

benefit from the development, by groups interested in international law, of techniques, both bilateral and multilateral, for adjusting amicably the competing interests and divergent philosophies of different nations.¹⁴

While Canada has been an international claimant pressing the claims of individual Canadians who have had property taken in the particular Eastern European countries with whom agreements have been negotiated, Canada has also been the respondent to international claims and is being pressed by a foreign government on behalf of its nationals in respect of damages claimed for Canadian government action. The case in question is that with respect to the Gut Dam which, in the past year, has been the subject of an arbitral agreement between the United States and Canada.¹⁵

The Gut Dam was erected in the years 1903-1904 by the Government of Canada in the St. Lawrence River about ten miles downstream from Prescott, Ontario. The purpose of the Dam was to assist navigation in the Canadian channel, and since one end of the Dam was to rest on American territory, its construction was the subject of negotiations between Canada and the United States. Strictly speaking, there is no single document which can be referred to as the Gut Dam Agreement. Rather the arrangements for construction of the Dam were the subject of some considerable correspondence between Ministers of the Canadian Government, the British Ambassador in Washington acting on behalf of Canada, and members of the United States Executive, and more particularly, Mr. Elihu Root, the Secretary of State, all of which is, for simplicity, referred to as the Gut Dam Agreement.¹⁶ The Dam was duly constructed, and, for a period of nearly fifty years, it remained as a facility improving navigation, free from notoriety and almost free from public notice.

In the years 1951 and 1952, however, extreme high-water conditions were experienced on Lake Ontario with consequent damage to properties on both sides of Lake Ontario, but more particularly on the southern, or American, shore. The residents on the south shore were particularly vociferous in their claims that the Government of Canada, in its construction of the Gut Dam, had been the author of their troubles. Having formed a protective association, they backed up their words by commencing action first against the United States and then subsequently against Canada in the U.S. Federal Courts. The action against Canada was commenced in the District Court for the Northern District

¹⁴ Cf. Edward G. Lee, "Proposals for the Alleviation of the Effects of Foreign Expropriatory Decrees upon International Investments," in *Canadian Bar Review*, Vol. 36, No. 3, September 1958, pp. 351-9.

¹⁵ Agreement between the Government of Canada and the Government of the United States of America concerning the Establishment of an International Arbitral Tribunal to Dispose of United States Claims relating to Gut Dam, signed at Ottawa, March 25, 1965; not yet ratified. And see in this connection, Richard B. Lillich, "The Gut Dam Claims Agreement with Canada," in *American Journal of International Law*, Vol. 59, No. 4, October 1965, pp. 892-8.

¹⁶ British Ambassador's Note No. 336 to United States Government of 8 November, 1900, and British Ambassador's Note of March 28, 1903, to United States Government. Instruments of Approval dated August 18, 1903, and October 10, 1904, signed by the Secretary of War, Mr. Elihu Root.