AGREEMENT BETWEEN THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA AND THE GOVERNMENT OF THE REPUBLIC OF SENEGAL CONCERNING RECIPROCAL CAPITAL INVESTMENT PROMOTION AND GUARANTEE

The Government of the Socialist Republic of Romania and the Government of the Republic of Senegal, hereinafter referred to as "Contracting Parties",

In their desire to develop the economic cooperation relations existing between these two States,

Aiming at creating favourable conditions for the capital investments made by investors from the Socialist Republic of Romania in the territory of the Republic of Senegal and by investors from the Republic of Senegal in the territory of the Socialist Republic of Romania,

Recognising that capital investment guarantees, in conformity with the present Agreement, by their nature stimulate initiatives in this area,

Have agreed as follows:

Article 1. Investment Promotion and Guarantees

(1) Each Contracting Party shall promote within its territory capital investments by investors from the other Contracting Party.

(2) Direct and indirect capital investments, authorized in conformity with the legal provisions of the Contracting Party within whose territory the investments are made, shall enjoy the protection and guarantees envisaged by the present Agreement.

Article 2. Definitions

Within the meaning of the present Agreement:

(1) "Capital investment" shall mean any share of direct or indirect participation in the attainment of an economic objective, including any capital share to which an investor has a right, as well as any increase in value and specifically, but not limited to:

a) Personal or real property rights, as defined in conformity with the laws of the Contracting Party in whose territory said property is located;

b) Shares or any other interests in the ownership of a corporation;

c) Credit rights or other rights related to services having a monetary value;

d) Industrial property rights, copyrights, technology, trademarks, goodwill and know-how;

e) Concessions granted by law or under a contract, particularly concessions related to prospecting, mining and exploitation of natural resources, with the exception of marine biological resources, which may be the subject of a separate arrangement between the two parties.

(2) The term "profit" shall be understood to mean the sums accruing from an investment in the form of dividends, profit-sharing and other income. Undistributed profits shall be regarded as an increase in assets and, as part of the investment, shall enjoy the same protection as the latter.

(3) The term "investor" shall be understood to mean:

a) For the Socialist Republic of Romania, Romanian economic units having legal personality and which in conformity with the law are authorized to engage in foreign trade and economic cooperation with foreign countries.

b) For the Republic of Senegal, investors are juridical as well as physical persons who, in conformity with the provisions of laws and regulations, carry out operations in economic, social and cultural areas.

(4) For purposes of application of the present Agreement:

a) The term "direct participation" shall mean shares held by an investor from one Contracting Party in a corporation or economic activity located within the territory of the other Contracting Party;

b) The term "indirect participation" shall mean shares held by a corporation having its registered office within the territory of one Contracting Party in another corporation or economic activity located entirely in said territory, when this first corporation is established with shares of its capital held by an investor from the other Contracting Party.

Article 3. Most-favored Nation Treatment

(1) Within its territory, each Contracting Party shall not subject capital investments or investors from the other Contracting Party to a treatment less favourable than that granted to capital investments or investors from a third country.

(2) If the legislation of one of the Contracting Parties or international obligations, existing or to be undertaken in the future by the Contracting Parties, outside the scope of the present Agreement, should give rise to regulations which grant capital investments and investors from the other Contracting Party a more favourable treatment than that envisaged by the present Agreement, said regulations shall be applied.

However, the measures referred to under paragraphs 1 and 2 of the present Article shall not apply to preferences which arise from the present or future membership of each of the Contracting Parties in a customs union, free-trade area, economic community.

(3) Each Contracting Party undertakes to fulfill any other obligation assumed with respect to capital investments made within its territory by investors from the other Contracting Party.

Article 4. Expropriation and Indemnification

(1) Capital investments made by investors from one of the Contracting Parties within the territory of the other Contracting Party may not be expropriated or subjected to other measures having a similar effect, unless the following conditions are complied with:

a) The measures shall be adopted in the public interest and by a legal procedure;

b) They shall not be discriminatory;

c) An adequate procedure shall be provided to determine the amount and terms of payment of the indemnification. Such indemnification shall correspond to the value of the investment on the date of the expropriation, shall be capable of being actually liquidated, freely transferable and shall be paid without unjustified delay.

Upon request by the party concerned, the amount of the indemnification may be reassessed by an appropriate court of the country where the investment was made. However, this condition, concerning the exhaustion of appeal procedures offered by the laws of the Contracting Party in whose territory the investment was made, may no longer be invoked by said party against the investor from the other party after a period of six months, which starts to run from the date of the first action undertaken in the contentious proceedings for the settlement of this dispute by the court.

(2) If a dispute remains between an investor and the Contracting Party in whose territory the investment was made concerning the amount of the indemnification, after the final decision of the national court, either one of them shall be entitled to submit the dispute, within a period of two months which starts to run after the exhaustion of internal appeals, in conformity with the Convention opened for signature in Washington on March 18, 1965, to the International Centre for Settlement of Investment Disputes, for conciliation or arbitration.

(3) Investors from one of the Contracting Parties whose capital investments have suffered material damage as a result of a war or other armed conflict or state of national emergency within the territory of the other Contracting Party, shall enjoy, with respect to indemnification, a treatment by the latter Contracting Party no less favourable than that granted to investors from any other State. The sums involved in such indemnifications shall be freely transferable.

Article 5. Repatriation of Capital and Profits

(1) Each Contracting Party, in connection with capital investments, guarantees to investors from the other Contracting Party the transfer:

a) Of the invested capital or proceeds from the liquidation or from the total or partial transfer of the investment;

b) Of the profits earned and of the other income originating from the capital investment;

c) Of the payments made for reimbursing loans for the investment and the related interest;

d) Of the earnings of citizens authorized to work within the framework of an investment made within the territory of the other Contracting Party.

(2) After compliance with the legal obligations to which investors are subjected, each Contracting Party shall grant the necessary permits to assure the execution without delay of the transfers referred to under paragraph 1 of the present Article.

Article 6. Subrogation

If one of the Contracting Parties, by virtue of a guarantee granted for an investment made within the territory of the other Contracting Party, makes payments in place of its own investors, it shall thereby be subrogated in the rights, obligations and legal actions of said investors. Similarly, the subrogation in the rights and obligations of the insured investors shall extend to the right of transfer referred to under Articles 4 and 5 above. The Contracting Party that has made the payment may not obtain rights or assume obligations greater than those of the insured investor.

Article 7. Currency Transfers

(1) The currency transfers referred to under Articles 4, 5 and 6 shall be made without delay in the convertible currency in which the investment was made or in another convertible currency, if it has been so agreed, at the exchange rate applicable on the of the transfer.

(2) For the purposes of paragraph 1, the term "without delay" shall be understood to mean that the transfers shall be made within a period that is normally necessary to comply with the transfer formalities. Said period shall run from the day on which the request and the necessary documents have been forwarded, through the appropriate channels, to the appropriate authorities.

Article 8. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of the present Agreement shall be settled, insofar as possible, by negotiations between the two Parties. If such a dispute cannot be settled within a period of six months from the date of the beginning of the negotiations, it shall be submitted, upon request by one of the Contracting Parties, to an Arbitral Tribunal.

(2) The Arbitral Tribunal shall be set up as follows: each Contracting Party shall designate an Arbitrator; those two Arbitrators shall propose, with the joint agreement of the two Parties, a Chairman who shall be a citizen of a third State, designated by the two Contracting Parties. The Arbitrators shall be appointed within a period of three months, and the Chairman within a period of five months, after one of the Contracting Parties has informed the other that it wishes to submit the dispute to an Arbitral Tribunal. If the Arbitrators are not appointed within the term agreed upon, the Contracting Party that has not appointed its Arbitrator agrees that the latter be appointed by the Secretary-General of the United Nations. If the two Parties are unable to reach agreement with respect to the appointment of the Chairman, they similarly agree that the latter be appointed by the Secretary-General of the United Nations.

(3) The Arbitral Tribunal shall adopt its decisions on the basis of the provisions of the present Agreement and of the other similar Agreements entered into by the Contracting Parties, as well as on the basis of the principles and rules of International Public Law. The Arbitral Tribunal shall adopt its decisions by majority vote and its decision shall be final and binding. Only the two Contracting Parties may submit cases to the Arbitral Tribunal and participate in the proceedings.

(4) Each Contracting Party shall bear the expenses of the Arbitrator designated by it and those related to the participation of its representatives in the tribunal proceedings. The expenses related to the Chairman and the other expenses shall be shared equally by the Contracting Parties.

(5) The Arbitral Tribunal shall set its own procedure.

Article 9. Effective Date, Validity and Expiry

(1) The present Agreement shall be submitted for ratification in conformity with the constitutional procedures of each country.

(2) The Agreement shall enter into force one month after the exchange of the instruments of ratification. The Agreement shall remain in force for a period of 10 years, and shall be extended for subsequent 10-year periods, except in the case of denunciation in writing by one of the Contracting Parties one year in advance of its expiry. After the expiry of the initial 10-year period, the Agreement may be denounced at any time, but it shall continue to remain in force for one year after it has been denounced.

(3) For capital investments made up to the date of expiry of the validity of the Agreement, its provisions shall remain applicable for a period of 10 years from the date of its expiry.

Signed in Bucharest on June 19, 1980, in two original copies, in the Romanian language and in the French language, the two texts being equally authentic.

For the Government of the Socialist Republc of Romania:

Gheorghe Cioara

For the Government of the Republic of Senegal:

Louis Alexandrenne