Paragrah 2 of this Article is intended to clarify that if an attempt to obtain evidence through the diplomatic or consular channels fails, it would not prejudice any subsequent effort to obtain evidence through employing the mode of the issue of a letter of request through the Central Agency. Such cases may happen where the witness may refuse to respond to a notice sent by the diplomatic or consular officer or where it may appear that the evidence could not be obtained without some measure of compulsion.

Article 22

Article 22 recognises an alternative method for recording of evidence which has often been used among neighbouring countries or countries having the same system of law and procedures. Although the Arrangements contemplate the principal mode for recording of evidence as being the one through the issue of letters of request channelised through the Central Agency, it was felt that the system of taking of evidence by a Commissioner should also be retained since this could be speedy and more attuned to the proceedings in aid of which the evidence is required. Nevertheless, it is to be appreciated that many countries of the Asian-African region may not be familiar with this type of procedure which had been in vogue in common law system principally among the countries of the British Empire. The provisions of this Article specify the circumstances and the conditions subject to which the Commissioner may take evidence, namely (a) the Commissioner shall be appointed by a judicial authority to record the evidence of a witness or expert for the purpose of proceedings pending before that judicial authority; (b) the State in which the evidence is to be recorded shall give its endorsement or authorisation to the Commissioner to record such evidence; and (c) the authorisation shall be subject to such terms and conditions as may be specified.

CHAPTER IV

Requests for Information and Documents

Articles 23 and 24

Chapter IV, consisting of Articles 23 and 24, deals with the question of mutual assistance between the States Parties to the bilateral arrangements. Whilst the provisions of Chapter II (Service of Process) and Chapter III (Taking of Evidence) are concerned with matters which are initiated principally at the instance of a party to a pending judicial proceeding, the provisions of Chapter IV are more concerned with furnishing of documents, judicial records and information which a State or a State functionary may require.

Article 23 accordingly, provides that the States Parties to the Arrangements should upon the request of each other furnish information on their laws and regulations relating to civil or commercial matters both substantive and procedural. The main objective behind this provision is that the States, which agree to enter upon Arrangements for judicial assistance, ought to be informed about the laws and regulations in force both substantive and procedural in each others territory.

Article 24 is concerned with requests for furnishing of judicial records. It is well-known that by reason of comity of courts within a country judicial records are freely made available by one court to another upon its request. The same principle is extended in regard to the courts of the Contracting States Parties to the bilateral Arrangements. These, however, have been made subject to two conditions, namely: (i) that the request should be channelised through the Central Agency which should specify the purpose for which the records or the information have been requested; and (ii) that the information or records so furnished shall not be used for any other purpose. Paragraph 3 provides for reimbursement of costs which may arise under this article. Nothing prevents the requesting State from charging the litigants in the requesting State for the expenses.

CHAPTER V

Final Provisions

Articles 25 to 29

Chapter V contains the final provisions which are generally incorporated in International Conventions or bilateral agreements.

Article 25 has the usual provisions concerning entry into force of the bilateral Arrangements. Some views have been expressed that ratification should not be required in this type of agreement which are basically in the nature of Executive arrangements. The article has therefore been placed within brackets.

Article 26 is rather important and it needs consideration of Member Governments. What is intended to be provided here is that the present bilateral Arrangements should not affect the existing or any future bilateral or multilateral agreements or other Arrangements between the Contracting States except to the extent specified. The objective behind this provision is basically two fold. Firstly, that co-operation through reciprocal assistance in judicial matters should be encouraged in

whatever form they are brought about and the possiblity of there being more than one set of arrangements for the purpose could be contemplated. Secondly, it is intended to safeguard the provisions of other present or future international, bilateral or multilateral instruments, containing regulations in certain fields concerning matters covered by the present Arrangements. So far as the future is concerned, the underlying idea of these Arrangements is to permit the Contracting States to conclude agreements supplementing its provisions or facilitating the application of the principles it contains.

The note in the text refers to the possibility that the bilateral Arrangement may be in conflict with existing instruments or practices.

To the extent that the bilateral Arrangements are in conflict with existing multilateral agreements to which both Contracting States are Parties, these States should first consider whether the multilateral agreement in question allows them to depart from the provisions of that multilateral agreement. If the multilateral agreement does not allow such a departure, the bilateral Arrangements should be adapted accordingly. If the multilateral agreement does give the States Parties to it freedom to provide for different solutions, the Contracting States may freely enter into the bilateral Arrangements.

To the extent that the bilateral Arrangements are in conflict with existing bilateral instruments or practices binding both Contracting States, the Contracting States will have to make a choice between the draft bilateral Arrangements and the existing practice. They may choose to maintain the existing provisions; in that case the conflicting provisions should not be included. Or they may prefer the provisions of the bilateral Arrangements; in that case they should specify that the provisions of the existing instrument or practices are replaced or superseded by the bilateral Arrangements.

Article 27 provides for the settlement of any difficulties which may arise under these Arrangements through negotiations.

Article 28 deals with the question of revision of these Arrangements. It was felt that in view of certain important innovations introduced in the text of these Arrangements, it would be desirable to allow States Parties to assess the working of the Arrangements on the basis of practical experience and to revise any of the provisions that may be considered necessary.

Article 29 deals with the question of denunciation of these Arrangements.

Appendix: Certain suggestions made by the representative of Pakistan at the Working Group Meeting have been reproduced in the Appendix in order to bring them to the notice of Governments. Although the Working Group did not feel inclined to incorporate the suggestions in the Model text of the bilateral arrangements it was felt that some of the Governments may find them useful for inclusion in bilateral arrangements with certain countries.

PROMOTION AND PROTECTION OF INVESTMENTS

Introduction

The question of promotion and protection of investments on a reciprocal basis was first discussed at the Jakarta Session held in April 1980 in the context of regional co-operation in the field of industry among the countries of the Asian-African region. This was followed by more intensive discussion of the matter at the Ministerial Meeting held in Kuala Lumpur in December 1980 under the auspices of the Government of Malaysia in collaboration with the AALCC. That meeting recognized the need to create stable but flexible relations between the investor and the host government particularly where the investments were made by one developing country in another. The participants at the Ministerial Meeting generally agreed that the investment climate should be promoted through adequate provisions for protection of investments, repatriation of capital and profits as also a procedure for settlement of disputes. The meeting examined the various modalities which had hitherto been employed for protection of investments and in the light of the discussions, indicated the desirability of formulation of the draft of a model umbrella investment protection agreement for consideration by member governments.

A meeting of officials which followed the Ministerial Meeting at Kuala Lumpur discussed the guidelines for preparation of a model umbrella investment protection agreement and in this connection the meeting identified the relevant elements which could be incorporated in the proposed draft. It was agreed that the model agreement should be prepared on broad general terms which could be suitably adjusted to the needs and requirements of each State. It was generally the view that investment incentives which were offered by various governments under their laws should normally not be incorporated in the investment protection agreements. The meeting was further of the view that model agreements should include certain special provisions which would help to promote investments from developing countries. The meeting requested the Secretary-General to prepare the draft of a model umbrella agreement in the light of the discussions held during the meeting for consideration of an expert group to be convened prior to the next Ministerial meeting.

The Secretary-General had accordingly prepared the tentative draft

of a model bilateral agreement on investment protection intended to be applicable between the countries of the region to serve as a basis for preliminary discussions by an Expert Group. The Secretariat draft was taken up for consideration during the Committee's Colombo Session held in May 1981 by its Trade Law Sub-Committee. The Sub-Committee had raised a number of important issues on the contents of the tentative draft for the purposes of further study. The report of the Trade Law Sub-Committee was thereafter placed before another Ministerial Meeting on Regional Co-operation in Industries held in Istanbul in September 1981 at the invitation of the Government of Turkey in collaboration with the AALCC. The meeting generally discussed some of the more important issues indicated by the Trade Law Sub-Committee and expressed the view that the comments of the Governments should be invited in order to enable the Secretariat to study the matter further. The Ministerial Meeting was further of the view that there should be an understanding that special treatment and incentives should be offered for investments from developing countries and it would be a matter for each Government to decide as to the modalities through which this should be effected, namely, under their municipal legislations or under bilateral treaties or under joint venture agreements as might be appropriate.

Subsequent to the Istanbul Meeting, the Secretray General had carried out extensive consultations with a view to preparation of a revised study so that the recommendations of the Committee, which might ultimately emerge, could be of practical value to meet the desired objectives. These consultations revealed a good deal of divergence in State practice and the attitude of States towards bilateral umbrella investment protection agreements as also in the matter of treatment of foreign investments. As a result of the overall survey of the position held by various Governments within the Asian-African region, it became apparent that a uniform approach in the matter of promotion and protection of investments through the formulation of a single draft of a bilateral treaty, however desirable, might not result in an adequate response in practical terms. It was therefore felt that the AALCC's study on the subject could perhaps contemplate preparation of models for three different types of bilateral agreements.

This approach was considered to be particularly suited in the context that the main purpose of AALCC's study, pursuant to the mandate of the Kuala Lumpur Meeting, was to promote flow of investments between the countries of the region. It therefore seemed that the primary objective should be aimed at creating a climate in which Governments would be prepared to accept the concept of promotion and protection of investments under bilateral arrangements. It was felt that through the

preparation of various alternative drafts it might be possible to promote such agreements in the manner acceptable to the Governments concerned based on terms and conditions suited to their needs. Furthermore, having regard to the divergence of State practice as also the commitments already made by some of the Governments in their bilateral agreements with industrialized States it seemed difficult to come out with a single text which would meet the needs and interests of all Governments.

It may be observed that a single model text incorporating a set of provisions which may represent a common standard acceptable to a group of States and basically reflecting their negotiating position is extremely useful when the model agreement is intended for use by a small group of nations having indentity of interest and approach on economic issues. It is also possible to work out a model for those countries who would be prepared to enter into bilateral agreements on the basis of certain norms and standards set out therein either generally or for a class of investments. Neither of these approaches appeared to be suitable to meet the present objectives of the study since a common position had yet to emerge in regard to investments which would make it possible for the Governments of the region to accept a uniform set of norms. Furthermore, if the AALCC were to recommend a text only for those countries which were prepared to accept it, that would derogate from the wider objectives of promoting investment protection agreements as between a substantially large number of countries of the region. One possible method in a single text might have been the inclusion of alternative formulations on the various issues and topics but the exercise would be extremely cumbrous and its utility minimal since such a draft could merely serve the purpose of placing at the disposal of Governments some material for their consideration which might be useful in negotiating bilateral agreements.

It was recognized that if three different models for bilateral agreements were to be formulated and recommended, complete uniformity of approach towards investments from developing countries could not be achieved, but at the same time it is to be appreciated that the formulation of a single text is not likely to produce any better result since that text might not be acceptable to a number of Governments in the practical realities of the situation with divergent views being held by different States or groups of States.

A revised study prepared by the Secretariat in November 1982 accordingly contained the suggestion that an endeavour be made to prepare the texts of three model agreements even though much of the material to be used in each of the texts would be common. The tentative

formulations in regard to the three possible model agreements were included in the study, namely:

Model A: Draft of a bilateral agreement basically on similar pattern as the agreements entered into between some of the countries of the region with industrialised States with certain changes and improvements particularly in the matter of promotion of investments.

Model B: Draft of an agreement whose provisions are somewhat more restrictive in the matter of protection of investments and contemplate a degree of flexibility in regard to reception and protection of investments.

Model C: Draft of an agreement on the pattern of Model 'A' but applicable to specific classes of investments only as determined by the host State.

A meeting of an open-ended Expert Group was thereafter convened for examination of the study prepared by the Secretariat. The Expert Group met at the Committee's Headquarters in New Delhi from the 5th to the 7th January 1983. The Meeting was attended by representatives of twenty-four Governments and the Kuwait Fund for Arab Economic Development.

The Expert Group endorsed the Secretary-General's suggestion that the Committee's approach should be towards formulation of alternative models in the matter of promotion and protection of investments rather than pursue a single model approach which had been attempted earlier and found to be impracticable in the light of the difficulties pointed out by the Trade Law Sub-Committee during its meeting in Colombo in May 1981. The Expert Group examined the tentative drafts prepared by the Secretariat. The text of Models 'A' and 'C' was revised by the Expert Group with a view to its submission to the Twenty-third Session of the AALCC. The text of Model 'B' was also discussed in considerable detail and the Secretriat was requested to revise its draft in the light of the discussions and observations made at the Expert Group Meeting.

The matter was thereafter discussed at the AALCC's Twenty-third Session held in Tokyo in May 1983 and it was decided that the drafts should be further examined by another Expert Group in order to ensure their wider acceptability to the countries of the region. An Expert Group Meeting at official level was accordingly convened which met in New Delhi during January-February 1984. The meeting was attended by participants from twenty-three Governments as also by the

representatives of the Inter-Arab Investment Guarantee Corporation, the World Bank and the European Communities. The Meeting examined the provisions of the drafts and finalised its recommendations in the form of the three models for submission to governments for observation and comments.

The Report of the Expert Group was placed before the Kathmandu Session for further consideration by the Committee. No comments of a substantive nature were made by any Member Government. However the delegation of Kuwait put forward certain suggestions for incorporation in an addendum to be annexed to Model 'A'.

The Committee, after taking note of various observations made in the course of its deliberations, decided to transmit to Member Governments the three Models of bilateral agreements for promotion and protection of investments, as finally adopted together with explanatory notes with the request that these model bilateral agreements be brought to the notice of the appropriate authorities and government departments.

REVIEW OF PROBLEMS AND ISSUES

Some basic observations

1. Foreign investments both in the form of capital and technology are needed by practically all developing countries in the Asian-African region for their developmental programmes. The needs of each country however varies depending upon its own resources, the development plans and the priorities attached to different sectors. Generally speaking, the sectors where foreign assistance is most needed are industry, infrastructure, including power generation and communication systems, mining, modernisation of agriculture and fishery development. With the exception of major oil producing countries, the capital investments needed by the developing countries are extensive which are obtained by way of assistance, lending programmes of international institutions or consortia of States, individual governments as also the private sector. Investment is made in the shape of loans (both tied and untied credits), acquisition of shares in companies, capital participation in projects or joint venture undertakings. Investments in technology take place through use of technical processes in industrial plants provision of know-how and the services of technicians and experts. Investments both in capital and technology have hitherto been obtained largely from industrialized States even though assistance from socialist

countries has not been insignificant.

2. Many of the developing countries in the Asian-African region have themselves become investors during the past decade. In addition, some of the more developed of the developing countries of the region have developed and perfected technology in less sophisticated fields which can be more easily absorbed by developing countries. These are being progressively invested within the region through joint venture projects or other types of arrangements. Investments are also being made by developing countries in the building of roads, cement or fertiliser factories, textiles and synthetics in other developing countries. This form of investment by one developing country into another is likely to assume a distinct pattern within the foreseeable future.

3. It would be in the interest of the countries of the region, particularly in the present context of world economic situation, to encourage greater flow of capital and technology among themselves and to create favourable conditions in which this could be achieved. Capital investment from within the region has one distinct advantage as there would be little possibility of their being tied to any particular or specific source for supply of technology. Furthermore, the technology to the extent they are obtainable from within the region is likely to be more suitable for adaptation and use in developing countries.

4. No investor, whether from a developed or developing country, would be likely to invest unless it is satisfied of certain basic conditions. It is therefore a matter of fundamental importance that a degree of stability in the relations between the investor and the host government must be foreseen, particularly where long-term arrangements are concerned. The basic conditions which the investors do seem to expect relate generally to favourable conditions concerning repatriation of capital and income, adequate compensation in the event of nationalisation or expropriation as also the assurance that the terms and conditions on which it has agreed to invest should remain operative for the period of investment and that nothing should be done by the host government to the detriment of the investor. It is nevertheless conceived that a certain degree of flexibility should be retained since it may well happen over the life of an investment that what was fair and equitable at the beginning may no longer be so in the light of changed circumstances. In such a case, revision or re-negotiation

could be jusified. As a matter of fact many long term agreements have been revised in favour of host countries sometimes as the result of voluntary re-negotiation; in other cases by unilateral government action but ultimately accepted by the investor.

5. Promotion and protection of investments in the context of furtherance of regional co-operation would include a combination of four basic factors, namely, (i) an element of reciprocity; (ii) encouragement given by government to their nationals and companies to invest in the developing countries of the region; (iii) creation of favourable conditions by host governments for reception and treatment of such investments; and (iv) adequate and effective provision for settlement of disputes as an important element in creating stability and confidence for attracting investments. These basic conditions would naturally need to be reflected in the recommendations and the instruments that are prepared by the AALCC under the present programme.

It may be stated that a provision on reciprocity has invariably been included in almost all bilateral investment agreements concluded between the developing conuntries and industrialized nations but the practical impact of such a provision except in regard to agreements with the major oil producing countries is not substantial. This is in view of the fact that the investments made by other developing countries in the industrialised States are almost neglegible. However, in investment protection ageements between the countries of the region, the element of reciprocity would be a major consideration since the concept of harnessing of their resources is an essential *sina qua non* in a programme of regional co-operation.

In regard to promotion of investments by nationals and companies of one developing country in another, it may be stated that whilst the attitude of the host governments would constitute an important element, efforts would equally be needed by the host governments to stimulate the flow and to create a climate in which such investments are encouraged. This would be particularly necessssary In the initial stages to create a psychological orientation in the investor to diversify his investments and gradually channelize some of them to developing countries. It may be stated that most of the industrialized nations offer guarantee schemes to their nationals and companies against non-commercial risks to promote investments in developing countries. Similar guarantee schemes or insurance covers could possibly be contemplated by some of the countries of the region to promote

investments by their nationals and companies in developing countries. Furthermore, concessionary rates of taxation of other forms of tax incentives as well as relief against double taxation might possibly be contemplated.

As regards the treatment to be accorded by host governments to investments emanating from developing countries, it has already been envisaged in the two Ministerial meetings that such investments should receive the most favourable treatment both in regard to incentives as also in the matter of protection of investments and repatriation of capital and profits.

In so far as the question of settlement of disputes is concerned, it may be stated that resolution of disputes and differences through fair and expeditious procedures constitute an integral part of any investment protection mechanism, since stability and confidence of the investor largely depend on the adequacy and effectiveness of the system. It has been pointed out in a recent study commissioned by the UNIDO that the arbitral institutions which had originated during the colonial period were inadequate and unsuitable for resolution of north-south industrial conflicts; it would seem to be equally so in promotion of south--south relations. A study of the existing bilateral investment protection agreements reveals that the most suitable manner in which conflicts can be resolved between the investor and the host governments is thourgh recourse to the International Convention on Settlement of Investment Disputes or the Additional Facility Rules of ICSID wherever possible. In other cases and also by way of an alternative, recourse to ad hoc arbitration under the UNCITRAL Rules could be contemplated since those Rules have been recommended by the General Assembly and have already received wide acceptance by the international community. The AALCC's scheme on settlement of disputes is primarily based on the acceptance of these two modalties. Through establishment of its Regional Centres for Arbitration at Kuala Lumpur and Cairo, the AALCC has already made provision for administration of the UNCITRAL Rules. Under two specific agreements between the ICSID and the AALCC arrangements have now been made for the proceedings under the ICSID Convention to be held in Kuala Lumpur or Cairo instead of Washington if the parties so desire. It is felt that the three possible modalities, namely, the procedures under the ICSID Convention, the Additional Facility Rules introduced by ICSID and conciliation or arbitration under the UNCITRAL Rules should be appropriate in settlement of disputes between the investor and the host government in a scheme for regional co-operation. It may be added that the success of the ICSID's scheme is demonstrated by the fact that a large number of agreements have incorporated a clause for arbitration

under the ICSID Convention but only eighteen disputes have so far arisen thus demonstrating the effectiveness of the ICSID clause in creating stability and confidence in the investments.

Attitude of Asian-African States towards investment protection

The attitude of the States within the Asian-African region in regard to the mode and manner of investment protection and the extent to which promotional incentives are offered appear to vary to a considerable extent.

In the Charter of Economic Rights and Duties of States, it is provided that each State has the right to regulate and exercise authority over foreign investments within its national jurisdiction, in accordance with its laws and regulations and in conformity with its national objectives and priorities. The State has also the right to nationalize, expropriate or transfer ownership of foreign property in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent.*

Several developing countries in the Asian-African region have, however, in the exercise of their sovereignty entered into bilateral investment protection agreements with industrialized States such as the United Kingdom, France, the Netherlands, Belgium, Federal Republic of Germany, Switzerland, Italy and Sweden, for promotion and protection of investments. The basic pattern followed in most of the agreements concluded with the countries in Western Europe by the

* See Article 2.2 of the Charter of Economic Rights and Duties of States adopted by the General Assembly on 12 December 1974.

The relevant provisions of paragraph 2 of Article 2 are in the following terms:-

"(a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investments;

(c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking in to account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalising State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means".

ASEAN countries, Sri Lanka, Egypt, Republic of Korea and a few others provide for most-favoured-nation treatment, full freedom in the matter of repatriation of capital and profits, adequate and effective compensation (full market value) in the event of expropriation or nationalisation and provisions for settlement of disputes. Some of the agreements such as an agreement between Japan and Egypt as also the agreements between the Netherlands with Malaysia and Singapore seem to further provide, that the investments of the contracting parties shall not only be provided most-favoured-nation treatment but also treatment no less favourable than accorded to their nationals. In the recent British draft of investment protection agreement a similar pattern is contemplated, that is to say, a treatment which would be no less favourable than accorded to the nationals of the host State as also to the nationals of any third State. Some agreements also provide for treatment in accordance with international law such as in the most recent agreement between Egypt and the United States. In the course of Euro Arab dialogue for conclusion of a model multilateral convention, the Arab States have, however, been reluctant to concede the national standard of treatment although they have been willing to accept other terms such as most-favoured-nation treatment, full freedom in the matter of repatriation of capital and return, full market value as compensation and a provision for settlement of disputes.

It may be reasonable to presume that the States which have expressed their willingness to enter into bilateral investment protection agreements and accord most-favoured-nation treatment to western investments should have no difficulty in concluding similar agreements with the countries of the region. Four such agreements have so far been concluded namely, between Japan with Egypt and Sri Lanka, and the agreements of Sri Lanka with Singapore and the Republic of Korea.

On the other hand, there are some States which are reluctant to enter into investment protection agreements and prefer to rely upon the provisions of their Constitution and the laws for taking a position that those are sufficient for protection of the investments in their countries. Some of these countries have, by now become investors themselves in the developing countries of the region and it is therefore possible that they might be interested in concluding investment protection agreements with the countries of the region on a bilateral basis for the promotion and protection of their own investments.

There is yet another group of countries such as the States parties to the Lome' Convention who accept in principle the need for protection of investments and this is clearly recognized in the Lome' Convention itself as also in the Declarations adopted therewith. These countries are

however reluctant to enter into bilateral investment protection umbrella agreements as such but favour investment protection agreements in regard to specific project on such sectors as mining, power generaton etc.

In addition, there are also some states which without entering into bilateral government to government umbrella aggrements have accepted the major elements relatable to investment protection in specific agreements concerning individual investments or classes of investments.

AALCC's Model Drafts

As regards the contents of the models of three investment protection agreements the following elements are of importance:-

(i) Desirability of entering into bilateral agreements;

(ii) Principle of reciprocity and non-discrimination;

(iii) Promotion of investments by contracting States in the territory of each other—financial guarantees and tax incentives;

(iv) Reception and registration of investments including the provision that the terms and conditions on which investments were made shall remain unaltered;

(v) Investments in national companies or corporations;

(vi) Most-favoured-nation treatment;

(vii) National standard of treatment;

(viii) Repatriation of capital and return;

(ix) Compensation for losses suffered;

(x) Conditions on which expropriation and nationalisation can take place including principles for compensation;

(xi) Value of investments—effect of inflation and variation in exchange rates;

(xii) Training programmes and transfer of technology and marketing arrangements;

(xiii) Past investments;

(xiv) Settlement of disputes as between the investor and the host government; and

(xv) Settlement of disputes between the two governments.

These points are briefly discussed below although some of the more important elements have already been referred to in the earlier part of the note.

(i) Desirability of entering into bilateral agreements

Investments abroad are generally made by corporations and State entities and at times even by individuals. Direct investments by governments are not very common. Experience has shown that an investor is usually reluctant to invest unless he is guarnteed certain safeguards for his investment such as in regard to repatriation of capital and return as also full compensation in the event of nationalisation or expropriation. Even though several countries offer such safeguards under their constitution or laws, there is a better psychological impact when the investment is made under government to government umbrella agreements. This method has proved to be very effective in recent years and many developed countries accordingly consider such bilateral investment protection agreements to be of considerable importance. The Ministerial Meeting at Kuala Lumpur held under the auspices of the AALCC in December 1980 recognized the importance of such investment protection agreements in the context of co-operation between the countries of the Asian-African region.

(ii) Principle of reciprocity and non-discrimination

This is an element which is generally incorporated in bilateral investment protection agreements even through the reciprocity provision in agreements between developing and developed countries are not of much practical significane. However, this is an element which would be meaningful in agreements between the countries of the region.

(iii) Promotion of investments by contracting States in the territory of each other—financial guarantees and tax incentives

Many developed countries provide investment guarantees or insurance schemes as incentives for their nationals and companies to invest abroad. Several countries also offer various kinds of reliefs in

taxtion to their nationals and companies in regard to their income, profit or gain derived from investments abroad. It is felt that if the countries of the region were to offer some attractive incentives in the form of tax concessions for investments in the developing countries of the region, it would greatly help to promote flow of investments between developing countries *inter se.* It may however not be practicable for most of the countries of region as yet to initiate investment guarantee schemes.

(iv) Reception and registration of investments including the terms and conditions thereof

It is felt that foreign investments in certain categories of cases should be registered in the host country to facilitae their identification in relation to discharge of the host government's obligations especially in regard to repatriation of capital and return as also protection of the investment. Many States allow foreign investors various incentives including concessionary taxation. It is felt that such incentives should be offered to the maximum extent in regard to investments emanating from the countries of the region. It is also important that the terms and conditions on which the invesment is received should remain unaltered for the period of the investment.

(V) Investment in national companies or corporations

Capital participation or investment in national companies or corporations by foreign parties are regulated by local laws; several countries allow such participation to the extent of a specific percentage of share capital and subject also to various terms and conditions. It is considered that such matters should be liberalised to the extent possible in so far as the investment from the countries of the region are concerned.

(vi) Most-favoured-nation treatment

Almost all bilateral agreements on promotion and protection of investments, which have been entered into by developing countries with industrialized nations contain provisions concerning most-favoured-nation standard of treatment. This means that whatever treatment that State accords to a third State, the same treatment would have to be applied to the nationals and companies of those industrialised States also. This necessarily creates some problems for those States who have already entered into such agreements in considering the standard of treatment for investments between developing countries *inter se* Nevertheless, it is important that a most-favoured-nation treatment clause should be incorporated in bilateral