

10-1-1967

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### Recommended Citation

Edward D. Re, *International Claims Adjudication: The United States-Canadian Agreement*, 17 Buff. L. Rev. 125 (1967).  
Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol17/iss1/9>

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# INTERNATIONAL CLAIMS ADJUDICATION: THE UNITED STATES-CANADIAN AGREEMENT

EDWARD D. RE\*

## I. INTRODUCTION

WITH the establishment of the Lake Ontario Claims Tribunal as authorized by the United States-Canadian Agreement of March 25, 1965,<sup>1</sup> the process has begun by which a dispute originating in 1951 and involving Gut Dam, formerly in the St. Lawrence River, will be finally resolved. Efforts to obtain compensation from Canada for American claims which arose out of the construction and operation of the dam by Canada have included international negotiation, litigation in the domestic courts of the United States, and enactment of a Lake Ontario Claims Act. The United States legislative effort to resolve the claims utilized a method of international claims settlement that may be termed "presettlement adjudication."

A brief discussion of the background of these claims will permit an examination of the presettlement adjudication technique and the function it may serve in achieving an equitable and satisfactory settlement of international claims. Reference will also be made to two claims programs presently being administered in the United States, wherein presettlement adjudication has again been authorized by the Congress of the United States in support of other American claimants.

## II. THE LAKE ONTARIO CLAIMS

In order to improve navigation in the St. Lawrence River, the Canadian Government proposed the building of a dam in the international section of the river between Galop and Adams Islands. Approval by the United States was required since the dam would partially be constructed on American territory.

In 1902 an act of Congress authorized the United States to give its consent, but only upon approval by the Secretary of War of the plans with respect to that part of the dam on United States territory.<sup>2</sup> An express condition of the Secretary of War's approval was that Canada would compensate for damage to the property of American citizens resulting from the construction or operation of the dam.<sup>3</sup> The dam was completed in 1904, but the question of whether it

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1. Agreement between the Government of the United States and the Government of Canada concerning the establishment of an International Arbitral Tribunal to dispose of United States claims relating to Gut Dam, March 25, 1965, 17 U.S.T. 1566, T.I.A.S. No. 6114 (1966) [hereinafter cited Agreement].

2. Public L. 57-164, 32 Stat. 392, stated in part, that "the type of proposed dam and the plans of construction and operation thereof shall be such as will not, in the judgment of the Secretary of War, materially affect the water level of Lake Ontario or the St. Lawrence River or cause any other injury to the interest of the United States or any citizen thereof."

3. The stipulation required the Government of Canada's agreement to "pay such

caused damage was not raised until 1951 when unusually high water levels in Lake Ontario injured property of American citizens on its southern shore. In 1952 further damage was reported and protests were made to the Canadian Government urging that the dam be removed.<sup>4</sup> Several damage suits were filed in the United States District Court by the claimants against the Canadian Government.<sup>5</sup> One was filed in the Court of Claims against the United States for having granted permission to construct the dam.<sup>6</sup>

While these actions were pending, the International Joint Commission,<sup>7</sup> at the request of the United States and Canada, was directed to study the factors which affected the fluctuations of the water level of Lake Ontario, including that of the dam's construction and operation. Negotiations were also undertaken between the United States and Canada with respect to the possibility of referring the claims to an international tribunal for determination. The Canadian Government, while recognizing its obligation to make compensation for such damages as were attributable to the dam, maintained that no accord was possible while

amount of compensation as may be agreed upon between the said government and the parties damaged, or as may be awarded the said parties in the proper court of the United States before which claims for damage may be brought." See RG 59: General Records of the Dep't of State, Misc. Letters, Part II, Aug., 1903; cited in *Huther v. United States*, 145 F. Supp. 916, 917 (Ct. Cl. 1956).

4. In direct negotiations with representatives of the claimants, Canada offered to submit the claims to arbitration but was unable to effect such an agreement. It removed the dam in 1953 in conjunction with the development of the St. Lawrence Seaway project.

5. These suits were consolidated for hearing and dismissed in 1956 for improper service on the defendant. See *Oster v. Dominion of Canada*, 144 F. Supp. 746 (N.D.N.Y.), *aff'd sub nom.*, 238 F.2d 400 (2d Cir. 1956), *cert. denied*, 353 U.S. 936 (1957).

6. See *Huther v. United States*, 145 F. Supp. 916 (Ct. Cl. 1956). The court dismissed the petition against the United States holding that the plaintiffs failed to state a claim upon which relief could be granted. It stated: "When the United States government constructs dams, dikes and other works affecting navigation and in doing so floods privately owned lands above high water mark, it is liable on the ground that it has taken private property for public use and must compensate such private owner by allowing just compensation. In such cases, however, it is held that the United States actually acquires the flooded lands as an integral part of the dam and reservoir system which it constructs and the title therefore in effect passes to the United States. In this case there has been no taking of plaintiffs' property by the United States." *Id.* at 918. The court went on to say: "It seems manifest that any damage that may have been caused to the plaintiffs was caused by the action of the Canadian government and recourse should be had by suits in the Canadian courts for any damages that were caused by the action of the Canadian government in the construction involved, and that any taking of property was for the use and benefit of the Canadian government, if such suits are permitted by the Canadian government, and, if not, representations and claims should be presented through authorized channels of the executive departments of the two governments. In any event the United States is in the position of a third party. There was no contract, express or implied, between plaintiffs and defendant, and even if the allegations of the petition are taken in their most favorable light there is no taking by the defendant of the property of citizens of the United States for public use." *Id.* at 918-19.

7. The International Joint Commission was established pursuant to the Boundary Waters Treaty of 1909, entered into between Great Britain and the United States, January 11, 1909, 36 Stat. 2448, T.S. No. 548. "The Boundary Waters Treaty of 1909 and subsequent proceedings of the International Joint Commission provide for maintenance of the natural level or flow of boundary waters between the United States and Canada, and their division or diversion, as well as for other boundary water problems that might arise." *Hearings Before a Subcomm. of the House Comm. on Appropriations*, 90th Cong., 1st Sess. 527 (1967).

the litigation against it was pending. The damage suits were dismissed on jurisdictional grounds. Canada thereafter refused to refer the claims to international arbitration because of the results of the International Joint Commission's study. The Lake Ontario Board of Engineers, established by the International Joint Commission, had reported that Gut Dam was only one of many factors, both natural and artificial, which had contributed in a complex manner to raising the water level of the lake and to the damage which resulted.<sup>8</sup> The International Joint Commission concluded that Gut Dam had the effect of raising water levels by approximately four inches.

The inability to achieve a settlement of the claims through legal and diplomatic means suggested the need of additional investigation so that the amount of damages specifically attributable to the dam could be determined and active negotiations with Canada reopened.<sup>9</sup> Accordingly, in 1962 Congress passed the Lake Ontario Claims Act<sup>10</sup> which provided that the validity and amount of the claims be determined by the Foreign Claims Settlement Commission—the national claims commission of the United States.<sup>11</sup> Although the act did not authorize payment of the claims, it directed the Foreign Claims Settlement Commission, upon its determination of the claims, to submit to the President a report listing the valid and invalid claims for such action as he deemed appropriate.<sup>12</sup>

It should be noted that the Lake Ontario Claims Act authorized with respect to these claims an adjudicatory process which had previously been utilized for claims settled pursuant to international agreements.<sup>13</sup> Adjudication of Gut Dam

8. See Int'l Lake Ont. Bd. of Engineers, *Effects on Lake Ontario Water Levels of Gut Dam and Channel Changes in the Galop Rapids Reach of the St. Lawrence River*, in Report to the International Joint Commission (July 1957), and *Water Levels of Lake Ontario*, in Final Report to the International Joint Commission (Dec. 1958). Although it was concluded that damage to the property had been sustained, the amount of the damage attributable to Gut Dam was not determined.

9. In 1962 Senator Kenneth Keating of New York introduced a bill providing for a full review of the claims in order to determine the extent of the damage sustained as well as the liability of Canada. S. 2978, 87th Cong., 2d Sess. (1962). A companion bill was introduced in the House of Representatives by Harold C. Ostertag of New York. H.R. 10955, 87th Cong., 2d Sess. (1962).

10. An act to authorize the Foreign Claims Settlement Commission of the United States to investigate the claims of citizens of the United States who suffered property damage in 1951 and 1952 as the result of the artificial raising of the water level of Lake Ontario, Public L. 87-587, 76 Stat. 387 (1962).

11. In 1954 there existed in the United States two national claims commissions: the International Claims Commission, administering claims under the International Claims Settlement Act of 1949, 64 Stat. 12 (1950), 22 U.S.C. §§ 1621-1627 (1964), and the War Claims Commission, administering claims under the War Claims Act of 1948, 62 Stat. 1240 (1948), 50 U.S.C. §§ 2001-16 (App. 1964). The desirability of combining these functions into a single, independent tribunal devoted exclusively to the processing and adjudication of claims was evident. Accordingly, by Reorganization Plan No. 1 of 1954, 68 Stat. 1279 (1954), 5 U.S.C. § 133z (1964), both of these commissions were abolished and their respective functions transferred to one national claims commission—the Foreign Claims Settlement Commission. For an examination of the role of the FCSC in international claims adjudication, see Re, *The Foreign Claims Settlement Commission: Its Functions and Jurisdiction*, 60 Mich. L. Rev. 1079 (1962).

12. Lake Ontario Claims Act, § 3, 76 Stat. 387 (1962).

13. The international agreement makes provision for a lump-sum or en bloc settlement which requires the payment of a certain amount by one country in settlement of all claims

claims, however, was intended to furnish a constructive basis for negotiating a settlement in the future. This is evident from the report of the Senate committee which considered the Lake Ontario Claims bill:

While this legislation is in no way a substitute for a negotiated settlement with Canada, it does seem to the Committee to be a step in the right direction. Apparently additional investigation is necessary to determine the amount of damage which is attributable to the Gut Dam, inasmuch as the total damage is described as having resulted from a combination of factors. This legislation would make it possible for such investigations to go forward and, it is hoped, would contribute to reopening active negotiation with Canada . . . .<sup>14</sup>

The possibility that agreement might be reached before the Commission fully discharged its functions under the act was also envisaged. The specific provision which dealt with this possibility stated:

If the Government of Canada enters into an agreement with the Government of the United States providing for arbitration or adjudication of the claims filed under this Act, the Commission shall discontinue its investigation and determination of the claims and transfer or otherwise make available to the Secretary of State all records and documents relating to the claims or, on the request of the Secretary of State, return to claimants documents filed in support of their claims.<sup>15</sup>

Pursuant to its authority under the Lake Ontario Claims Act, the Foreign Claims Settlement Commission established the appropriate procedural regulations with respect to the claims,<sup>16</sup> and fixed October 15, 1963, as the terminal date for the filing of claims. It also examined previous studies on the effect of the raising of the water level by the dam in 1951 and 1952, and undertook additional studies of the factual and engineering problems involved.

Besides the problem of causal relationship, problems of ownership and documentation were encountered with respect to many of the claims. A major

by the nationals of the other country to the agreement. Pursuant to the lump-sum settlement agreement, the receiving state establishes its own judicial machinery to adjudicate the claims of its nationals. In the United States, the International Claims Settlement Act of 1949, 64 Stat. 12 (1950), 22 U.S.C. §§ 1621-27 (1964), has been the vehicle for the adjudication of claims settled pursuant to international agreements. A recent program administered by the Commission under the authority of Title I of that Act involved the payment of \$40 million in twenty annual installments by the Republic of Poland in settlement of claims based chiefly on nationalizations of property. See Agreement with the Government of the Polish People's Republic Regarding Claims of Nationals of the United States, July 16, 1960, 11 U.S.T. 1953, T.I.A.S. No. 4545. For a report of the claims programs administered pursuant to lump-sum settlement agreements see *Re, The Foreign Claims Settlement Commission: Completed Claims Programs*, 3 Va. J. Int'l L. 101 (1963), reprinted in Southwestern Legal Foundation, Selected Readings on Protection by Law of Private Foreign Investments 865 (1964). For a report on the completion of the Polish Claims Program by the Commission, see 24 FCSC Semi ann. Rep. § 2, at 35 (Jan.-June 1966).

14. S. Rep. No. 1750, 87th Cong., 2d Sess. 5 (1962).

15. Lake Ontario Claims Act, § 5, 76 Stat. 387, 388 (1962).

16. See 45 C.F.R. pt. 560 (Supp. 1967). Although the Lake Ontario Claims Act did not establish a terminal date, the Commission had fixed October 15, 1965 for completion of its determination and submission of its report to the President.

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difficulty was the inability to obtain substantiation of the amount of damage caused by erosion or inundation where the soil had not been replaced at the time.<sup>17</sup> The Commission made suggestions as to appropriate information and evidentiary matters which would be helpful in the determination of the claims. Many claimants, however, in the absence of any present hope for payment, were reluctant to incur the expense necessary in the development of their claims. Although decisions were issued on many of the claims, since negotiations with Canada had in fact reopened, the Commission withheld their publication.

### III. THE LAKE ONTARIO CLAIMS TRIBUNAL

The negotiations with Canada were successful, producing an agreement which provided that the claims be submitted to international arbitration. Under the terms of the agreement,<sup>18</sup> signed at Ottawa, the "Lake Ontario Claims Tribunal United States and Canada" was authorized to be established with jurisdiction to hear and dispose of the claims "in a final fashion."

Pursuant to the provisions of the Lake Ontario Claims Act, the Foreign Claims Settlement Commission thereupon discontinued the adjudication of the remaining claims and transferred the records and documents of its Lake Ontario Program to the Department of State.<sup>19</sup> Pending the ratification of the agreement by the two governments,<sup>20</sup> the Department of State established the United States Agency for the purpose of receiving and preparing the claims for submission to the Tribunal.<sup>21</sup>

Under Article II of the Agreement, the Tribunal is directed to determine, in the first instance, whether Gut Dam caused damage to American property holders by raising the water level of Lake Ontario or the St. Lawrence River. In the event of an affirmative determination, the Tribunal then will be required to determine the amount of damage sustained and who is liable for the damage.<sup>22</sup> It should be noted that for the first time American claimants are assured of compensation for their losses since Canada by this agreement has consented to pay for all damages for which it is found liable.

The Tribunal is composed of two national members, *i.e.*, one from Canada

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17. Under Commission regulations, the burden of proof is on the claimant with respect to "all issues involved in the determination of his claim." 45 C.F.R. § 531.6(d), incorporated by reference under 45 C.F.R. § 560.6 (1967).

18. Agreement, 17 U.S.T. 1566, T.I.A.S. No. 6114 (1966).

19. The Commission discontinued the Lake Ontario Program on April 17, 1965. For a report on that program, see Re, *The Foreign Claims Settlement Commission and the Lake Ontario Claims Program*, 4 Int'l Leg. Mat. 473-76 (1965), reprinted in 22 FCSC Semi ann. Rep. 12-17 (Jan.-June 1965).

20. The Agreement was submitted to the United States Senate on May 17, 1965 for its advice and consent to ratification which was given on August 30, 1965. It was ratified by President Johnson on September 3, 1965 and by Canada on September 13, 1966. Ratifications were exchanged at Washington, D.C. on October 11, 1966, the date on which it thereby entered into force. See Agreement, 17 U.S.T. 1566, T.I.A.S. No. 6114 (1966).

21. 54 Dep't State Bull. 207 (1966).

22. It should be noted that the language of Article II of the Agreement also permits a determination imposing liability on the United States. See *Hearings Before a Subcomm. of the House Comm. on Appropriations*, 89th Cong., 2d Sess. 730 (1966).

and one from the United States, and a chairman designated jointly by them.<sup>23</sup> It has been in session at Ottawa since January 1967, and has been conducting hearings involving procedural questions. It is presently considering the basic issue of liability and the portion of damage attributable to Gut Dam—the major issues raised in a series of briefs exchanged by the two governments. Hence, no decisions have thus far been rendered on any of the claims submitted to it for adjudication.<sup>24</sup>

All individual claims were required under Article VIII of the Agreement to be presented to the Tribunal through the United States agent. The Agents of both governments are also charged with the responsibility of submitting the pleadings, evidence, briefs and arguments of their governments with respect to the claims filed.<sup>25</sup> In December 1966 the United States Agent prepared and submitted claims on behalf of United States nationals,<sup>26</sup> together with the necessary undertaking binding each claimant, his successors and assigns, as to the finality of the Tribunal's decision. The undertaking also waived all recourse against the Government of Canada for the same damage except as provided by the terms of the agreement.

In its determination of the issue of legal liability, the Tribunal must apply "the substantive law in force in Canada and in the United States . . . to all the facts and circumstances surrounding the construction and maintenance of Gut Dam."<sup>27</sup> While the Agreement specifically includes international law as part of

23. The Honorable W. D. Roach, formerly Justice of the Court of Appeal of Ontario, is the Canadian Member, and Professor Alwyn Freeman of Johns Hopkins University is the United States Member. The Chairman of the Tribunal is Dr. Lambertus Erades, Vice President of the Rotterdam District Court of the Netherlands. Article I(4) of the Agreement provides that "Each member of the Tribunal shall be a judge or a lawyer competent to hold high judicial office in his national State." By Executive Order, September 18, 1967, the President designated the Lake Ontario Claims Tribunal as "a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act." 32 Fed. Reg. 13251 (September 20, 1967).

24. Each decision must be by majority vote and shall constitute "a full and final determination of the subject matter of the decision." Agreement, art. 1(3), 17 U.S.T. 1566, T.I.A.S. No. 6114 (1966).

25. Pursuant to Article VIII of the Agreement, the Government of Canada designated H. Courtney Kingstone, Deputy Head of the Legal Division of the Department of External Affairs, as its agent. Ernest L. Kerley of the Department of State was designated United States Agent. Mr. Carl F. Goodmen, who had been Ass't United States Agent, was appointed Agent in February 1967. See 54 Dep't State Bull. 207 (1966). Each agent may be assisted by such counsel, engineers, investigators and other persons as their respective Governments desire. The Tribunal may also appoint such other persons, including engineers, it considers necessary to assist it in the performance of its duties. Article IX provides: "Whenever under the terms of this Agreement the approval or other form of instructions of Governments is required, such approval or other form of instructions shall be communicated by the Agent of such Government. All other communications required to be made to or by either Government under the terms of this Agreement shall be channeled through its Agent." Agreement, art. IX, 17 U.S.T. 1566, 1572, T.I.A.S. No. 6114 (1966).

26. In December 1966 the United States Agent also submitted the main brief of the United States with respect to the claims filed. Canada was permitted to answer to the main brief by May 7, 1967. The Tribunal fixed July 6, 1967 and September 4, 1967 for the filing of reply and rejoinder briefs by the United States and Canada, respectively. See *Hearings Before a Subcomm. of the House Comm. on Appropriations*, 90th Cong., 1st Sess. 539 (1967).

27. Agreement, art. II(2)(a), 17 U.S.T. at 1568, T.I.A.S. No. 6114 (1966).

“the law in force” in Canada and the United States, it relieves claimants from complying with the international law principle that their legal remedies must be exhausted before the claims will be allowed.<sup>28</sup>

All decisions of the Tribunal must be supported by “reasons in writing” and accompanied by “a copy of the record of all the proceedings” with respect to the claims.<sup>29</sup> Although the Tribunal must render a decision on each of the claims filed, it may make general findings with respect to all of them or as to any particular category of claims.<sup>30</sup> Awards of the Tribunal will be paid in United States currency within one year from the date the decision is submitted by the Tribunal to Canada and the United States.<sup>31</sup> Unless the period is extended by the two governments, all decisions must be rendered within two years of the Tribunal’s first meeting.

#### IV. PRESETTLEMENT ADJUDICATION AND THE LAKE ONTARIO PROGRAM

The presettlement adjudication of the Lake Ontario claims constituted a valuable precedent for the independent investigation and adjudication of international claims by a national claims commission. While the element of domestic adjudication was present, the function of the Foreign Claims Settlement Commission was intended to precede rather than follow negotiations affecting settlement.<sup>32</sup> It indicated also that the broad experience of the Commission in international claims adjudication could be utilized in new areas.<sup>33</sup>

Notwithstanding the termination of the Commission’s Lake Ontario Program, the work of the Commission has been of assistance to the United States Agent in the presentation of claims before the Lake Ontario Claims Tribunal.<sup>34</sup>

28. *Id.* art. II(2)(c).

29. *Id.* art. XII(2), 17 U.S.T. at 1573. The comparable provision for decisions of the FCSC is contained in the International Claims Settlement Act of 1949. *See* tit. I, § 4(h), 64 Stat. 12, 15 (1950), 22 U.S.C. § 1623(h) (1964). Under this section the Commission’s action in allowing or denying any claim is “final and conclusive . . . and not subject to review . . . by any court by mandamus or otherwise.”

30. Agreement, art. II(5), 17 U.S.T. at 1569. Paragraph 3 of that Article states: “In the event that in the opinion of the Tribunal there exists such a divergence between the relevant substantive law in force in Canada and in the United States of America that it is not possible to make a final decision with regard to any particular claim as provided by this Article, the Tribunal shall apply such of the legal principles set forth in paragraph 2 as it considers appropriate, having regard to the desire of the Parties hereto to reach a solution just to all interests concerned.” *Id.* art. II(3).

31. *Id.* art. XIII, 17 U.S.T. at 1573. Payments on awards of the FCSC where funds have been provided are made by the Secretary of the Treasury in accordance with various statutory limitations and priorities. *See, e.g.*, International Claims Settlement Act of 1949, tit. I, § 7, 64 Stat. 12, 16 (1950), 22 U.S.C. § 1626 (1964).

32. *See Re, Domestic Adjudication and Lump-Sum Settlement as an Enforcement Technique*, 58 Am. Soc’y Int’l Proc. 39, 46 (1964).

33. *E.g.*, note the 1963 amendment to Section 620(e) of the Foreign Assistance Act, whereby Congress authorized the FCSC to evaluate expropriated property, at the request of the President. The President is required to suspend assistance to the government of any country which nationalizes or expropriates United States property, or imposes measures having the effect of expropriation, without providing “speedy compensation for such property in convertible foreign exchange, equivalent to the full value thereof.” 77 Stat. 379, 386 (1963), as amended, 22 U.S.C.A. § 2370(e)(1) (Supp. 1967).

34. *See* testimony of Richard D. Kearney, Deputy Legal Adviser of the Department



While the Commission did not submit a final report to the President determining which claims were valid and the total amounts of such claims, documents and materials of the Commission, including the evidence submitted to it in support of all the claims, were transferred to the State Department and thereby made available to the United States Agent.

Presettlement adjudication of the claims by the Commission may very well have influenced the renewal of negotiations with Canada. The determination of the United States Government to settle these claims, as evidenced by enactment of the Lake Ontario Claims bill, clearly demonstrated that the claims were not being abandoned despite prior fruitless efforts.

The 1965 agreement with Canada which provided for international arbitration of the claims assures claimants that payment will be made on any awards that may be issued. No such assurance existed under the Commission's Lake Ontario Program.<sup>35</sup> Whereas a determination by the Foreign Claims Settlement Commission that the damage was attributable, even in part, to the construction or operation of the dam by Canada would not have been binding on the Canadian Government, the United States and Canada have agreed to accept the decisions of the Tribunal as "final and binding."<sup>36</sup>

Apart from its specific consequences in the Lake Ontario Program, several benefits are likely to result from presettlement adjudication.<sup>37</sup> From an administrative standpoint, it has been observed that presettlement adjudication alleviates the burdens of adjudication by making possible the early production and consequent preservation of evidence.<sup>38</sup> Equally important is the fact that

of State, in *Hearings Before a Subcommittee of the House Committee on Appropriations*, 89th Cong., 2d Sess. 730, 745 (1966).

35. "[T]he previous legislation under which the Foreign Claims Settlement Commission was considering the claims would have resulted merely in findings by the Foreign Claims Settlement Commission as to the amount of the claims and would not have imposed any obligations upon the Canadians to make payment thereon. The Canadian Government agreed to undergo a liability to pay the claims only if an international tribunal were established which would find that they were liable and find the amount of the claim." Statement of Richard D. Kearney, Deputy Legal Adviser of the Department of State, in *Hearings Before a Subcommittee of the House Committee on Appropriations*, 90th Cong., 1st Sess. 539 (1967).

36. Agreement, art. XII(4), 17 U.S.T. at 1573. "The decisions of the majority of the members of the Tribunal shall be the decisions of the Tribunal and shall be accepted as final and binding by the two Governments."

37. The Rumanian Claims Agreement of 1960, 11 U.S.T. 317, T.I.A.S. No. 4451 (1960), has been described as an instance where adjudication preceded a settlement of United States claims. See Graving, *Stockholder Claims Against Cuba*, 48 A.B.A.J. 335, 337 (1962). While the FCSC adjudicated claims involving Rumania and other Balkan countries, it should be noted that the adjudication was not in anticipation of any future settlement with those countries. Rather, the adjudication was pursuant to Congressional authorization for payment of claims from assets of their governments blocked by the United States during World War II. See International Claims Settlement Act of 1949, tits. II, III, 69 Stat. 562 (1955), 22 U.S.C. §§ 1631-41q (1964). Since the Rumanian claims were not paid in full under Title III and therefore not discharged, additional sums have been authorized to be paid thereon under the 1960 agreement with Rumania. See 23 FCSC Semi ann. Rep. 5 (July-Dec. 1965).

38. From its experience the FCSC has learned that long delays in the initiation of claims programs make it difficult to substantiate claims. In a final report on the Lake Ontario Program it was observed that several years had already elapsed since the losses were incurred and that "claimants were reluctant because of the cost involved to engage professional

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the presentation of such claims is likely to be made by those who have suffered the losses and have knowledge of the facts rather than by their survivors. Although this may offer little satisfaction to claimants in the absence of present payment, presettlement adjudication, nevertheless, makes possible a determination by a quasi-judicial body that their claims are valid and that the loss suffered by them is in a specific amount.<sup>39</sup>

### V. CONCLUSION

Following the Lake Ontario Program, Congress enacted the Cuban Claims Act of 1964 which authorized the presettlement adjudication of American claims against Cuba.<sup>40</sup> In 1966, the Act was amended to include claims against Communist China.<sup>41</sup> American citizens whose properties in Cuba and Communist China have been confiscated were not compensated for their losses.<sup>42</sup> Since Congress authorized presettlement adjudication of Cuban and Chinese claims, no provision was made for their payment.<sup>43</sup>

The determination of the validity and amount of such claims by the Foreign Claims Settlement Commission was described to be "in the best interests of all concerned" and the only orderly procedure available to liquidate the damage sustained. It has been stated that the Commission's findings in its Cuban and

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appraisers to estimate [their] losses." Re, *The Foreign Claims Settlement Commission and the Lake Ontario Claims Program*, 4 Int'l Leg. Mat. 468, 475 (1965).

39. Although it was estimated that as many as 1,000 property owners sustained damage, only 542 claims were filed with the FCSC. *Id.* at 473. It must be added that experience has demonstrated that of all the claims filed under the International Claims Settlement Act of 1949, as amended, more than half have not resulted in awards. Re, *The Presettlement Adjudication of International Claims*, in *International Arbitration: Liber Amicorum* for Martin Domke 214 (P. Sanders ed. 1967).

40. An act to amend the International Claims Settlement Act of 1949 to provide for the determination of the amounts of claims of nationals of the United States against the Government of Cuba, Public L. 88-666, 78 Stat. 1110, 22 U.S.C. §§ 1643-43k (1964), as amended, 79 Stat. 988 (1965), 22 U.S.C. §§ 1643-43j (Supp. I 1965). The Cuban Claims Act added Title V to the International Claims Settlement Act of 1949. For an analysis of the basic provisions of the Cuban Claims Act, see Re, *The Foreign Claims Settlement Commission and the Cuban Claims Program*, 1 Int'l Law. 81 (1966).

41. An act to amend Title V of the International Claims Settlement Act of 1949 to provide for the determination of the amounts of claims of nationals of the United States against the Chinese Communist regime, Public L. 89-780, 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643-43i (Supp. II 1965-66). As in the case of Cuban claims, the function of the Commission is to certify to each claimant and to the Secretary of State the amount determined to be the loss or damage suffered by the claimant. See tit. V, § 507(a), 78 Stat. 1112, 22 U.S.C. § 1643f(a) (1964).

42. It should be noted that in addition to claims for property taken or for debts for merchandise furnished or services rendered, Title V conferred jurisdiction upon the FCSC with respect to claims for disability or death of United States nationals arising out of violations of international law by the Government of Cuba, or the Chinese Communist regime. See *id.* tit. V, § 501, as amended, 79 Stat. 988 (1965), as amended, 80 Stat. 1365 (1966), 22 U.S.C. §§ 1643-43i (Supp. II 1965-66).

43. Title V specifically precludes any authorization for payment of the claims adjudicated thereunder. See *Hearings Before the Subcomm. on the Far East and the Pacific of the House Comm. on Foreign Affairs*, 89th Cong., 2d Sess. 10 (1966) (statement of Edward D. Re, Chrmn., FCSC). The function of the FCSC is therefore limited to adjudication as in the case of the Lake Ontario Program.

Chinese claims programs will provide a more constructive basis for future negotiations with those countries.<sup>44</sup>

The United States-Canadian Agreement of 1965 resolves a class of outstanding claims of American nationals.<sup>45</sup> It is hoped that the presettlement adjudication technique briefly described herein may help resolve other outstanding classes of claims in the best interests of all claimants. It is also hoped that it may thereby promote international cooperation and understanding.

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44. See remarks of President Johnson upon signing the Cuban Claims Act into law, 51 Dep't State Bull. 674 (1964). See also *Hearings Before the Subcomm. on the Far East and the Pacific of the House Comm. on Foreign Affairs*, 89th Cong., 2d Sess. 6 (1966).

45. At the first meeting of the Lake Ontario Claims Tribunal on January 11, 1967, the Agreement was described as an example of governmental concern "for the just settlement of claims of individual citizens who allege damages as a result of governmental action." It was also referred to as another demonstration of the basic character of the relations between the United States and Canada in their "devotion to the pacific settlement of disputes." 19 External Affairs 90-94 (1967).