



Memo Genl

January 11, 1994

Mr. E. Cooper Brown
6935 Laurel Avenue
Takoma Park, MD 20912

Dear Mr. Brown:

Thank you for your letter of November 8, 1993, enclosing a petition for the referral to the Foreign Claims Settlement Commission of claims for Mexico's alleged violations of international law. The alleged violations relate to property claims against the United States by Mexican nationals and their descendants that were settled in the Convention for the Adjustment and Settlement of Certain Outstanding Claims, signed at Washington November 19, 1941, entered into force April 2, 1942 ("the 1941 Convention").

As noted in your petition, the claimants in question are all "heirs and successors in interest to Mexican nationals" whose lands were allegedly illegally expropriated by the United States or its agents in the 19th century. As you know, these land claims were espoused by the Government of Mexico against the United States and were fully and finally settled in the 1941 Convention.

Under international law and longstanding practice, the United States may only present to another government the claim of one of its nationals if several requirements have been satisfied. First, the claim must be continuously owned, from the time the claim arises, by a United States national. Second, the claimant must exhaust all available legal remedies in the country against which the claim is brought. Third, the act complained of must constitute a violation of international norms of state responsibility attributable to the government of the country.

These requirements are not satisfied in this case. First, although the descendants of the original claimants may now be United States citizens, all these claims were originally claims of Mexican nationals. Although you have argued that the settlement of the claims by Mexico in 1941 constitutes a separate taking, the underlying claims themselves arose at the time of the initial alleged taking. As such, the international law requirement that a claim be continuously owned by a United States national before the United States Government may present it to another country has not been, and cannot be, met in these land grant cases. Second, although you have referred in the

petition to "extensive negotiations" and the presentation to the Mexican Government of a petition and certain documentation, it does not appear that the claimants have exhausted available legal remedies in Mexico. There is no evidence, for instance, that you have filed any legal action in Mexican courts and pursued it through the Mexican legal system.

Finally, contrary to the central premise of your petition, Mexico's failure to pay compensation for claims settled by it under the 1941 Convention does not constitute a violation of that Convention. As the enclosed memorandum notes, and as the United States has consistently explained, the 1941 Convention did not obligate either country to compensate the original owners of the claims. Any such obligation as might exist would arise under domestic law. While under no international legal obligation to do so, the United States enacted legislation under which the original owners of the claims asserted by the United States were compensated for their losses. Mexico did not choose to do the same. However, as the 1941 Convention does not create an obligation to compensate the original owners of the claims, it cannot be said that Mexico has failed to live up to its obligations under that treaty.

Insofar as there appears to be no basis for the United States Government to present these claims against the Government of Mexico, it would not be appropriate to refer them to the Foreign Claims Settlement Commission.

I regret that we cannot be more helpful.

Sincerely,



Ronald J. Bettauer
Assistant Legal Adviser for
International Claims and
Investment Disputes