

ARTICLE II of the Agreement sets out the jurisdiction of the Tribunal:

1. The Tribunal shall have jurisdiction to hear and decide in a final fashion each claim presented to it in accordance with the terms of this Agreement. Each decision of the Tribunal shall be based on its determination of *any one or more* of the following questions on the basis of the legal principles set forth in this Article:
 - (a) Was the construction and maintenance of Gut Dam the proximate cause of damage or detriment to the property that is the subject of such claim?
 - (b) If the construction and maintenance of Gut Dam was the proximate cause of damage or detriment to such property, what was the nature and extent of damage caused?
 - (c) Does there exist any legal liability to pay compensation for any damage or detriment caused by the construction and maintenance of Gut Dam to such property?
 - (d) If there exists a legal liability to pay compensation for any damage or detriment caused by the construction and maintenance of Gut Dam to such property, what is the nature and extent of such damage and what amount of compensation in terms of United States dollars should be paid therefor and by whom?

The final words cited, "and by whom," indicate a further concession by the United States. The Tribunal is to have jurisdiction to determine what, if any, responsibility the United States must bear for any loss that is found attributable to the Dam.²⁹

One can foresee for the Tribunal some difficult decisions on the question of causation. The Joint Reference to the I.J.C. in 1952 of the question of high-water levels in Lake Ontario has been referred to above. The final report of the International Lake Ontario Board of Engineers³⁰ emphasized the great importance of natural factors such as precipitation, evaporation, wave action, barometric pressure and ice retardation on the variation in levels. In addition the Engineers pointed out that there were three other non-natural factors besides the Gut Dam which, in conjunction with crustal movement (that is observed rising in the earth's crust at the mouth of the Lake) contributed to an elevation of the Lake level by 1.21 feet between 1903-4 and 1962. These are the regulation of Lake Superior, changes in the Chicago water diversion, and diversion of the Long Lac watershed into Lake Superior. These three are all posterior in time to the Gut Dam and

²⁹ Lillich, "The Gut Dam Claims Agreement with Canada," pp. 892-8.

³⁰ *Water Levels of Lake Ontario. Final Report to International Joint Commission, International Lake Ontario Board of Engineers, December 1959.*