

Section of International and Comparative Law (Annual Meeting 1971)

WHEREAS, There is an increasing number of proceedings before federal administrative tribunals where documents should be served or evidence obtained in a foreign country, and there is no statute or treaty authorizing such extra-territorial procedures, and

WHEREAS, Sections 1696 and 1782 of the federal judicial code (28. U.S.C.), as amended by P.L. 88-619 of 10/03/64, provide for the execution by district courts of requests for the service of documents and the obtaining of evidence in the United States for use in proceedings before foreign and international tribunals, and the term "tribunals" is construed to include administrative tribunals, and

WHEREAS, The Hague Convention on Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters, ratified by the United States on 04/24/67, does not apply to administrative tribunals, and the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, signed by the United States, and its ratification recommended by the Association (94 A.B.A. Rep. 398), does not apply to administrative tribunals.

NOW, THEREFORE, BE IT RESOLVED, That the American Bar Association recommends that the federal judicial code (Title 28, U.S. Code) be amended to provide in substance as follows:

Sec. 1697. Upon application by an administrative tribunal a district court may order, in a manner provided by the Federal Rules of Civil Procedure for service of process, service in a foreign country of a document issued in connection with a proceeding in the tribunal

Sec. 1785. Upon application by an administrative tribunal a district court may order, in a manner provided by the Federal Rules of Civil Procedure, the taking of a deposition in a foreign country for use by the tribunal

BE IT FURTHER RESOLVED, That representatives of the Section of International and Comparative Law be authorized to appear before the appropriate committees of the Congress to urge the enactment of such legislation, and that copies of this resolution be sent to the Chairman of the Judiciary committees of the House and Senate, to the Attorney General, the Secretary of State, the Chairman of the Administrative Conference, and to the federal administrative tribunals.