Tunisia Bilateral Investment Treaty

Signed May 15, 1990; Entered into Force February 7, 1993

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TREATY WITH TUNISIA CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF TUNISIA CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT, WITH PROTOCOL, SIGNED AT WASHINGTON ON MAY 15, 1990

MAY 20, 1991 -Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, May 17, 1991.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the United States of America and the Republic of Tunisia Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington on May 15, 1990. 1 transmit also, for the information of the Senate, the report of the Department of State with respect to this treaty.

The Bilateral Investment Treaty (BIT) program, initiated in 1981, is designed to encourage and protect U.S. investment. The treaty is an integral part of U.S. efforts to encourage Tunisia and other governnments to adopt macroeconomic and structural policies that will romote economic growth. It is also fully consistent with U.S. policy toward international investment. That policy holds that an open international investment system in which participants respond to market forces provides the best and most efficient mechanism to promote global economic development. A specific tenet, reflected in this treaty, is that U.S. direct investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment. Under this treaty, the Parties also agree to international law standards for expropriation and compensation; to free financial transfers; and to procedures, includ ing international arbitration, for the settlement of investment disputes.

I recommend that the Senate consider this treaty as soon as pos sible and give its advice and consent to ratification of the treaty, with protocol, at an early date.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 24, 1991.

The PRESIDENT,
The White House.
THE PRESIDENT: I have the honor to submit to you the Treaty Between the United States of America and the Republic of Tunisia Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol, signed at Washington, May 15, 1990. I recommend that this treaty, with protocol, be transmitted to the Senate for its advice and consent to ratification.

This treaty constitutes a continuation of the bilateral investment treaty (BIT) program initiated in 1981. Negotiation of these treaties has been pursued by the Office of the United States Trade Representative and the Department of State with active participation of the Departments of Commerce and Treasury, in conjunction with other U.S. Government agencies. BITS with Bangladesh, Cameroon, Grenada, Senegal, Turkey and Zaire have entered into force.
The global BIT program is intended to encourage and protect U S. investment in developing countries. By providing certain mutual guarantees and protections, a BIT creates a more stable and predictable legal framework for foreign investors in the territory of each of the treaty Parties. The negotiation of a series of bilateral treaties with interested countries establishes greater international discipline in the investment area.

Experience to date has shown that interested countries are will ing to provide U.S. investors with significant investment guarantees and assurances as a way of inducing additional foreign investment. It is U.S. policy to advise potential treaty partners that conclusion of a BIT with the United States is an important and favorable factor in the investment relationship, but does not in and of itself result in immediate increases in U.S. investment flows.
The BIT approach is similar to programs that have been undertaken with considerable success by

a number of European countries, including the Federal Republic of Germany and the United Kingdom, since the early 1960s. Indeed, U.S. industrialized partners already have over 200 BITS in force, primarily with developing countries. U.S. treaties, which draw upon language used in its Treaties of Friendship, Commerce, and Navigation (FCNs) as well as European counter parts, are more comprehensive and far-reaching than European BITS.

THE U.S.-TUNISIA TREATY

The treaty with Tunisia satisfies all four main BIT objectives:
- -foreign investors are to be accorded treatment in accordance with international law and are to be treated no less favorably than investors of the host country or no less favorably than investors of third countries, whichever is the most favorable treatment ("national" or "most-favored-nation" treatment) subject to certain specified exceptions;
--international law standards shall apply to the expropriation of investments and to the payment of compensation for expropriation;
--free transfers shall be afforded to funds associated with an in vestment into and out of the host country; and
- -procedures shall allow an investor to take a dispute with a Party directly to binding third-party arbitration.

Some provisions of the treaty with Tunisia differ in minor respects from the U.S. model text. In general, however, the treaty closely follows the language contained in the U.S. model text. The most significant provisions of the U.S.-Tunisia treaty are as follows:

The definition section clarifies terms such as "company of a Party" and "investment." The concept of "investment" is broad and designed to be flexible; although numerous types of economic interests are enumerated, the intent is to include all legitimate interests in, the territory of either Party, whether directly or indirectly controlled by nationals of the other, having economic value or "associated" with an investment. "Companies of a Party" are those legally constituted under the laws of a Party.

As does the model BIT, the treaty with Tunisia accords the better of national or most-favored-nation (MFN) treatment to foreign investment after establishment, subject to each Party's exception tions which are set forth in the treaty or in a protocol, which is an integral part of the treaty. The exceptions are designed to protect state regulatory interests and to accommodate the derogations from national treatment and, in some cases, MFN treatment in state or federal law. The U.S. exceptions to national treatment include such areas as air transport, shipping, banking, telecommunications, energy and power production, and insurance; and from national and MFN treatment in the case of ownership of real property. Any additional restrictions or limitations which the United States may adopt with respect to those matters or sectors in the protocol or treaty are not to affect existing investments. The Government of Tunisia did not request any sectoral exceptions to the treaty.

With respect to establishing an investment, the treaty with Tunisia differs from the model BIT. It provides for MFN treatment and, "within the framework of existing laws and regulations," national treatment for incoming investment. In addition, Article X.2 authorizes a Party to require establishment in accordance with the terms and conditions set forth in its legislation, provided such formalities "do not impair any right set forth in this Treaty." Tunisia, thus, is permitted to favor its own nationals with respect to the establishment of investment.

As does the model BIT, the treaty with Tunisia includes general treatment protections designed to be a guide to interpretation and application of the treaty. Thus, the Parties agree to accord investments "fair and equitable treatment" and "full protection and security" in no case "less than that required by international law."

In the U.S.-Tunisia BIT, the right of a company to engage top managerial personnel of its choice is "without prejudice to the right of either Party to prescribe fair procedures." Although this qualification is not found in the U.S. model text, the requirement that such procedures be "fair" provides some assurance that any governmental procedures will not impair the substance of the

right conferred by the treaty.
Whereas the U.S. model BIT provides that "neither Party shall impose performance requirements," the U.S.-Tunisia text states that "each Party shall endeavor not to impose performance requirements."
Both the U.S. model text and the Tunisia Treaty contain an exception to MFN treatment by virtue of a Party's "binding obligations that drive from full membership in a regional customs union or free trade area." The Protocol specifically identifies "any relationship with the Arab Maghreb Union" as falling within the scope of that exception.
As does the model BIT, the treaty with Tunisia confers protection from unlawful interference with property interests and assures compensation in accordance with international law standards. It provides that any direct or indirect taking must be: for a public purpose; nondiscriminatory; accompanied by the payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general standards of treatment discussed above.
The Tunisian text replaces the model BIT term "fair market value" with the term "full value" with regard to compensation of an expropriated investment. This wording modification was requested by Tunisia because it does not have a fully developed market economy.
It should be noted that several key provisions concerning the compensation for expropriation are found in paragraph 2 of the protocol rather than the main text. In keeping with Tunisian practice, the term "interest" in those provisions has been changed to "an amount to compensate for any delay in payment" and the term "prevailing market rate of exchange" has been changed to "rate of exchange used for commercial purposes." These changes are not substantive.
As does the model BIT, the treaty with Tunisia provides for free transfers "related to an investment," specifically including returns, compensation for expropriation, payments arising out of an investment dispute, contract payments, proceeds from the sale of an investment, and contributions to capital for maintenance or development of an investment. Such transfers are to be made in a "freely usable currency at the prevailing rate of exchange for commercial transactions on the date of transfer." In a departure from the U.S. model, the term "freely convertible currency" replaces the term "freely usable currency" and the term "prevailing rate of exchange" replaces "prevailing market rate of exchange. Also, the provision that the rate of exchange be calculated "with respect to spot transactions in the currency to be transferred" is omitted from the Tunisia text. All of these changes were made to reflect actual conditions with respect to Tunisian currency and do not change the transfer provision materially.
The model language found in Article IV.1 of the treaty concerning transfers is modified by paragraph 3 of the protocol which provided that transfers related to proceeds from sale or liquidating may be temporarily delayed in certain limited balance of payments emergencies. The protocal language was included to accommodate Tunisian concerns about foreign exchange shortages. This is a substantive but limited departure from the goal of completely free transfers found in the U.S. model text. A similar balance of payments exception has been agreed to with several other countries, including Egypt and Turkey.
Both the BIT model and the treaty with Tunisia recognize that notwithstanding this guarantee Parties can maintain certain laws and regulations regarding transfers provided these are applied in a non-discriminatory fashion. In particular, the text provides that Parties can require reports of currency transfers and impose income taxes by such means as a withholding tax on dividends. The article also recognizes that Parties retain the right to protect the rights of creditors and ensure the satisfaction of judgments in adjudicatory proceedings.
The BIT provides that where a defined investment dispute arises between a Party and a national or company of the other Party, including a dispute as to the interpretation of an investment agreement, and the dispute cannot be resolved through negotiation, it may be submitted to arbitration in accordance with any dispute settlement procedures to which the national or company and the host country have previously agreed. The Tunisian treaty omits "investment authorization" from the definition of investment disputes because Tunisia has indicated it does not use such authorizations.
As in the model BIT, unless the national or company has submitted the dispute to previously agreed dispute settlement procedures or to adjudication by domestic courts or other tribunals of the host country, the national or company may submit the dispute to the International Centre for

the Settlement of Investment Disputes ("ICSID") for conciliation or binding arbitration. Exhaustion of local remedies is not required. In a separate provisions, the BIT Parties also agree to provide effective means of asserting claims and enforcing rights with respect to investment.

The BIT with Tunisia contains the U.S. model language for arbitration between the Parties in case of a dispute regarding the interpretation or application of the treaty. Another BIT provision ex empts disputes arising under Export-Import Bank programs, or other credit guarantee or insurance arrangements providing for al ternative dispute settlement arrangements, from the standard BIT arbitration clauses.

Both the model and the U.S.-Tunisia BIT exhort Parties to apply their tax policies fairly and equitably. Because the United States specifically addresses tax matters in tax treaties, BITs for the most part exclude such matters. As does the model BIT, the U.S.-Tunisia treaty does not derogate from any obligations that require more favorable treatment of investments and does not preclude measures necessary for public order or essential security interests.

The treaty enters into force 30 days after exchange of ratifications and continues in force for at least ten years. Thereafter, either Party may terminate the treaty, subject to one year's written notice.

With respect to pre-1956 U.S. investments, the BIT with Tunisia adds the following sentence to the U.S. model text: "If any issues arises with respect to any pre-1956 U.S. investment, the two sides agree to consult as necessary on such issues to reach a satisfactory solution." This sentence was added to respond to Tunisia's concerns regarding pre-independence investments. The U.S. Government does not know of any U.S. investments which would fall into this category.

I join with the U.S. Trade Representative and other U.S. Govern ment agencies in supporting the treaty and favor its transmission to the Senate at an early date.

Respectfully submitted,

LAWRENCE EAGLEBURGER.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF TUNISIA CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT

The United States of America and the Republic of Tunisia (hereinafter referred to as the "Parties"),

Desiring to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party; and

Desiring to encourage the nationals and companies of one Party to invest in the territory of the other Party and to create favorable conditions for such investments; and

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties; and

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and effective utilization of economic resources; and

Having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of investment,

Have agreed as follows:

ARTICLE I

1. For the purposes of this Treaty,

(a) "investment' means every kind of investment, in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value, and associated with an investment;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill; and

(v) any right conferred by law or contract, and any licenses and permits pursuant to law;

(b) "national" of a Party means:

(i) with respect to Tunisia: natural persons of Tunisian nationality in accordance with Tunisian law;

(ii) with respect to the United States: natural persons who are nationals of the United States under its law;

(c) "company of a Party" means any kind of corporation, company, association, or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned;

(d) "return" means an amount derived directly or indirectly from or associated with an investment, including profits; dividends; interest; capital gains; royalties on industrial and intellectual property rights; management, technical assistance or other fees;

(e) "associated activities" include the organization, control, operation, maintenance, and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports.

2. Each Party reserves the right to deny to any company the advantages of this Treaty if nationals of any third country directly or indirectly control such company; but, in the case of a company of the other Party, only if that company has no substantial business activities in the territory of the other Party or is controlled directly or indirectly by nationals of a third country with which the denying Party does not maintain normal economic relations.

3. Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

ARTICLE II

1. Each Party shall permit in its territory investments, and activities associated therewith, by nationals and companies of the other Party on a basis no less favorable than that accorded in like situations to investments of nationals or companies of any other country and, within the framework of its existing laws and regulations, no less favorable than that accorded in like situations to investments of its own nationals and companies.

2. Each Party shall accord to these investments, once established, and associated activities, treatment not less favorable than that accorded in like situations to investments of its own nationals and companies or to investments of nationals and companies of any third country, whichever is the most favorable.

3. Investment shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. Each Party shall observe any obligation it may have entered into with regard to investments.

4. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

5. Without prejudice to the right of either Party to prescribe fair procedures in connection with the employment of top managerial personnel, companies which are legally constituted under the applicable laws and regulations of one Party, and which are investments, shall be permitted to engage such personnel of their choice, regardless of nationality.

6. Each Party shall endeavor not to impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

7. Each Party shall provide to the nationals and companies of the other Party the right of recourse to administrative and judicial authorities in order to assert claims and enforce rights in the event of a dispute relating to an investment.

8. Each Party shall make public all laws and regulations that pertain to or affect investments in its territory of nationals or companies of the other Party. The party's practices, administrative procedures, and verdicts can be consulted by investors of the other Party.

9. The treatment accorded by the United States of America to investments and associated activities under the provisions of this Article shall in any political subdivision of the United States of America be the treatment accorded therein to companies legally constituted under the laws and regulations of any other political subdivision of the United States of America.

10. The most favored nation provisions of this Article shall not apply to advantages accorded by either Party to nationals or companies of any third country by virtue of that Party's binding obligations that derive from full membership in a regional customs union or free trade area.

ARTICLE III

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to: expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II (3). Compensation shall be equivalent to the full value of the expropriated investment immediately before the expropriatory action was taken or became known.

2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation therefor, conforms to the principles of international law.

3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, as regards any measures it adopts in relation to such losses.

ARTICLE IV

1. Each Party shall, with respect to investment by nationals or companies of the other Party, permit the free and prompt transfer, related to such investment, of: (a) returns; (b) compensation pursuant to Article III; (c) payments arising out of an investment dispute; (d) payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement; (e) proceeds from the sale or liquidation of all or any part of an investment; and (f) additional contributions to capital for the maintenance or development of an investment.

2. Transfers shall be made in a freely convertible currency at the prevailing rate of exchange for commercial transactions on the date of transfer.

3. Notwithstanding the provisions of paragraphs I and 2, either Party may maintain laws and regulations (a) requiring reports of currency transfer and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable and nondiscriminatory application of its law.

ARTICLE V

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty.

ARTICLE VI

1. For the purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and or (b) an alleged breach national or company of the other Party; or of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation. Subject to Paragraph 3 of this Article, if the dispute cannot be resolved through consultation and negotiation, the dispute shall be submitted for settlement in accordance with previously agreed, applicable dispute-settlement procedures.

3. (a) The national or company concerned may choose to consent in writing to the submission of the dispute to the International Centre for the Settlement of Investment Disputes ('Centre") for the settlement by conciliation or arbitration, at any time after six months from the date upon which the dispute arose. Once the national or company concerned has so consented, either party to the dispute may institute such proceedings provided:

(i) the dispute has not been submitted by the national or company for resolution in accordance with any applicable previously agreed dispute settlement procedures; and

(ii) the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a party to the dispute. Unless the parties to the dispute agree otherwise, the national or company may choose whether to proceed through conciliation or arbitration.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or arbitration, applying the provisions of the Convention on the

Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18, 1965 ('Convention') and the Regulations and Rules of the Centre.

4. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counter-claim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

5. For the purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party or a political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall, in accordance with Article 25(2)(b) of the Convention referred to in paragraph 3 of this Article, be treated as a national or company of such other Party.

ARTICLE VII

1. Any dispute between the Parties concerning the interpretation or application of the Treaty which is not resolved through consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. in the absence of an agreement by the Parties to the contrary, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the Parties or by the arbitrators, shall govern.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who in a national of a third State. The UNCITRAL Rules for appointing members of three member panels shall apply mutatis mutandis to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the Centre.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the data of selection of the third arbitrator, and the Tribunal shall render its decisions within two months of the date of the final submissions of the date of the closing of the hearings, whichever is later.

4. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Parties. The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

ARTICLE VIII

The provisions of Article VI and VII shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the united States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE IX

This Treaty shall not derogate from:

(a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party;

(b) international legal obligations; or

(c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization

that entitle investments or associated activities to treatment sore favorable than that accorded by this Treaty in like situations.

ARTICLE X

1. This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude either Party from requiring that investments and associated activities be established in accordance with the terms and conditions set forth in its legislation provided that such terms and conditions do not impair any right set forth in this Treaty.

ARTICLE XI

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.

2. Nevertheless, the provisions of this Treaty, and in particular Article VI and VII, shall apply to matters of taxation only with respect to the following:

(a) expropriation, pursuant to Article III;

(b) transfers, pursuant to Article IV; or

(c) the observance and enforcement of terms of an investment agreement or authorization as referred to in Article VI(l)(a),

to the extent they are not subject to the dispute settlement provisions of a Convention for the avoidance of double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.

ARTICLE XII

This Treaty shall apply to the political subdivisions of the Parties.

ARTICLE XIII

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments made or acquired after the time of entry into force as well as to investments existing at the time of entry into force. If any issue arises with respect to any pre-1956 U.S. investment, the two sides agree to consult as necessary on such issues to reach a satisfactory solution.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end of the initial ten year period or at any time thereafter.

3. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from such date of termination.

4. The Protocol shall form an integral part of the Treaty.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty.
DONE in duplicate at Washington on the fifteenth day of May, 1990, in the English, Arabic and

French languages, the three texts being equally authentic.
FOR THE UNITED STATES OF AMERICA:

[signature] Carla Hills

FOR THE REPUBLIC OF TUNISIA:

[signature] Ismail Khelil

PROTOCOL

1. (a) with respect to Article II, paragraphs 1 and 2, the United States reserves the right to limit the extent to which nationals or companies of Tunisia or their investments may within U.S. territory establish, acquire interests in, or carry on investments engaged in air transportation; ocean and coastal shipping; banking; insurance; government grants; government insurance and loan programs; energy and power production; custom house brokers; ownership of real estate; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in the Communications Satellite Corporation; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; primary dealership in U.S. Government securities; maritime related services; use of land and natural resources. Rights to engage in mining on the public domain shall be dependent on reciprocal rights being granted to investments of U.S. nationals or companies within the territory of Tunisia.

(b) With respect to Article II, paragraph 9, the United States interprets 'political subdivision of the United States of America' to mean the fifty states of the United States and the District of Columbia.

(c) With respect to Article II, paragraph 10, the Republic of Tunisia reserves the right not to apply most favored nation provisions to nationals and companies of the United States that arise out of any relationship with the Arab Maghreb Union.

2. With respect to Article III, paragraph 1, the compensation shall include an amount to compensate for any delay in payment that may occur from the date of expropriation. Prompt transfer of the compensation at the rate of exchange used for commercial purposes on the date of expropriation shall be guaranteed in order to maintain the value of the compensation.

3. With respect to Article IV, in exceptional financial or economic circumstances relating to foreign exchange, the Republic of Tunisia may temporarily delay transfers of the type specified in Article IV (1)(e), but only (a) in a manner consistent with Article 11; (b) for the time period necessary to restore its reserves of foreign exchange to a minimally acceptable level, but not to exceed three years from the date when the transfer is requested; and (c) provided that the national or company has an opportunity to invest the proceeds in a manner which will preserve the value until transfer occurs.

4. With respect to Article VI, if the Government of Tunisia (or any of its competent agencies) makes payment to any of its nationals or companies under an indemnity or a guarantee it has granted with respect to an investment or any part thereof in the territory of the United States, and therefore has become subrogated to any of the rights of such nationals or companies with respect to such investment, the United States shall recognize (a) such rights of the Government of Tunisia (or its competent agency), and that the Government of Tunisia (or its competent agency) in entitled by virtue of subrogation to enforce such rights.