

MOOT COURT PROBLEM

D.M. HARISH MEMORIAL – GOVERNMENT LAW COLLEGE

INTERNATIONAL LAW MOOT COURT COMPETITION, 2006

BEFORE THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE THE HAGUE

State of Ratanka

... Applicant

Versus

Federal Republic of Anghore

... Respondent

1. The Federal Republic of Anghore (“Anghore”) is a developing country that attained independence on 21st November, 1977 after 267 years of colonial rule. The Constitution of Anghore provides for a Federal form of Government, and Anghore has 13 states or sub-federal units. Anghore has amongst developing countries a very strong commitment to a democratic form of Government and has adopted a Parliamentary form of democracy, much like the form of Government in countries such as India and the United Kingdom. The capital of Anghore is “*Highbury*”, and the National/Central Government, which includes the National Legislature, the Executive and the Supreme Court of Anghore are based in Highbury. The commercial capital of Anghore, where the only the national stock exchange is located, is “*Stanford – Ridge*”, which is also the capital of the Anghoran State of “*Chelski*”.

2. Anghore has a population of 456 million, with a per capita income of US \$ 670 per annum. Although 20% of population of Anghore lives below the poverty line as per

international standards, the 'middle class' segment of society in Anghore, which constitutes about 52% of the total population, is burgeoning and with a disposable income that has been estimated by national economists at between US \$ 950 to 1100 per month. The Gross Domestic Product (GDP) of Anghore has grown at around 7.5 % per annum from 1995 to 2000 and at an even higher rate since then, with the growth in the year 2004-2005 reaching 9.5% over the previous financial year.

3. In 1992 Anghore took measures to "liberalize" its economy, and permit Foreign Direct Investment (FDI) in certain key sectors, subject to limits or ceilings on the quantum of foreign equity that could be held in companies operating within the sectors where such FDI was permitted. Initially, FDI was allowed only in sectors that were perceived as being for the benefit of the nation at large such as ports, power generation and road transportation.

4. Over the years the Anghoran national policy concerning FDI has been substantially liberalized, with FDI being regulated by a 'negative list' as opposed to a 'positive list' as was the case till 1999. Despite the liberalization of Anghores FDI policy, the Real Estate sector remained on the negative list of restricted sectors in which FDI was not permitted. This policy was enforced to overcome the legacy of a societal divide based on land ownership, which was not evenly distributed and was the privilege of a few.

5. This policy on FDI in Real Estate changed and the new policy was announced in the declaration of the Anghoran Minister of Finance and Trade, Mr. Diddy Frogba, made on 17th January 2001, when the annually revised policy on FDI was being announced. Minister Frogba released the revised FDI policy for Real Estate and Construction, which read as follows:

"It is expected that allowing investment in the construction and development sector would have a multiplier effect on the economy by providing an impetus to construction activities of all types. The following are the benefits expected from the implementation of this policy; (a) being an employment intensive sector, it

would create employment not only for skilled and unskilled laborers, technicians and artisans but also for engineers, architects and designers; (b) lead to spin-off benefits to manufacturing sector particularly construction material industries like cement, steel and brick making; and (c) ensure rapid increase in built-up infrastructure as well as improving the infrastructure.

1. *FDI would be permitted up to 100% foreign ownership of equity incorporations incorporated in Anghore for this purpose;*
2. *The investor would not be permitted to sell undeveloped plots. "Undeveloped Plots" will mean and includes where roads, water supply, street lighting, drainage, sewerage, and other conveniences, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be allowed to dispose of the plots;*
3. *The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/ Municipal/Local Body concerned;*
4. *This essentially means that now it is State Governments and Municipal Bodies which would be approving such projects, not the Central Government. It also means that in terms of treatment, FDI projects would be accorded national treatment on par with local developers.*
5. *FDI in this sector will, therefore, not displace or replace the local industry but rather help it to grow at a rapid pace and generate greater economic activity."*
6. This policy was introduced with the objective of improving the quality of development in urban centers of Anghore, in particular *Highbury and Stanford – Ridge*.

7. Stanford – Ridge has a population of approximately 11 million people. One of the geographical limitations on the development of Stanford-Ridge is that it is surrounded by the sea on three sides (east, west and south), and hence cannot expand despite its increasing population. Stanford-Ridge is an extremely congested city and 34% of its population lives in sprawling slums that do not have the basic necessities and amenities. The living conditions were described by the WHO in a 2004 report as “*squalid unhygienic and deplorable*”.

8. At the turn of the 20th century, Stanford-Ridge became the industrial centre of Anghore. The most prominent industry that was established at that time was that of “textile mills” that were set up in what is today the central area of the city. In all there were 40 cotton textile mills that occupied a land area of approximately 750 acres. The cotton textile mill industry flourished for 70 years till the early 1970’s, as the cheap cost of labour and the quality of workmanship gave the finished cotton garments a significant export market. In the mid 1970’s there was a tremendous upheaval in the cotton textile industry in Stanford-Ridge on account of a massive labour agitation combined with a loss of market share in the global textile market for finished goods. By 1980, the cotton textile mills were completely and totally defunct and the management of 50 % of the mills was taken over by a statutory corporation under the management and control of the Government of Anghore known as the National Cotton Textile Corporation (NCTC). Initially the NCTC’s objective was to attempt to revive the mills over which it assumed management, but upon realizing that this was not possible, the NCTC became the owner of the mills it had assumed management over, by virtue of an enactment of the National Legislature, known as the National Textile Ownership Act, 1988.

9. By 1995 the Government of Chelski recognized that the lands occupied by the cotton textile mill of Stanford-Ridge were a valuable resource that was lying idle because the majority of the mills were by this time defunct. These cotton textile mills were located in an area earmarked for ‘industry’ that could not be utilized for any other purpose (residential or commercial). The Government therefore framed a comprehensive regulation, Regulation 101, as part of the Urban Planning Rules and Regulations

applicable to Stanford-Ridge, which pertained specifically to the revival and rehabilitation of these cotton textile mills and in cases where specific mills were incapable of revival, then for the unlocking of the mill land to be utilized for diverse purposes subject to the conditions specified in the Regulations. One of the objectives of this Regulation was to generate finance and optimize existing capital by allowing the development of mill lands, which finance would be utilized for the long overdue retrenchment payments to the mill workers, taxes/statutory dues and repayment of monies to banks and other financial institutions. (The relevant text of the Regulation, also referred to as “original Regulation 101”, is set out at Annexure I.) In 1997, the State Government of Chelski amended the Urban Planning Rules and Regulations applicable to Stanford – Ridge and allowed other industries located in the same geographical area as the textile mills to redevelop their lands for commercial use without making any surrender of land.

10. For two years, Regulation 101 was in operation but had only marginal success because the conditions for using the entire land of any cotton textile mill unit for any commercial or residential purpose were perceived by the mill owners as onerous and therefore there were only 5 privately owned mills that opted to subject their lands to the scheme provided for in Regulation 101. The mill owners did make a representation to the State Government of Chelski that the compensation for half of the land surrendered was not satisfactory. Specifically, it was represented that the market value of the Transferable Development Rights to be utilized in the designated northern suburb of Stanford-Ridge was only 71% of the market value of the land value in the location of the textile mills, on a unit-to-unit basis for land price comparison.

11. There was no significant development of mill lands during the period of operation of Regulation 101. Also the original Regulation 101(1)(a) was being applied by certain land owners in a manner such that it resulted in the circumvention of the Regulation, by utilizing the balance building potential of the land without demolishing any structure, thereby making no surrender of the land to the city. To overcome these infirmities in the original Regulation 101, the Government of Chelski appointed a Committee headed by

the Minister of State for Textiles, for reexamining the Regulation and proposing amendments to Regulation 101 to provide a further incentive to mill owners to submit to the Scheme of Regulation 101. The Wagner Committee recommended various amendments to Regulation 101, both to clarify the earlier/original Regulation 101 and to recast the underlying policy so as to induce mill owners to redevelop their mill lands.

12. The cabinet of the Government of Chelski considered and discussed the proposal. 3 months after the Wagner Committee report was submitted, Regulation 101 was amended.(The relevant provisions of “amended Regulation 101” are set out Annexure II.) The amended Regulation 101 was notified and came into operation on 4 May 2000. Since the coming into force of the new Regulations, the State Government of Chelski and the concerned statutory authorities were granting the necessary permits and consents under the amended Regulations for the redevelopment of textile mill lands on the basis that all the land upon which structures existed/built upon was to be retained in its entirety by the land owners. In other words, only the vacant land (open to the sky) was subjected to the surrender norms that required the specified percentage to be handed over to the City Council and Low Income Housing Board for the stated purposes.

13. Kavala Construction Inc. (Kavala Constructions), a company incorporated in the State of Ratanka, was amongst the leading construction companies in the world, and had entered the Anghoran market in mid 2001 as soon as it learned of the “Real Estate and Construction” sector opening up to FDI. Kavala Constructions entered into a joint venture with an Anghoran company, and set up a subsidiary incorporated in Anghore called Kavala Anghore Constructions Ltd. (Kavala Anghore). The main business of Kavala Anghore, in which Kavala owned 74% of the equity, was corporate and residential construction services in urban centers. Kavala Anghore entered into several construction and development agreements, particularly with NCTC for the development of its mill lands. Of the 20 NCTC mills, 17 of them were to be developed by Kavala Anghore. Kavala Anghore obtained these developments rights as it was the highest bidder, amongst six companies, that were invited to offer private bids for the procurement the rights for the development of mill lands. The reserve bid price set by NCTC was US\$

550 million. The successful bid of Kavala Anghore was US\$ 867 million.

14. Pursuant to these development agreements, Kavala Anghore had the rights to exploit the building and development over 17 mill lands and to enter into agreements for sale of premises (commercial and residential) that were to be constructed on these mill lands. Approximately 60% of the price paid by Kavala Anghore was to be financed by financial institutions against the security of the mill lands and future buildings to be constructed on the mill lands.

15. The situation in November 2002 was as follows: for 5 of the 17 mills, Kavala Anghore had already procured 2 of the 3 construction permits from the relevant authorities and for 8 other mill lands it had received sanction to commence constructions and had constructed a total of 11 buildings and received substantial sums from buyers of residential and commercial premises in these buildings.

16. In January 2003, the urban crisis in Stanford – Ridge reached a flashpoint. The city was paralyzed because of two days of incessant torrential rainfall that caused widespread loss to life and property. After the disaster, a commission of inquiry was instituted to investigate into the reasons for the failure of the State's machinery to cope with the aftermath of this natural disaster. In its findings, the Report of the committee stated that a substantial part of the destruction and loss caused to the city was because of the woefully inadequate and disintegrating infrastructure—particularly roads, water supply and sewerage—of Stanford – Ridge. The Report also recognized that there was no potential for improving the infrastructure because of the unregulated and often times illegal construction and development in the city that has encroached upon virtually all open spaces. The report also noted that the unprecedented flooding was because much of the construction and development throughout Stanford – Ridge was on land that was flattened by destroying the natural gradient (hills and hillocks) of land, which are natural catchments areas for rain water. It was also noted that the construction and development erodes the top layer of the earth and soil thereby reducing the absorption capacity of rain water. In its conclusions the Report stated that the State Government of Chelski had

completely failed in its responsibility of planning and regulating development in Stanford – Ridge and it was the cumulative effect of years of dereliction of duty that has led to a situation that is fast approaching a point of no return.

17. On 13 March 2003, a Non Governmental Organization that had pioneered the environmental movement in urban centers of Anghore filed a Public Interest Litigation/environmental class action challenging the existing development and proposed development of mill lands in the city of Stanford-Ridge. The basis for this challenge was that the amended Regulations were being erroneously interpreted and applied by the State Government of Chelski, as a result of which there was a drastic reduction of 140 acres that was to be maintained as open spaces and handed over to the City Council. It was argued that by excluding per se all the land that is built upon from the land sharing requirements, the State Government was defeating the principal object of the Regulation. It was also the contention of the NGO that the State Government's interpretation and application of the amended Regulation 101 would render the Regulation unconstitutional, as the 'right to life' enshrined in the Anghoran constitution had been interpreted to include the right to a clean and wholesome environment. It was further argued that the well founded environmental doctrines and principles of 'intergenerational equities' and 'sustainable development' have been accepted as part of Anghoran law and the Anghoran Constitution and have been applied by the Supreme Court of Anghore in previous decisions. Hence, it was submitted that the interpretation and application of amended Regulation 101 was in clear violation of the environmental protection standards that were protected by the Constitution of Anghore.

18 This Petition was opposed by the State Government of Anghore, the private builders, NCTC and Kavala Anghore. It was their contention that the amended Regulations were correctly interpreted and applied. According to them the Regulation, which allowed the land- owners to retain the land on which structures existed at the time of development was a necessary modification to the policy to induce land owners to submit their mill lands to this scheme for redevelopment and reconstruction. The Respondents to the Petition argued that the policy of the State Government was very clear

in its terms and hence there was no basis for construing it in the manner propounded by the NGO. They also argued that the apprehended reduction in land area to be made available to the city under the amended Regulation 101 was an argument based on a comparison of the original Regulation viz. the amended Regulation, however, the original Regulation had failed and no land was made available to the city. Hence, it was argued that the amended Regulation 101 cannot be considered environmentally prejudicial because the effect of the amended Regulation is not to deprive the city of lands that were actually surrendered to the city for open spaces.

19. In a widely publicized decision the Highest Court of the State of Chelski upheld the challenge of the environmental NGO and agreed with the interpretation of the amended Regulation that required 50% of the *entire* mill land area to be surrendered for open spaces and low income housing. The High Court interpreted the expression “open lands” in the amended Regulations to mean ‘open lands, i.e., lands that are open after the demolition of existing structures’. Hence, the percentage wise distribution of land as specified in the amended Regulation 101 was made applicable to the entire land, and not only the existing open land. The High Court upheld the argument that any other interpretation of the Regulations would be contrary to the doctrine of ‘intergenerational equities’ and ‘sustainable development’. The High Court noted that the protection and preservation of the environment is a basic right of the citizens that must be protected. It also said that any endeavor of alleviating the miserable conditions and the myriad sufferings of the people of Stanford – Ridge must begin with improving their living conditions and all such steps are predicated on the availability of open spaces. The High Court made strong and direct observations against the brazen disregard for regulated planning and development and the proper implementation of laws, against the State Government of Chelski and stated that “... *it is unfortunate that the policy of the State gives priority to the profiteering of Foreign Investors, who are only interested in exploiting the commercial value of land that is scarcely available. This is an abdication of the primary duty of ensuring balanced development in Stanford – Ridge*”. This ruling was made to apply to constructions that had already commenced under the amended Regulation 101, including the constructions of Kavala Anghore. The ruling of the

Chelski High Court specifically stated that where development was proposed, the development would have to conform to this interpretation of the amended Regulation 101. As regards those mill lands where development had actually occurred, the land owner/developer would have to surrender 50% of the land area of such plot if available for surrender. This aspect of the ruling applicable specifically to those Kavala Anghore plots where buildings had been constructed.

20. Kavala Anghore, amongst others, preferred an appeal from this Judgment to the Supreme Court of Anghore. The Supreme Court admitted the appeal but did not find it fit to '*stay*' the operation of the High Courts Order in its entirety. It was made clear by the Supreme Court that should the Judgment of the High Court be eventually set aside by the supreme court, the land that Kavala Anghore would have to surrender would be returned to it, as in any event it was to be maintained as open spaces. The Supreme Court also stated that till the final hearing and judgment of the Supreme Court, the Government of Chelski would be restrained from the construction of low income housing on the land surrendered for this purpose. In the normal course, the Supreme Court of Anghore would take 3 years to finally dispose off an appeal such as the appeal preferred by Kavala Anghore.

21 Aggrieved by the turn of events in Anghore, Kavala Construction took up the issue with the Ministry of Economic Affairs and the Ministry of External Affairs of Ratanka. As Kavala Constructions was a very prominent corporation in Ratanka, the concerned Ministries of Ratanka raised the issue in bilateral talks with Anghore. The Government of Anghore responded by stating that it has full faith in its judicial system and that it would not be appropriate for the executive to interfere in a matter of such public importance, even to the extent of applying to the Supreme Court to expedite the final hearing of the appeal. The concerned Ministries of the Ratanka Government did emphasize the immense loss that was being caused to their corporation, who entered the Anghoran market as a good faith foreign investor in response to the liberalization of FDI of the Real Estate sector in Anghore. Ultimately, despite sustained efforts on the part of both nations, the dispute could not be resolved diplomatically.

22. In 1976, Ratanka and Bangal (the former Sovereign that ruled over Anghore till Anghore attained independence) had signed and ratified a Friendship, Commerce and Navigation Treaty (the “Treaty”) (Annexure III), which was applicable specifically to the territory of Anghore, which at that time was a regional province of Bangal. Invoking the provisions of the Treaty, Ratanka has submitted this dispute to the International Court of Justice under Article 36(1) of the ICJ Statute, and raised the following claims.

23. The State of Ratanka submits that:

1 The Friendship Commerce and Navigation Treaty of 1976 devolves upon the State of Anghore, and the Hon'ble Court would therefore have jurisdiction to entertain the present dispute;

2 The Federal Republic of Anghore has violated the National Treatment obligation as contained in the Treaty by requiring the mandatory surrender of land only from the owners and developers of textile mill lands and in particular Kavala Construction;

3 The Federal Republic of Anghore has diminished the value of the investment made by Kavala Construction and has specifically acted in breach of the provisions of Article 11 of the Treaty; and

4 Amended Regulation 101 amounts to “expropriation” as contemplated under the Treaty and is in violation of violation of the provisions of the Treaty and International Law in particular the requirement to determine the compensation for expropriation at market value.

5 For the various breaches of the provisions of the Treaty and International law, the State of Ratanka claimed US\$ 2.5 billion as and by way of reparation under International Law.

24 The Federal Republic of Anghore opposed all of the aforesaid claims. The Federal Republic of Anghore further submitted that the International Court of Justice

should not entertain the dispute as Kavala Construction has failed to exhaust all local remedies. The Federal Republic of Anghore specifically relied upon the provisions of Article 11(3) of the Treaty in responding to claim (c) of the State of Ratanka.

25 Both Ratanka and Anghore are members of the United Nations Organisation, the World Trade Organization; The Vienna Convention on the Law of Treaties; The Rio Declaration on Environment and Development, Kyoto Protocol to the United Nations Framework Convention on Climate Change and The Vienna Convention on Succession of States with respect to Treaties, 1981.

Annexure 1

Original Regulation 101 of the Urban Planning Rules and Regulation, 1995.

Regulation 101: Development/Redevelopment of Lands of Textile Mills

1.Lands of Sick and/or Non- Operational Cotton Textile Mills.-

With the previous approval of the State Government to a layout plan prepared, for the development or redevelopment of the entire open land and built up area of the premises of sick and/ or non operational textile mills on such conditions as may be deemed fit, the State Government may allow :-

- a. The existing built up area to be utilized
 - 3 For commercial purposes as permitted under these regulations
- b. Open Lands and lands after demolition of existing structures in case of a redevelopment scheme to be used as in the table below

Sr. No.	Percentage of land area for open space	Percentage of land area for Low Income Housing	Percentage of land area for Residential and Commercial Development to the Owner
1	25	25	50

Note:

- 1 The owner of the land will be entitled to Transferable Development Rights (T.D.R), only in respect the lands earmarked for open spaces and low-income housing. It is clarified that these T.D.R entitle the landowner to develop and construct only in designated northern suburbs of Stanford – Ridge

Annexure II

Amended Regulation 101 of the Urban Planning Rules and Regulation, 1995.

Regulation 101: Development/Redevelopment of Lands of Textile Mills

1. Lands of Sick and/or Non- Operational Textile Mills. -

With the previous approval of the State Government to a layout prepared, for the development or redevelopment of the entire open land and built up area of the premises of sick and/ or non operational textile mills and on such condition, as may be deemed fit, the State Government may allow: -

- a. The existing built up area to be utilized
 - 3 For commercial purposes as permitted under these regulations
- b. Open Lands and unutilized development capacity of each such land be used as in the table below

Sr. No.	Percentage of land area for open space	Percentage of land area for Low Income Housing	Percentage of land area for Residential and Commercial Development to the Owner
1	25	25	50

Note:

- 1.The owner of the land will be entitled to development rights to be utilized on the lands to be developed/retained by him in respect of land surrendered for open spaces In case of lands surrendered for low income housing the owner of the land will be entitled to Transferable Development Rights (TDR). It is clarified that these T.D.R entitle the landowner to develop and construct only in designated northern suburbs of Stanford – Ridge.
- 2.It shall be permissible for the owners of the land to submit a complete scheme for the development or redevelopment of different cotton textile mills whether under common ownership or otherwise, upon which the development permission sought for the lands comprised in this scheme shall be considered by the state government in an integrated manner

Annexure III

FREINDSHIP, COMMERCE AND NAVIGATION TREATY BETWEEN THE STATE OF RATANKA AND THE KINGDOM OF BANGAL

(Relevant Provisions)

The State of Ratanka and the Kingdom of Bangal hereinafter referred to as the “Contracting Parties”

Desiring to create favourable conditions for greater flow of trade, commerce and investment made by investors of either Contracting Party in the territory of the other Contracting Party, and

Recognizing that the promotion and protection of such investments will lend greater stimulation to the development of business initiatives and will increase prosperity in the territories of both Contracting Parties.

Have agreed as follows:

ARTICLE 1

DEFINITIONS

(1) In this Agreement,

1. “investment” means every kind of asset established or acquired under the relevant law and regulations of the Contracting Party in whose territory the investment is made, and in particular, through not exclusively, includes:

- (i) movable and immovable property as well as other rights *in rem* such as mortgages, liens or pledges;
- (ii) shares, debentures and any other form of participation in a company;
- (iii) claims to money, or to any performance under contract having an economic value;
- (iv) intellectual property rights, goodwill, technical processes, know-how, copyrights, trade-marks, trade-names and patents in accordance with the relevant laws of the respective Contracting Parties;
- (v) business concessions conferred by law or under contract including any concession to search for, extract or exploit natural resources;

2. “investor” means in respect to either Contracting Party:

(i) the “national”, that is a natural person deriving his or her status as a national of that Contracting Party from the relevant laws of that Contracting Party; and

(ii) the “company” that is a legal person, such as a corporation, firm or association, incorporated or considered in accordance with the law of that Contracting Party.

3. “return” means the amount yielded by an investment and includes profit, interest, capital gains, dividends, royalties and fees.

ARTICLE 2

SCOPE OF THE AGREEMENT

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with

its laws and regulations, whether made before or after the coming into force of this Agreement.

ARTICLE 3

PROMOTION AND PROTECTION OF INVESTMENTS

- 1 Each Contracting Party shall encourage the making of investments in its territory by investors of the other Contracting Party, and admit such investments in accordance with the provision of its laws and its policy in the field of foreign investment.
- 2 Each Contracting Party shall in accordance with its laws render assistance to the investors of the other Contracting Party, whose investments were admitted in its territory, for obtaining the required clearances and permissions.

ARTICLE 4

TREATMENT OF INVESTMENTS

1. Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.
2. Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment, which shall not be less favorable than that accorded either to investments of its own, or investments of investors of any third State.
3. In addition, each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investments, treatment which shall not be less favorable than that accorded to investors of any third state
4. The provisions of paragraphs (2) and (3) shall not be construed so as to oblige either Contracting Party to extend to the investors of the other contracting party the benefit of any treatment, preference or privilege resulting from:
5. Any customs union, free trade area, common market or any similar international agreement or interim arrangement leading up to such customs union, free trade area, or common market of which either of the Contracting parties is a member, or

6. Any international agreement or any matter relating wholly or mainly to taxation

ARTICLE 5

COMPENSATION FOR LOSSES

Investors of either Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or not in the territory of the latter Contracting Party shall be afforded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

ARTICLE 6

EXPROPRIATION

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having effects equivalent of nationalization or expropriation except for public purposes, under due process of law, on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable rate until the date of payment, shall be made without unreasonable delay and shall be effectively realizable and be freely transferable.
2. The investor affected by the expropriation shall have right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.
3. Where a Contracting Party expropriates, nationalizes or takes measures having effect equivalent of nationalization or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this article are applied to the extent necessary to ensure fair and equitable compensation as specified therein to such

investors of the other Contracting Party who are owners of those shares

ARTICLE 7

TRANSFER OF INVESTMENT CAPITAL AND RETURNS

- 1 Each contracting Party shall permit all funds of an investor of the other Contracting Party related to an investment, in its territory to be freely transferred, without unreasonable delay and on a non-discriminatory basis. Such funds may include:
 - (a) Capital and additional capital amounts used to maintain and increase investments;
 - (b) net operating profits including dividends and interest in proportion to their share-holdings;
 - (c) repayments of any loan including interest thereon, relating to the investments;
 - (d) payment of royalties and services fees relating to the investment;
 - (e) proceeds from sales of their shares;
 - (f) proceeds received by investors in case of sale or partial sale or liquidation;
 - (g) the earnings of citizens / nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party;
 - (h) any compensation paid pursuant to Articles 5 and 6.
- 2 All transfers shall be effected without unreasonable delay in any freely convertible currency at the market rate of exchange prevailing on the date of transfer.

ARTICLE 8

SETTLEMENT OF DISPUTES

1. Any dispute between the Contracting Parties concerning the interpretation and the application of this Agreement should, if possible, be settled through negotiations between the Governments of The two Contracting Parties.

2. If the dispute cannot be settled within a period of six months following the date on which such negotiations were requested by either Contracting Party, be submitted to the International Court of Justice.

ARTICLE 11

REGULATION OF INVESTMENT

- 1 If the provisions of the law of either Contracting Party or obligations under international law existing at present or established thereafter between the Contracting Parties, in addition to the present Agreement, contain rules, whether general or specific, entitling investments and returns of investors of the other Contracting Party to treatment more favorable than that provided for by the present Agreement, such rules shall to the extent that they are more favorable, prevail over the present Agreement.
- 2 Except as otherwise provided in this Agreement, all investments shall, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.
- 3 The provisions of this Agreement shall not in any way limit the legal right of either Contracting Party to apply prohibitions or restrictions of any kind or take any other action which is directed to the protection of its essential security interests, or to the protection of public health or the prevention of diseases in pests animals or plants.
- 4 Each Contracting Party shall, however, honour any obligation it may have entered into with regard to investments of investors of other Contracting Party.