

No. 8802

**UNITED STATES OF AMERICA
and
CANADA**

Agreement concerning the establishment of an International Arbitral Tribunal to dispose of United States claims relating to Gut Dam. Signed at Ottawa, on 25 March 1965

Official text: English.

Registered by the United States of America on 18 October 1967.

**ÉTATS-UNIS D'AMÉRIQUE
et
CANADA**

Accord concernant la création d'un tribunal international d'arbitrage chargé de régler les réclamations des États-Unis relatives au barrage Gut. Signé à Ottawa, le 25 mars 1965

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 18 octobre 1967.

No. 8802. AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA CONCERNING THE ESTABLISHMENT OF AN INTERNATIONAL ARBITRAL TRIBUNAL TO DISPOSE OF UNITED STATES CLAIMS RELATING TO GUT DAM. SIGNED AT OTTAWA, ON 25 MARCH 1965

The Government of the United States of America and
The Government of Canada,

Considering that claims have been made by nationals of the United States of America against the Government of Canada alleging that their property in the United States has suffered damage or detriment as a result of high water levels in Lake Ontario or the St. Lawrence River;

Considering that these claimants have alleged further that the damage or detriment was attributable in whole or in part to the construction and maintenance of a dam in the international section of the St. Lawrence River known as and hereinafter referred to as "Gut Dam" and have claimed compensation for such damage or detriment from the Government of Canada; and

Considering that in the special circumstances associated with these claims the need arises to establish an international arbitral tribunal to hear and dispose of these claims in a final fashion,

Have agreed as follows:

Article I

1. An international arbitral tribunal, which shall be known as the Lake Ontario Claims Tribunal United States and Canada, hereinafter referred to as "the Tribunal", is hereby established for the purpose of hearing and finally disposing of claims of nationals of the United States of America including juridical persons that are presented to the Tribunal in accordance with the terms of this Agreement.

¹ Came into force on 11 October 1966, the date of the exchange of the instruments of ratification at Washington, in accordance with article XVI.

2. The Tribunal shall consist of the Chairman and two national members. One national member shall be appointed by the Government of the United States of America within two months after this Agreement enters into force; the other national member shall be appointed by the Government of Canada within the same period; a third member, who shall preside over the Tribunal as Chairman, shall be designated jointly by the two Governments within three months after this Agreement enters into force. If the third member has not been designated within three months after this Agreement enters into force, either Party to this Agreement may request the President of the International Court of Justice to designate such third member. In the event of the inability of any member of the Tribunal to serve, or in the event of a member failing to act as such, his successor shall be chosen in accordance with the same procedure and within the same time limits provided herein for the selection of his predecessor.

3. Each member of the Tribunal shall have one vote. Every decision of the Tribunal shall be reached by a majority vote and shall constitute a full and final determination of the subject matter of the decision.

4. Each member of the Tribunal shall be a judge or a lawyer competent to hold high judicial office in his national State. No member prior to his appointment shall have been associated directly or indirectly with any matter relating to this Agreement.

5. Each member of the Tribunal, before entering upon his duties, shall make and subscribe to a solemn declaration before the Joint Secretaries of the Tribunal stating that he will carefully and impartially examine and decide according to his best judgment and in accordance with the provisions of this Agreement all matters presented for his decision. A duplicate of every such declaration shall be filed with each of the Joint Secretaries of the Tribunal.

Article II

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 exist 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?
2. The Tribunal shall determine any legal liability issue arising under paragraph 1 of this Article in accordance with the following provisions:
- (a) The Tribunal shall apply the substantive law in force in Canada and in the United States of America (exclusive, however, of any laws limiting the time within which any legal suit with respect to any claim is required to be instituted) to all the facts and circumstances surrounding the construction and maintenance of Gut Dam including all the documents passing between Governments concerning the construction of the dam and other relevant documents.
 - (b) In this Article the law in force in Canada and the United States of America respectively includes international law.
 - (c) No claim shall be disallowed or rejected by the Tribunal through the application of the general principle of international law that legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.
3. 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.
4. The Tribunal shall not have jurisdiction over any claim presented under this Agreement unless the claim is accompanied by an undertaking, signed by the claimant in a form that is valid and binding under Canadian and United States law on any such claimant and his successors and assigns and indicating that he
- (a) accepts the decision of the Tribunal as final and binding with respect to the matters to which it relates, and
 - (b) waives any right he may have to proceed against the Government of Canada otherwise than in a manner consistent with the terms of this Agreement.