTENSTEIN

For the Government of the People's Democratic Republic of Algeria:

ABELLATIF BENACHENOU