

Section of Natural Resources Law (Annual Meeting 1973)

WHEREAS, The U.S. economy and the American consumer are becoming increasingly dependent on foreign sources for certain essential mineral resources; and

WHEREAS, The conduct of certain governments in countries where these resources are located and where U.S. private investment has contributed to their development has placed in jeopardy the continued availability of these resources to the U.S. economy; and

WHEREAS, This conduct has often been in violation of international law principles, as declared in the United Nations General Assembly Resolution 1803 on Permanent Sovereignty over Natural Resources of 12/14/62; and

WHEREAS, The understanding and acceptance of international law principles relating to private foreign investment by host countries is essential to continued U.S. private investment in developing foreign mineral resources and their availability for export;

NOW, THEREFORE, BE IT RESOLVED, That the American Bar Association

(1) urges the United States Government in its participation in international organizations as well as in its bilateral relations to insist on the application of the following rules of international law respecting foreign private investment:

- (a) An agreement between a State and a foreign private investor for economic development, including agreements for mineral resources development, shall be binding on both parties according to the terms thereof;
- (b) In the absence of such an economic development agreement, the property of a foreign private investor may not be expropriated, otherwise taken, or the investment impaired except:
 - (i) for a public purpose,
 - (ii) on a non-discriminatory basis, and
 - (iii) upon payment of prompt adequate and effective compensation;

(2) urges the United States Government:

- (a) To use its political and economic influence in international organizations and in state to state relations to secure the establishment and acceptance of an international tribunal with compulsory jurisdiction to decide private investment disputes between a foreign private investor and the host state.
- (b) In the absence of the establishment and acceptance of such a tribunal, to encourage other states to exercise jurisdiction in cases involving foreign private investment and to decide such cases in accordance with rules of international law as stated in paragraph (1) above.