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Introduction

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INTRODUCTION*

The settlement of international claims is one area of international law where the rights of individuals are affected frequently, since these claims generally are based upon private grievances against a foreign country, *e.g.*, claims by United States nationals against Cuba for the taking of their property without compensation. Since there is no international judicial system to adjudicate these claims, they have been handled traditionally by diplomatic negotiations or by special ad hoc international claims commissions. The vast number of claims occasioned by World War II and various postwar nationalization programs, coupled with the unwillingness of many countries to have these claims submitted to third party adjudication, have combined to render these traditional methods of settlement inadequate for today's needs.

Instead of being handled by these old techniques, at least ninety-five percent of international claims since World War II have been determined by the lump sum settlement-national claims commission device. According to the former Chairman of the Foreign Claims Settlement Commission, the national commission established by the United States to adjudicate claims following its lump sum settlements, "a 'lump sum,' 'en bloc,' or 'global' settlement involves an agreement, arrived at by diplomatic negotiation between governments, to settle outstanding international claims by the payment of a given sum without resorting to international adjudication. Such a settlement permits the state receiving the lump sum to distribute the fund thus acquired among claimants who may be entitled thereto pursuant to domestic procedure."¹ While it is possible to quibble with portions of this definition, it is a useful working one, especially since it clearly differentiates between the two phases of the lump sum settlement technique: the settlement process and the adjudica-

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1. *Re, Domestic Adjudication and Lump-Sum Settlement as an Enforcement Technique*, 58 A.S.I.L. PROCEEDINGS 39, 40 (1964).

tion process.²

Recently a substantial body of literature has sprung up concerning the adjudication of claims by national claims commissions³ but, with the exception of a short monograph by Litmans on the lump sum settlements of the United States⁴ and sections in the standard works on nationalization by Foighel⁵ and White,⁶ little attention has been given to the settlement agreements themselves.⁷ Writers from the developing countries who reject the law of international claims,⁸ along with their colleagues in the West who question its continued relevance to present day conditions,⁹ overlook the important role played by such agreements in its formulation and concentrate exclusively on how their postwar use supposedly undercuts the just compensation rule.¹⁰ While there is no doubt, as White observes, that "the post-war compensation agreements constitute a valuable potential source of customary international law relating to that question,"¹¹ the importance of studying the whole flow of lump sum settlements and their effect on other areas of the law of international claims can no longer be ignored.¹²

In 1966, with the aid of a grant from the Ford Foundation, the Procedural Aspects of International Law Institute established a research

2. *Id.* Despite its inclusive title, Re's article ignores the settlement process and concentrates instead on the "Domestic Adjudication of International Claims by the Foreign Claims Settlement Commission." *Id.* at 41.

3. See, e.g., R. LILICH, *INTERNATIONAL CLAIMS: THEIR ADJUDICATION BY NATIONAL COMMISSIONS* (1962). See also R. LILICH, *INTERNATIONAL CLAIMS: POSTWAR BRITISH PRACTICE* (1967). A bibliography of postwar literature in the United States and Great Britain may be found in Lillich, *International Claims: A Comparative Study of American and British Practice*, 39 IND. L.J. 465, 466 n.15 (1964), updated in Lillich, *International Claims Practice*, in *THIS FIRE-PROOF HOUSE: CANADIANS SPEAK OUT ABOUT LAW AND ORDER IN THE INTERNATIONAL COMMUNITY* 112 n.58 (Head ed. 1967).

4. M. LITMANS, *THE INTERNATIONAL LUMP-SUM SETTLEMENTS OF THE UNITED STATES* (1962). It is unfortunate that this pioneering and provocative monograph has gone virtually unnoticed.

5. See I. FOIGHEL, *NATIONALIZATION AND COMPENSATION* 207-14 (1964).

6. See G. WHITE, *NATIONALISATION OF FOREIGN PROPERTY* 206-26 (1961).

7. Still less attention has been paid to the larger process of settlement against which the actual agreements must be read. For discussion of this problem in the context of evaluating the effect of lump-sum settlements on the international law requirement of just compensation, see Dawson & Weston, *Prompt, Adequate and Effective: A Universal Standard of Compensation?*, 30 *FORDHAM L. REV.* 727, 752-53 (1962).

8. See, e.g., Roy, *Is the Law of Responsibility of States for Injuries to Aliens a Part of Universal International Law?*, 55 *A.J.I.L.* 863 (1961).

9. See, e.g., Falk, *Historical Tendencies, Modernizing and Revolutionary Nations, and the International Legal Order*, 8 *HOW. L.J.* 128 (1962).

10. See, e.g., Amador, *(Fourth) Report on State Responsibility*, [1959] 2 *Y.B. INT'L L. COMM'N* 21-22, U.N. Doc. A/CN. 4/119 (1959).

11. G. WHITE, *supra* note 6, at 183.

12. For an early plea for such a study, see Fatouros, *Book Review*, 41 *CAN. B. REV.* 306, 310 (1963). See also Lillich, *Toward the Formulation of an Acceptable Body of Law Concerning State Responsibility*, 16 *SYRACUSE L. REV.* 721, 735-36 (1965).

project on International Procedures to Protect Private Rights. Of the three topics being studied under this research project, the one on lump sum settlements really gets underway with the publication of the three articles in this Symposium.¹³ In "Eligible Claimants Under Lump Sum Settlement Agreements," Professor Lillich, drawing on his prior studies of American and British postwar practice, examines the provisions in over forty agreements on the threshold question of whom they permit to claim. "Postwar French Foreign Claims Practice: Adjudication by National Commissions—An Introductory Note," by Professor Weston, is the first attempt by any scholar to collect and analyze the law of France in this regard. Finally, in "Economic Observations on Lump Sum Settlement Agreements," Professor Mintz, an economist, provides another dimension by which the importance of these agreements and their effect on international law and relations can be judged.

This Symposium, then, represents the first of several studies on this subject prepared for publication by the Procedural Aspects of International Law Institute. The editors of the *Indiana Law Journal* present it to the profession, hoping that it not only helps to clarify the law in this neglected area but also stimulates further debate on its many significant and controversial aspects.

13. For a paper outlining the project and discussing the effect of such settlements on the compensation question, see Lillich, *International Claims: Their Settlement by Lump Sum Agreements*, in *INTERNATIONAL ARBITRATION LIBER AMICORUM FOR MARTIN DOMKE* 143 (Sanders ed. 1967).