regard to construction of roads, buildings, civil works for factories and other forms of infrastructure. It may well be expected that with the inflow of capital and transfer of sophisticated technology, these countries would be in a position to intensify their progress in the field of industrialization and to render greater assistance to the countries of the region which are developing or less developed. It would however be of great advantage if some kind of an understanding could be reached between the developing countries themselves including the developed of the developing by way of regional co-operation to demarcate areas of industrial activity with a view to eliminate competition and to complement each others efforts.

The western economic assistance programme on which the developing countries including the developed of the developing are still dependent, whether from individual governments or a consortium of governments, generally follow a basic pattern of tied credits, that is, allocation of particular sums covering the foreign exchange components of the expenditure on the approved projects. This is invariably subject to the condition that the goods and services to be obtained for the project should be from the country providing the credit. The same pattern is also followed in regard to assistance obtained from the industrialized countries in eastern Europe. This necessarily limits the choice of the developing countries undertaking an industrial project in the matter of selection of the process of the type or machinery as also in the matter of selection of the contractors for erection and commissioning of the plants with the result that the best available technology in a particular field cannot always be availed of. This has a certain degree of retarding effect on the industrial progress of the developing countries and particularly in the developed of the developing. These shortcomings could be largely eliminated if the capital required for a project could come by way of capital participation from the sources in the major oil producing countries in the region as joint venture partners or equity participants in industrial undertakings.

D. *The developing countries*

The majority of the countries of the region are those which

may be termed as developing, some of them having abundance of raw material or unexploited natural resources. There is also abundance of manpower in certain areas especially in the category of semi-skilled or unskilled for whom opportunities of employment need to be considerably enhanced by progressive industrialization. The problems faced by these countries are again lack of technology and capital. Assistance would therefore need to be generated in both these areas from other countries of the region. The fields of industrial activity which could be promoted in these countries with optimum benefit may be the following :—

(a) Fertilizers, pesticides and agricultural implements;

(b) Cement;

(c) Processing of raw material, both agricultural and mineral and canning;

(d) Storage and refrigeration;

(e) Power generation;

(f) Consumer goods including textiles, synthetics and metal using items;

(g) Intermediate products like car bodies and machine parts, rubber tyres, etc.;

(h) Infrastructure: roads, railways, bridges, airport (civil works).

E. *Less developed countries*

There are some countries in the region which fall in this category not because they lack raw material but primarily due to the fact that their agricultural or mineral wealth has remained unexploited. The main reasons for this state of affairs is lack of an adequate communication system, absence of infrastructure as also urgent need of capital and technology. The assistance in these fields have to be generated as a matter of urgency not only by attracting investments but through direct aid and assistance as also through concessionary lendings. The fields in which industrial activities could be concentrated in so far as these countries are concerned could legitimately fall under the following broad heads :—

(i) Exploitation of mineral wealth;

(ii) Raw material processing;

(iii) Forest industry; and

(iv) Building of infrastructure like roads, railways, bridges, airports, etc.

Conclusion

On the above survey of the needs and requirements of the various countries of the region falling under five broad categories and considering the role these countries could play in a system of co-operation for economic growth of the region as a whole, there would seem to be considerable scope for progress through harnessing the resourcess of the countries of the region. If the governments could be persuaded to orient their programmes and policy approaches on the lines indicated above, greater results could be achieved than through the continuing dialogue between the developed and developing countries in world forums.

INVESTMENT PROTECTION

In any programme for mutual assistance, whether through location of petroleum refineries or capital participation by way of investments in industrial undertakings in developing countries, or joint venture arrangements for imparting or transfer of technology, the question of protection of investments is a fundamental factor which would need to be taken into account. It is legitimate to expect that no investor or entrepreneur, whether from a developed or a developing country, would embark on a long-term investment project unless he can be assured of the protection of the investment and reasonable profits therefrom as also repatriation of capital and income. Attention therefore has to be focussed on the need and urgency of promoting an adequate system of investment guarantees to provide against situations in which the

investor may be deprived of his substantial rights. Such situations may arise in various circumstances but the normal investment protection mechanisms are generally intended to cover : (i) Confiscatory or expropriatory measures and the risk of nationalization; and (ii) restrictions that may be imposed on repatriation of investment or profit.

Whilst the commercial risks involved in an investment have legitimately to be borne by the investor, protection against deprivation of rights through the laws and regulations or executive action by the State in which the investment is made, would appear to be a *sine qua non* if the flow of investments particularly between the developing countries of the region is to be accelerated for their mutual benefit. The investments by a developing country in another developing country for their mutual benefit, investments which promote economic co-operation among the countries of the region and the investments which are in the national interest of the developing country where it is made, would appear to fall in a special category and on a different footing than the normal investments by industrialized nations and multinational corporations primarily for their own benefit. It is therefore important that protection of this special class of investments should be viewed in a new perspective.

A number of countries in the Asian-African region have enacted laws and regulations and some of them have even provisions in their constitutions for protection of investments. It is, however, well recognized that there can be no fetter on the right of a State to amend such legislative provisions through their own constitutional procedures. A provision contained in a contract or assurance given against nationalization, even though creating some kind of a moral obligation, is not legally binding on a government and much less on any successor government. Furthermore, according to well settled principles of international law, proceedings have to be taken before local judicial or administrative forums if contractual obligations are breached and only after exhaustion of such remedies, action may be taken, where appropriate, at international level. Experience has shown that if a government or a party having the support of the government has committed a breach of its contractual agreement or when a government has nationalized or expropriated property, there are few practical measures one can take, and even such measures which are permissible are extremely time-consuming. It may, however, be pointed out that most governments have by and large been known to honour their commitments in order not to tarnish their image and to maintain their reputation in the investment market. Nevertheless, the anxiety of an investor for safeguarding of his investment needs to be appreciated and acceptable solutions have to be found.

During the past two decades several modalities have been evolved and measures taken for protection of investments in developing countries, no doubt with varying objectives. These include insurance schemes by private institutions, insurance by State agencies in the country of the investor, bilateral investment guarantee agreements at government to government level, insurance schemes under the auspices of international economic institutions as also multilateral agreements and joint declaration by a group of States. These would be briefly discussed hereunder.

Private insurance

Some of the larger insurance or reinsurance companies have evolved schemes for issuing policies to cover risks on investments against nationalization and other forms of governmental action through which the investor may be deprived of his substantial rights with respect to the investment. These are essentially meant to protect the interests of private investor, whether individual or body corporate. The premium payable on such insurance policies depends not only on the quantum of the investment but also on the country where the investment is made in order to assess the risk element that needs to be covered. This is generally costly and ultimately it is the developing country which has to bear the burden because the premium is in the usual course passed on as a part of the costs involved in the investment.

This form of private insurance might not be suitable in regard to investments between the developing countries *inter se*, except perhaps in some categories of cases, since substantial sums in the form of premia would be siphoned away to insurance companies which are at present owned or controlled by industrialized nations. Furthermore, the possibility of some kind of interference by these companies in the shape of assessing risks or computation of compensation cannot be altogether ruled out.

Insurance by State agencies in the country of the investor

The most modern method which some of the western countries have adopted for safeguarding investments is a form of compulsory insurance cover provided by a State agency or corporation. This is quite recent in origin and has been successfully tried out in some countries, particularly the United States of America, Canada, France, United Kingdom and the Federal Republic of Germany. These schemes appear to have been elaborated with a two-fold objective, namely, the protection of the investment by the private investor and also to encourage the promotion and continuance of such investments by their nationals which is considered to be in the interest of the State from political as well as economic aspects. In the United States, following upon large scale expropriation of American property in certain developing countries in the mid-fifties and the sixties the public at large and even some of the multinational corporations expressed their extreme reluctance to get into investment involvements abroad. As this was likely to be detrimental to American economy generally and also to the United States role in world affairs, the government evolved certain schemes to be administered by State corporations in order to provide a form of guarantee to the investor against his loss of investment. Under those schemes, if loss was suffered by the investor due to any act or omission by the State where the investment is made, the investor could lodge a claim before the State corporation without having to pursue what is often regarded as fruitless litigation before the local courts. Investment guarantees were also given by the United States under the Mutual Security Act of 1954. In France, shortly after the promulgation of nationalization decrees in one of its former colonies, a law was passed making it compulsory for investors or contractors doing business abroad to take out a policy of insurance issued by a State agency (COFACE). In Britain the scheme is known as ECGD and in the Federal Republic of Germany as HERMES. In Canada, investment guarantees are provided by the Export Development Corporation on behalf of the State. The premium paid on such insurance is usually included in the price quoted or the interest rate and the same is normally passed on to the recipient of the credit. The State providing such risk cover, and thus making itself liable to compensate the investor in case of loss, would normally take over the rights of the investor in regard to accrual of any claim arising from the loss suffered through bilateral investment protection agreements with the governments of the countries where the investments are made.

It is very doubtful whether this pattern of investment protection would be suitable for developing countries of the region at this stage in view of the fact that private investments made by their nationals are not likely to be of such magnitude as to justify the adoption of a system which is full of complexities.

Bilateral investment protection agreements

The United States of America has entered into as many as 44 investment protection agreements with the developing countries in the Asian-African region over a period of 20 years, namely, from 1954 to 1973.[1] The agreements generally follow

1. The United States has entered into investment protection agreements with the following countries :

   Egypt (1973), Afganistan (1957), Botswana (1968), Burundi (1969), Central African Republic (1965), Chad (1965), Congo (1962), Cyprus (1963), Dahomey (1965), Ethiopia (1962), Gabon (1963), Gambia (1967), Ghana (1958), Greece (1963), Indonesia (1967), Ivory Coast (1961), Jordan (1963), Kenya (1964), Republic of Korea (1960), Lesotho (1967), Liberia (1960), Malagasy (1963), Malaysia (1959), Malawi (1967), Mauritania (1969), Mauritius (1970), Morocco (1963), Nepal (1960), Niger (1962), Nigeria (1962), Pakistan (1955), Senegal

one basic pattern under which the two governments agree to consult between themselves at the request of either of them concerning investment projects in the developing country by the nationals of the United States of America with regard to which investment guarantees can be given by the United States under its laws and regulations. The Government of the United States under these bilateral agreements agrees that it will not issue any guarantee with regard to a project unless it is approved by the developing country in which the investment is to be made. The host government in its turn agrees that where such guarantees are given by the United States and payments are made in accordance with such guarantees, it will recognize the right of the United States to any claim or cause of action or the right of the investor arising out of any situation which led to payments being made in terms of the guarantee. A provision for settlement of disputes is also included in all these agreements.

Canada has entered into investment protection agreements with four developing countries of the region between the years 1971 to 1976.[2] These agreements provide for guarantees being given by the Government of Canada through its agent, the Export Development Corporation, in respect of Canadian investments in the developing country concerned, transfer of the rights of the invester to the government where payments have been made under the guarantee as also modalities for settlement of disputes.

The Federal Republic of Germany has concluded agreements with 26 developing countries in the Asian-African region between the years 1963 to 1973.[3] These agreements follow a basic

(1970), Sierra Leone (1961), Singapore (1966), Somalia (1964), Sri Lanka (1966), Sudan (1959), Swaziland (1970), Togo (1962), Tunisia (1963), Uganda (1965), Upper Volta (1965), Zaire (1962) and Zambia (1966).

2. Canada has entered into investment protection agreements with the following countries :

   Gambia (1976), Indonesia (1973), Malaysia (1971), and Singapore (1971).

3. The Federal Republic of Germany has entered into investment protection agreements with the following countries :

pattern under which provisions are made concerning the treatment of the nationals of the Federal Republic of Germany and companies registered therein, security of investments, protection from expropriation, payment of adequate compensation in tangible form in the event of nationalization, repatriation of capital and profits as also settlement of disputes.

The eight agreements concluded by *the Netherlands* with the developing countries of the region, entered into between the years 1964 to 1973,[4] also follow the same pattern as the agreements with the Federal Republic of Germany, in that they provide for protection of Netherlands nationals, repatriation of capital and profits, adequate and effective compensation in the event of nationalization and settlement of disputes.

This pattern is also adopted in sixteen agreements entered into by *Switzerland* with the developing countries of the region between the years 1962 to 1974,[5] as also in the agreements concluded by France with Tunisia (1972), Indonesia (1973) and Mauritius (1974). The three agreements entered into by Indonesia with Belgium (1972), Denmark (1968) and Norway (1969) also contain similar provisions.

Cameroon (1963), Central African Republic (1968), Chad (1968), Congo (1967), Ethiopia (1964), Gabon (1971), Ghana (1972), Indonesia (1971), Ivory Coast (1968), Kenya (1964), Republic of Korea (1967) Liberia (1967), Malagasy (1966), Malaysia (1963), Mauritius (1973), Morocco (1968), Niger (1966), Pakistan (1962), Senegal (1966), Sierra Leone (1966), Sri Lanka (1966), Sudan (1973), Tunisia (1966), Uganda (1968), Zaire (1970) and Zambia (1966).

4. The Netherlands have entered into investment protection agreements with the following countries :

   Cameroon (1966), Indonesia (1971), Ivory Coast (1966), Kenya (1970), Singapore (1972), Sudan (1973), Tunisia (1964) and Uganda (1970).

5. Switzerland has entered into investment protection agreements with the following countries :

   Egypt (1974), Cameroon (1964), Chad (1967), Congo (1964), Dahomey (1966), Gabon (1972), Ivory Coast (1962), Republic of Korea (1971), Malagasy (1966), Niger (1962), Senegal (1964), Sudan (1974), Togo (1964), Tunisia (1964), Upper Volta (1969) and Zaire (1972).

Insurance schemes under the auspices of international economic institutions

World Bank's initiative

In February 1972, the International Bank for Reconstruction and Development (IBRD) prepared a scheme for establishment of an international investment insurance agency in order to provide an adequate machinery for protection of investments in developing countries with a view to accelerate the flow of investments to those countries to meet their needs of development and industrialization. The types of risk which were proposed to be covered through an insurance scheme related *inter-alia* to :

(i) expropriation, confiscation or any other type of governmental action or inaction which deprives the investor of effective control over or the benefits of his investments;

(ii) governmental restrictions on conversion and transfer of assets and profits; and

(iii) armed conflict or civil unrest.

The investments proposed to be covered under this scheme were those made in the territories of a developing country and approved for the purposes of insurance by the developing country in which the investment is made. The investment also needed to be sponsored by a State member. The finances for the insurance agency were to be provided from a premium income, a common working capital fund and a provision for loss sharing between the States which had sponsored proposals for insurance of investments. Although the Executive Directors of the Bank had approved of the recommendations the scheme for establishment of the investment insurance agency could not be brought into being as it was difficult to reconcile the conflicting positions of member States on some of the important issues. The scheme had therefore to be abandoned. The World Bank's initiative, if accepted, could have provided an effective guarantee for investments through a system of insurance in which the developing countries could have confidence.

Inter-Arab Investment Guarantee Corporation

An Inter-Arab Investment Guarantee Corporation has been established under a Convention to which 18 Arab States had acceded upto September 1977. The purpose of the corporation is to provide insurance coverage to Arab investors in investments between contracting States in the form of reasonable compensation for losses resulting from risks which are not of a commercial nature. These include measures taken by public authorities in the host country whereby the investor is deprived of substantial rights in respect to investments including confiscatory or expropriatory measures and nationalization as also restrictions imposed on the investor to repatriate the principal of his investment and earnings. The capital of the corporation, to be subscribed by the contracting States in certain agreed proportions, has now been fixed at 25 million Kuwaiti Dinars. The income of the corporation is mainly to be derived from fees and premia paid on insurance.

Inter-American Development Bank

The Inter-American Development Bank has issued a Memorandum on 31st October 1979, proposing a major new approach to stimulate the development of Latin America's energy and mineral resources. The initiative has arisen from the increasing concern regarding the substantial decline in new investments in this sector throughout Latin America. The Bank is therefore proposing that there be established an Inter-American Energy and Minerals Fund to facilitate the commitment of new investment and technical skills in this sector. The resources of the fund would be utilized in two ways :—

(i) to provide eligible investors with insurance against expropriation and risk of inconvertability of currency;

(ii) to provide guarantees for third party loans in approved projects.

Member States of the Bank will be invited to pledge contributions to the fund and the fund will not come into existence

until at least 11 member States have pledged to contribute an aggregate of at least 750 million U.S. Dollars to be utilized for insurance operations and at least 350 million U.S. Dollars to be used for guarantee operations. The participating nations will be expected to execute an agreement establishing the Fund. The proposal is based on the expectation that the multilateral character of the fund coupled with the regional focus and experience of the Bank will not only encourage investment flows but also minimize disputes with host governments arising out of such investments. The insurance on guarantee cover under the scheme will be available only to nationals of countries which are members of the Fund and businesses under the effective control of such countries in regard to projects which involve exploration, exploitation, development, mining or other extraction and processing of petroleum, gas or any other mineral which take place in the territory of a developing country which is a member of the Inter-American Development Bank. The finances for the scheme will consist of :

(a) Pledges of member countries;

(b) Sums actually paid to the fund by member countries;

(c) Premium earnings; and

(d) Salvage from claims paid by the Fund.

It would be noticed that insurance schemes under the auspices of international economic institutions have not made much progress so far. The Inter-Arab Insurance Guarantee Corporation covers a very limited area, that is, investments between the 18 contracting Arab States in regard to each other's investments. It does not cover investments made in Arab countries by other States or their nationals nor does it cover Arab investments in countries which are not parties to the Convention.

The formulation of a scheme for insurance for investments in the context of regional co-operation in Asia and Africa will not only be difficult but a time consuming process even if this form of investment guarantee is considered suitable. It may be possible to approach economic institutions like the Asian