with power to determine the claims of American citizens arising out of foreign relations. This action faced Canada with an unpleasant choice: Canada could either not oppose the claims as they were presented to the Commission and thereby be subject to a unilateral finding by a foreign tribunal; or having to accept the jurisdiction of a foreign tribunal, an action which, in relation to the courts, Canada had already refused to do.

What was perhaps an even more fundamental motivation on the Canadian Government was an assessment of Canada's position in this controversy in relation to her customary posture in international relations. An outstanding claim would of course be an irritant in Canadian-American relations, although its importance should not be over-emphasized. While the controversy had been outstanding for over a decade, it had not been an evident source of bad relations. But a more fundamental challenge for Canada lay behind the American claim to litigate the dispute. Ever since her emergence as a sovereign nation (which coincides with the establishment of the Permanent Court of International Justice) Canada has been a firm, some might even say a tiresome, advocate of resort to judicial process for settling international disputes. Canada's was one of the earliest and most unequivocal submissions to jurisdiction of the International Court.[24] In the face of that, how could it be said that we should not agree to adjudication of this dispute? We may indeed regard the claims as frivolous, as over-valued, as without any basis in law, but why then not seek confirmation of our position by an arbitral tribunal? In the light of successive statements by Secretaries of State for External Affairs[25] in favour of establishing the rule of law in international relations, Canada could hardly avoid practising what she had preached. In the face of those considerations, a supra-national arbitration remained the best solution.

The American Executive indicated that it was in favour of the settlement of the question by an international arbitral tribunal in lieu of the decision by the Foreign Claims Settlement Commission, and after negotiations between the two countries, an agreement dated March 25, 1965,[26] was entered into by which the Lake Ontario Claims Tribunal -- United States and Canada -- was established.

The Tribunal is to be made up of three members, one appointed by each of the two states, and the third by agreement between them or, failing such agreement, by the President of the International Court of Justice.[27] The decision of the Tribunal is to be by majority vote, each of the three members having one vote.[28]

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[24]Instrument of ratification deposited on July 28, 1930. See *International Court of Justice Yearbook 1963-64*, pp. 221-2.

[25]See the speech by the Hon. Paul Martin to the Toronto Branch of the International Law Association, October 14, 1964, in *External Affairs*, Vol. XVI, No. 12, December 1964, pp. 586-96, referred to in footnote 13, *supra*.

[26]Cited in footnote 15, *supra*.

[27]Article I.2.

[28]Article I.3.