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CONTINUITY AND CHANGE IN U.S.-MEXICO
LAND AND WATER RELATIONS: THE POLITICS OF THE
INTERNATIONAL BOUNDARY AND WATER COMMISSION

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ABSTRACT

Continuity and Change in U.S.-Mexico Land and Water Relations:
The Politics of the International Boundary and Water Commission

This paper examines the politics of the International Boundary and Water Commission, United States and Mexico (IBWC), focusing on the Commission's work in the post-1944 period. The study shows how the Commission has managed problems within its jurisdiction, the elements of its institutional stability, and how it has been affected by changing circumstances.

The basis of the Commission's success is attributable to both its formal treaty powers and a range of informal practices adopted pragmatically to serve the IBWC's needs in the borderlands. The combination of these formal and informal elements is evident in the main features of the Commission's diplomacy which stress its exclusive jurisdiction, brokerage functions, emphasis on technical expertise, pigeonholing of political issues, and ad hoc agenda.

While these features of its diplomacy remain unaltered, the Commission's agenda and institutional context have changed over the last decade. Jurisdictional expansion, inclusion of more interests and actors, greater emphasis on the political as opposed to the technical aspects of diplomacy, and a modestly more comprehensive approach to land and water problems mark the Commission's evolution.

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Introduction

In view of the attention lavished upon such contemporary U.S.-Mexican issues as energy and migration, it is easy to forget that some of the oldest problems in our common relations remain with us. Fundamental to the relations of contiguous states are problems of territoriality and shared waters. It is informative, then, that land and water questions tend to occupy the backstage and not the proscenium of U.S.-Mexican contention.

This bilateral accomplishment is a function of the most successful institutional arrangement in U.S.-Mexican relations, and one of the least known: the International Boundary and Water Commission, United States and Mexico (IBWC). From the twin cities of El Paso-Juárez, the national sections of this commission (the International Boundary and Water Commission, U.S. Section, and the Comisión Internacional de Límites y Aguas, CILA) jointly manage the international boundary and those waterways forming or crossing the border. Preceded by various ad hoc commissions in the 19th century, the Commission played a central role in reconciling the most potentially divisive issues in U.S.-Mexican affairs, without fanfare. It has been instrumental in negotiation of 6 major treaties and 262 subsidiary agreements, and is the principal agent charged with implementing these mandates. So successful has been the work of the Commission that it has been touted as the model for U.S.-Mexican relations, a paradigm for international water cooperation, the quintessential element in what used to be called "the special relationship." Speaking of the post-1944 record, Amistead I. Seldon, chairman of the House Foreign Relations subcommittee on Latin America states:

Americans and Mexicans can be justly proud. Throughout history two questions have persistently troubled relations between the neighbor states--territorial disputes and questions of water rights. We have had our share of problems on this nearly 2,000-mile boundary. But for several decades now, our record on both these potentially explosive issues has been successful.¹

Yet the Commission's success is problematical. How, for instance, has the Commission managed the numerous questions arising within its jurisdiction? What are the elements of the Commission's institutional stability? How has the Commission been affected by changing circumstances along the border and in bilateral affairs?

This paper seeks to examine these questions. In this undertaking, the paper will focus primarily on the post-1944 period, for three reasons. First, the preceding period of the Commission's work has been thoroughly examined by Charles A. Timm, whose study is still the standard source, if now badly dated. Second, the Commission's modern post-1944 history has been neglected by the scholarly community. And third, substantial changes in the context of the Commission's work have taken place since 1944 and deserve study.

The International Boundary and Water Commission:
A Historical Perspective, 1889-1944

It is proper to periodize the Commission's evolution in four distinct phases: those of the ad hoc commissions (1848-1888), early institutionalization (1889-1932), institutional transition (1933-1944), and the modern phase (1945 to present). Although it is impossible to adequately survey the earlier history of the Commission here, some background is necessary in order to understand the present basis of the Commission's activities.

Binational coordination with respect to the U.S.-Mexican boundary first became a significant concern following the Mexican-American war. While boundary contention preceded this event, accounting for the war itself, the massive territorial cession entailed by the Treaty of Guadalupe Hidalgo (1848) and Mesilla Valley bargain (1853) spurred U.S. interest in the fixing of the fluvial and land boundary. Determined to secure its northern territories from further flexings of manifest destiny, Mexico too saw the utility of fixing the boundary. Three ad hoc commissions were formed between 1848 and 1888, the first two respectively to demarcate the boundary subsequent to the two above-mentioned treaties, the third to implement the relocation of the land boundary pursuant to the Convention of 1882.

The second, institutional, phase of the Commission's development commenced with the Convention of 1889, which recognized developments along the international boundary and formally specified that an international body be constituted on a permanent basis to oversee the bilateral agreements. The International Boundary Commission (IBC) created by that treaty was empowered to consult, investigate, and determine a solution to problems arising under previous treaties, subject to the concurrence of the two governments. During its early years, the newly formed IBC was, according to Timm, principally occupied with "the marking of bancos [segments of land detached from one or the other nation's domain by accretive or avulsive changes in the course of the Rio Grande or Colorado rivers], the preparation of data and arguments for the negotiation of the banco elimination treaty of 1905, the elimination of some 75 bancos under the treaty, and the study of the problem of equitable apportionment of water in the El Paso-Juarez Valley."² Two major treaties--the 1905 Treaty on banco elimination and the 1906 Convention apportioning waters on the upper reach of the Rio Grande--were among the Commission's accomplishments during this period.

Interrupted by the revolutionary decade in Mexico, the work of the Commission was fully resumed by 1923. Thereafter, the powers and functions

of the Commission were steadily enhanced. In addition to the surveying of bancos and rivers, the IBC undertook preliminary studies for channel rectification along the Rio Grande. In 1924, the two governments established the International Waters Commission (IWC) to implement provisions of the Treaty of 1906 and to attempt to negotiate the apportionment of the waters of the lower Rio Grande and Colorado River. After these discussions proved fruitless, the functions of the IWC were transferred to the IBC, further augmenting the powers of the Commission.

While the functions of the U.S.-Mexican IWC and IBC were not fully merged until 1941--with the transfer of the functions of the Mexican section of the IWC to IBC--the period after 1932 saw the rapid development of the Commission. A major treaty concerning the rectification of the channel of the lower Rio Grande was concluded in 1933. This was followed in the U.S. by enabling legislation reinforcing the powers of the U.S. Section in the sphere of water management. Most importantly, however, the Commission played a major role in the negotiations leading to the 1944 Waters Treaty apportioning the waters of the lower Rio Grande and the Colorado River. This treaty further enlarged the powers of the Commission, extending the powers of the U.S. Section to the full Commission and granting each Commissioner ambassadorial status. The 1944 treaty functions as the IBWC's fundamental charter.

Since 1944 the Commission has continued to expand its functions and jurisdiction. Among its many accomplishments in the modern period are two important bilateral treaties: the 1963 Convention on the Chamizal, and the 1970 Boundary Treaty. In addition, through its powers of formal agreement, the Commission has undertaken numerous projects pursuant to its treaty mandate. Fully 83 minutes have been adopted by the Commission, ratified, and implemented since the Commission attained its present form in 1945. Among the works undertaken have been the construction and maintenance of three major dams (and numerous levees), the operation of hydro-electric works, a number of extensive flood-control projects, a series of sanitation and sewage-disposal projects, and many special investigations and actions relating to matters brought to its attention.

Technique and Diplomacy: Engineering Border Solutions

The Commission's effectiveness is attributable to its unique approach to conflict management. As Smedresman observes, the IBWC has evolved in response to the special conditions of the boundary and waters in its custody.³ It is unlike either of the U.S.-Canadian Commissions in a number of fundamental respects and bears little resemblance to other international rivers commissions.

The Commission under the 1944 Water Treaty. Elementary to the way the Commission has managed boundary and water problems is a narrow construction of its functional mandate in the frontier zone. Article 2 of the 1944 treaty restricts the Commission's jurisdiction "to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and the works located upon their

common boundary, each Section of the Commission retaining jurisdiction over that part of the works located within the limits of its own country."⁴ This article, incorporating provisions of earlier treaties, lends the Commission special and exclusive status with respect to the boundary itself. Likewise, it serves as a limitation on the strictly domestic functions of the Commission.

The dual character of the Commission, indicated in the article above, is its most distinctive institutional feature. The Commission is constituted in two separate sections, each subject to the sovereign authority of its national government through its ministry of foreign relations. Each section is headed by a single Commissioner, who by treaty must be a licensed engineer. Each Commissioner and his staff, consisting of two principal engineers, a legal advisor, and a secretary, are accorded full diplomatic privileges, with the Commissioner holding ambassadorial rank. The national sections each retain administrative authority over those aspects of the Commission's work exclusively located within their own territorial domain and over other functions of a strictly domestic nature which may be assigned to them by their own governments.

Nevertheless, the Commission approaches the functions and powers of a truly international agency. In its joint capacity, the Commission is empowered with an array of investigative, quasi-judicial, administrative, and operational functions. The 1944 treaty mandates the Commission to "initiate and carry on investigations and develop plans for the works which are to be constructed or established in accordance with the provisions of this and other treaties...." Further, with respect to investigation, it is charged "to furnish the information requested of the Commissioners jointly by the two governments on matters within their jurisdiction," and to "submit annually to a report to the two governments on matters in its charge."

Concerning judicial powers, the 1944 treaty provides the Commission with authority "to settle all differences that may arise between the two governments with respect to the interpretation and application of this treaty, subject to the approval of the two governments." In carrying out this mandate, the Commission may convene formal hearings, call and examine witnesses, and avail itself of the courts in both nations to enforce compliance with its judgments.

The administrative powers of the Commission are conveyed in Article 24 of the 1944 treaty, which requires the Commission "in general to exercise and discharge the specific powers and duties entrusted to the Commission by this and other treaties and to carry into execution and prevent the violation of the provisions of those treaties and agreements." As seen above, the national sections retain jurisdiction over works entirely within their own national limits even "if the works are used exclusively to fulfill provisions of the treaty." The Commission's joint administrative functions are limited to those works and functions physically international in nature. Included here are boundary demarcation, channel rectification, construction and maintenance of water storage, hydroelectric, sanitation and sewage facilities, and scheduling of water deliveries.

The jurisdiction and function of the Commission under the 1944 treaty have been supplemented by the two treaties and various of its formal minutes referred to previously. The Chamizal Convention gave the Commission powers to relocate human settlements and transfer specific properties adjudicated under that treaty, as well as providing for channel rectification and maintenance in the vicinity of the Chamizal tract. The 1970 Boundary Treaty further defined the Commission's authority with respect to the maritime boundary and other matters of technical importance, in addition to providing an adjudicatory formula for settling boundary disputes. Among the more important of recent minutes, Minute 242 expanded the functions of the Commission in the spheres of water quality and subterranean waters, while the more recent minute expands the Commission's powers in relation to the management of border sanitation problems.

The outlines of the Commission's approach to conflict management are perceptible within the brief sketch of its charter under the 1944 treaty above. The main elements consist of emphasis upon: (1) exclusive jurisdiction; (2) brokerage; (3) technical expertise; (4) pigeonholing political issues, and (5) an ad hoc approach to diplomacy.

Exclusive Jurisdiction. Over time, the Commission has come to exercise a near monopoly in land and water affairs affecting the international boundary. Since 1944, it has become the clearinghouse for the articulation of boundary and water issues, a fact noted with pride as well as chagrin by officials. Its institutional preeminence is largely a function of the following conditions: (1) the mandate conferred by the 1944 treaty; (2) domestic institutional relations developed pursuant to that mandate, and (3) the Commission's ability to defend and expand its range of functions at both international and domestic levels in the post-1944 period.

Article 2 of the 1944 treaty makes the Commission the exclusive agent implementing the treaty's provisions. It states:

The application of the present Treaty, the regulation and exercise of the rights and obligations which the two governments assume thereunder, and the settlement of all disputes are hereby entrusted to the International Boundary Commission, which shall function in conformity with the powers and limitation set forth in this Treaty.

This exclusive role has been ratified in succeeding treaties and minutes agreed to by the two nations, providing only that the Commission should consult with other relevant agencies as necessary.

Institutionally, the Commission is separate from the U.S. Department of State and the Mexican Ministry of Foreign Relations. Its individual sections operate under the policy guidance of these executive bodies, yet function as independent agencies in other respects--the U.S. Section being the most independent in this regard. The independence the Commission enjoys provides it with a de facto role in policy-making and a strong hand in border affairs.

The degree to which the Commission actually shapes foreign policy, however, depends on definition. If "policy" is construed specifically as formal statute, the Commission's role is limited. Even here, however, the Commission has historically played a highly influential role in the development of actual treaty language. If "policy" is construed broadly to include both major influences on statute, quasi-formal acts of agreement pursuant to treaty language, and the numerous day-to-day acts of judgment involved in managing its multi-functional operations and an evolving range of issues along the border, the Commission is clearly the principal policy-shaping actor in this sphere.

An example of the Commission's discretionary space and functional independence may be found with respect to its powers of consultation and investigation. Unlike its northerly counterparts, the Commission has no formalized procedures for public consultation or input into the international aspects of its decisions. The Commission's usual procedure has been to consult on an ad hoc basis, seeking out those advices necessary to the performance of its functions. The Commission has acquired in some quarters an image of aloofness and indifference to local concerns, an image it strongly disavows.⁵

Further contributing to the exclusive jurisdiction it enjoys is the Commission's functional development in the post-1944 period. As seen above, the 1944 treaty grants the Commission a narrow but specific sphere of authority centering on the international boundary. This limitation on its jurisdiction has proven as much an asset as a handicap from an institution-building perspective and has abetted its development by providing a strong argument for a functional imperative. At the international level, the joint Commission has benefitted by the addition of functions mentioned previously in connection with the two treaties and official minutes since 1944. At the domestic level, the Commission's sections have been able to successfully augment and defend their prerogatives within the context of national administrative structures. There are, however, important differences between the United States and Mexico in this latter respect. Within the United States, a decentralized system of public administration and domestic politics has enabled the U.S. Section to expand its functions more fully in relation to other agencies than has been the case on the Mexican side. Although a number of federal agencies have jurisdictions which touch the work of the U.S. Section (e.g., Bureau of Reclamation, Army Corps of Engineers, Water Resources Council, Geological Survey, and Environmental Protection Agency, among others), the IBWC has been quite successful in fending off challenges to its authority and developing its domestic functions.

An example of this functional growth of the U.S. Section can be seen in the development of its construction capabilities. Since its early rechannelization activities in the 1930s, the IBWC has steadily augmented its in-house construction activities, reaching its zenith in size in the late 1950s during the period of its major reclamation activities on the Rio Grande. At its height, IBWC's total staff and personnel together numbered some 457 persons. This number has diminished to a present size of 298 but has nevertheless remained substantially larger than its Mexican

counterpart, which, lacking a construction division, has numbered fewer than 100 personnel for several decades. At various times, especially during the zealous administrative reformism of the Truman and Eisenhower years, the IBWC was challenged by critics who argued that its functions might well be performed by other agencies (principally mentioned were the Bureau of Reclamation and the Corps of Engineers, with whom the IBWC regularly consulted). Foreseeing the potential of interagency rivalry when the 1944 treaty was signed, the U.S. Section in 1945 signed a memorandum of understanding with one of these agencies, the Bureau of Reclamation. This document specified the IBWC's responsibilities for construction and maintenance along the international reach of the Rio Grande and Colorado River, committing IBWC to consult with the Bureau on all matters which might be deemed relevant to its concerns. Although the memorandum was not entirely successful in averting further conflicts, the U.S. Section was staunchly and effectively supported by the Department of State.⁶

An aspect of the U.S. Section's effectiveness in developing its functional domain is its intimate ties to the four border states. The development of river basins is a regional issue by nature, of special concern to those who stand to benefit directly from projects related to the development of the resources. Although the U.S. Section implements national interests, it is popularly viewed as a regional agency and does little to dispel this image--and in fact profits from it. The IBWC-U.S. tries to maintain close links with border states' governments and congressional delegations. It is something of an anomaly at the level of the U.S. Department of State since it has--in its own view--an effective constituency upon which it can draw support for its functions and projects. Since the Commission must go to Congress for funds with which to initiate new projects, these alliances are a crucial aspect of the domestic politics of the U.S. Section.

The Mexican situation is considerably different, due to the centralized and authoritarian policy process in that country. As in the case of the U.S. Section, CILA--the Mexican Section--has substantially augmented its powers and functions through the treaties and minutes of the Commission since 1944. It is exclusively responsible for the oversight and management of the Mexican part of the joint works undertaken by the Commission, and serves as the principal technical consultant for the Ministry of Foreign Relations.

The Mexican Section, however, exercises less policy independence than does the U.S. Section, for several reasons. As noted earlier, CILA lacks a construction division and hence is bereft of an operational element which lends the U.S. Section extra discretion and functional authority in relation to other agencies. CILA instead shares its responsibilities in the operational area with the influential Ministry of Agriculture and Water Resources (SARH), the Federal Electricity Commission (CFE), the Ministry of Health's sub-ministry for Environmental Improvement (SMA), and the Ministry of Human Development and Public Work (SAHOP). In addition, CILA exercises less policy independence within the Foreign Ministry. It is administratively situated within the Ministry's Office of International Boundaries and Waters and in this capacity is more circumscribed than the U.S. Section. As a technical agency, however, the advice of the Mexican

Section is highly respected in the higher councils of the Mexican government, and its advices seem frequently to be determinative.⁷ Finally, there is little evidence of CILA's cultivating a clientele or constituency in the border area. It appears more the case that the centralized nature of Mexican politics encourages vertical linkages within the Ministry of Foreign Relations and upper levels of the Mexican federal hierarchy as the significant elements in the alignment of support for the Mexican Section.

Brokerage. Another element stressed in the Commission's approach to conflict management is brokerage, including mediation, liaison, and consultative activities. The Commission, as previously shown, is enjoined to "initiate and carry on investigations," to "develop plans for works," and to "settle all differences that may arise between the two governments," among other pertinent provisions. As these brokerage functions are performed in practice, however, they depend upon a pattern of informal procedures and some anomalous structural properties of the Commission itself.

An important dimension of the Commission's brokerage role is its liaison and consultative activities, which are extensive and ongoing. In addition to the Commission's main offices in El Paso-Juárez, each Section maintains field offices located near the major zones of ongoing interest to the Commission. The field offices enable the Sections to be apprised of ongoing and new developments, and to monitor and troubleshoot problems as they come to the Commission's attention. The importance of these regular consultative activities is suggested by the Commissioners themselves:

The heads of the field offices of a Section maintain a constant and courteous exchange of information with the corresponding heads of the field offices of the other Section of the Commission, through reciprocal visits, telephone calls, and the joint conduct of inspections of different parts of the boundary. This practice allows the forwarding of timely information to their respective Commissioners concerning the initiation and evolution of the great majority of international questions, and on their own initiative to take prompt corrective measures in numerous matters.⁸

Operationally, both activities and proximity of the respective sections facilitate the implementation of the Commission's duties. Located only a couple of miles apart, the Commissioners and their staffs engage in numerous regular transactions, formal and informal. Ordinarily, the two Commissioners meet once a week to deal with routine matters, more frequently if extraordinary problems are concerned. The frequent interchange among personnel of each section fosters a pragmatic and intimate mode of operation, with corresponding norms of confidentiality, informality, and mutual access contributing to effective performance of its functions.

Further facilitating the brokerage role of the Commission are the diplomatic immunities of the Commission's staff, the longevity of tenure, and the similarity of the Commissioners' professional backgrounds. All three of these features are anomalies of the Commission itself. For

instance, the diplomatic status of the Commissioners and their staffs has no equivalent among U.S.-related international commissions. Given the cultural complexities of U.S.-Mexican relations, as well as the historical and symbolic importance of boundaries and waters, particularly in Mexico, it is no accident that these prerogatives were vigorously pursued during the negotiation of the 1944 treaty, or that they have greatly helped to preserve a sense of parity in this issue area between the Sections.⁹

In the same vein, the Commissioners' tenure is unique in both its political aspects and duration. Unlike the U.S.-Canadian International Joint Commission and International Boundary Commission, by comparison, the appointment of Commissioners has not been a patronage post subject to the vicissitudes of partisan politics. The 1944 treaty limited the post to a licensed engineer--who in practice must be familiar with soil mechanics and hydraulic engineering. The current Commissioners, however, have been recruited from within the Commission itself, highly unusual for commissions of this type. Moreover, Commissioners serve until retirement, making the post virtually a career appointment. The present U.S. Commissioner, Ambassador Joseph F. Friedkin, has been with the Commission for 40 years, 17 of those as Commissioner. The former Mexican Commissioner, Ambassador David Herrera Jordán, held the post for 32 years before his retirement in 1979. His successor, Joaquín C. Bustamante, has, like Friedkin, been with the Commission for his professional career--a total of 55 years.¹⁰

The effect of such longevity in office may be inferred from a statement by former Ambassador Herrera Jordán:

I understand Friedkin's English and he understands my Spanish...We have met so many times. On many matters it has been very difficult; we must work for the present and for the future. But our countries' relationships are improving constantly.¹¹

Not only do the Commissioners develop common bases of understanding, they also are able to put their own strong imprint on the operations of the Commission. With respect to the U.S. Section, for example, the fact that the Commissioner and his staff continue on while their policy superiors at the Department of State are regularly rotated adds considerably to the reputation and weight accorded the Commission at executive levels. A similar phenomenon obtains with respect to the Mexican section, where the Commissioner and staff survive the sexenio personnel turnovers in Mexican government.

Underlying the Commission's performance of its brokerage role is its self-image as the instrumental agent of policy authority--not its fundamental source. The Commission formally functions as the intermediary between, and consultant to, its member governments. The formal authority and informal structure of the Commission, however, insure that the Commission is involved in policy formation beyond the level of mere influence. The 1944 treaty provides that the Commission's formal agreements--minutes--

become executive agreements when ratified by their foreign ministries. If no formal action is taken within 30 days, such agreements are ratified automatically. As a rule, the Commission's minutes are automatically ratified; only the extraordinary case is given extensive scrutiny.¹² That this is the case reflects the careful groundwork and consultation of the Commission in advance, as well as its cautious interpretation of the limits of its own authority. As brokers, then, the Commissioners and their staffs are regularly involved in the policy process as it bears on their own jurisdiction.

Technical Expertise. A distinctive feature of the Commission's diplomacy is its preoccupation with ways to apply its engineering expertise to the solution of border problems. Over the years the Commission has earned and cultivated a reputation as a border "corps of engineers." Both sections are heavily weighted with technical staff; only two lawyers, for instance, are attached to the U.S. Section, which has more than 30 engineers including the Commissioner. This predominantly technical approach is further reflected in the Commission's own claims to having but a technical competence in relation to its respective governments. Commissioner Friedkin, for instance, describes the role of his Section to be that of "technical advisors to the Department of State."¹³ Although the national section must also represent its nation's best interests in development, this limited assessment of its own competence has generally strengthened the Commission's reputation for impartiality and contributed to the performance of its brokerage role. A close observer of the Commission, César Sepúlveda, states:

The Commission can suggest technical solutions--not contaminated by politics--to the governments. These are expert solutions that permit the leaders of each country to avoid complicated diplomatic and political pressures.¹⁴

This technical orientation is evident in the Commission's working agenda. In its selection of priorities as well as the rules it admits in evidence in a formal hearing, the Commission gives preference to technical data.¹⁵

The linkage between technical and political issues, however, may be so close as to be obscure. Underlying the Commission's technical approach are the very political bases of the 1944 treaty which provide for the apportionment of resources previously disputed and establish in the Commission the responsibility "to develop plans for works...; to estimate the costs of such works; and to recommend the division of such costs between the two governments." The apportionment of costs has been intimately tied to technical solutions in the form of dams, sanitation and wastewater works, desalinization plants, etc., which the Commission has historically preferred. Important to the pursuit of technical solutions, therefore, has been the Commission's informal understanding that costs shall be apportioned by the rule of proportional benefit.¹⁶ This arrangement is both equitable and attractive, for it allows the U.S. to respond to its domestic needs with the pork-barrel practices of U.S. water politics--

with a corresponding enticement for Mexico whose resource limitation might otherwise complicate technical solutions.

Pigeonholing Political Issues. Corollary to the Commission's preference for technical solutions is its aversion to issues which have become publicly politicized, entailing major policy decisions. The Commission has "insisted on avoiding strife and doing something practicable."¹⁷ This low-profile, noncontroversial dealing with boundary and water issues has been treated as instrument and measure of diplomatic accomplishment in the border region.

The Commission's cautious diplomacy is a function of the real institutional limitations on its powers. In matters of general policy, where the two governments choose to differ, the Commission is subordinate, lacking sovereign authority requisite to an independent policy stance. Still, within the limits of its authority, the Commission has sought to avoid conflict in constructing its agenda, over which it has substantial discretion. This discretion has enabled it to defer questions already on its formal agenda and to avoid those which are pending. In Timm's words, "if a given problem, as Chamizal, cannot be settled at a given time, the Commissioners simply avoid the subject and direct their energies toward some constructive work in which both states have a vital interest...."¹⁸ This process is evident not only with respect to the Chamizal but in the approach to apportionment, salinity, land boundary fencing, and other matters. Where such issues cannot be simply set aside, the Commission's sections serve as consultants to the foreign ministries until the political controversy abates.

As an aspect of this instinct for self-preservation, the Commission has scrupulously refrained from inter-sectional criticism. In practice, the Commissioners are laudatory of their counterparts. If a problem of policy or administration is officially noted, it is critiqued at the level of the ministry or other responsible policy authority. The Commission, in sum, has pursued a deliberately conservative policy approach to conflictual issues and has not, as a rule, sought to assert itself or to innovate in a way which might jeopardize its extant functions.

Ad Hoc Diplomacy. A final element of the Commission's conflict management is its nonprogrammatic response to the field of problems within its jurisdiction. Day observes that "neither Mexico nor the United States" has sought to bring "its resources and technical ability to bear upon joint problems as part of a long range development effort."¹⁹ Water management along the boundary has instead proceeded in the form of specific projects adopted incrementally as the necessity or opportunity arose.

A noteworthy development in this respect was the specification of a schedule of priorities for the use of international waters in the 1944 treaty. The schedule has enabled the Commission to respond more effectively to certain problems of water management (e.g., emergency diversions for domestic consumption, decisions between irrigation and power needs). It also serves as a basic reference for problems of contending uses. Nevertheless, the 1944 treaty and subsequent arrangements fall short of a number of "critical issues" beyond the formal terms of reference of the Commission.²⁰

The Commission has limited its longer-range planning activities to ad hoc, specifically funded projects within its authorized sphere of jurisdiction. Its planning budget (U.S. Section) is small and must be defended on an annual basis. The Commission, therefore, has normally reacted to problems as they were brought to its attention, rather than anticipating and planning for their occurrence.

Of related concern, the Commission has rather successfully avoided linking the settlement of land and water controversies with other issues in this area and with more general concerns in U.S.-Mexican affairs. Exceptions here may be seen in the cases of the Chamizal, the Colorado salinity crisis, and lately, in the treatment of sanitation and pollution matters. In the majority of cases, however, the Commission has been able to keep the problems compartmentalized, dealing with them singly, case by case.

Continuity and Change: The Evolving Problematic

Since 1944, the Commission has added to its functional domain touched by the pace of development and growth in the border area. Not only has it been affected by change in the border environment, but its accomplishments have reciprocally shaped its evolving tasks. In the last decade, these changes have begun to alter the traditional framework of conflict management.

The changes in recent years involve a shift in terms of the dual mandate of the Commission. Broadly, there has been an increase in the scope of the Commission's water-management functions and diminution in problems attendant to policing the boundary. The shifting complexion of the border problematic presents the Commission with a more politicized and volatile range of issues which are testing its diplomatic skills. Change is also evident in the institutional sphere of the Commission's work. The following pages will focus on the boundary, water-management, and institutional aspects of change as they bear on the activities of the Commission.

The International Boundary. The work of the Commission in the field of boundary maintenance is its long-standing, continuous, and, arguably, most successful mission. In the 35 years after 1889, the demarcation and adjudication of disputed areas preoccupied the Commission. Under the provisions of the early treaties (e.g., 1848, 1853, 1883) and the Boundary Convention of 1905, the role assigned to the Commission was eminently technical, with the IBC applying its professional expertise to solve contentious issues.

Nevertheless, the settlement of disputes in the fluvial part of the boundary problems has been long-standing, most notably those of the Chamizal, El Horcon tract, and Presidio-Ojinaga Valley on the Rio Grande. The case of El Chamizal, for instance, became a cause celebre with Mexico and was, for a time, regarded as virtually unsolvable. The original source of that controversy lay in the inability of the Commissioners to agree on whether a change in the Rio Grande's course was due to accretion or avulsion. The determination was complicated by the stakes at issue. Situated near the central area of El Paso-Juárez, the Chamizal tract was valuable real estate.

When the matter was finally committed to international arbitration in 1911, the United States refused to accede to the determination favoring Mexico. Thereafter, the Commission's sections were relegated the duties of technical consultants as their respective foreign ministries sporadically sought a political solution. Under these circumstances, the sections were especially prone to partisan views, adding to the obstacles surrounding the issue. Resolution eventually hinged on disregarding the points at controversy in the original dispute and redefining the problem politically. A land-swap and channelization project, coupled with material and image incentives on the U.S. side, was worked out, the result of a coincidence of propitious circumstances centering on the mutual interest of Presidents' Kennedy and Lopez Mateos in finding a solution. At this point, the Commissioners of the two sections were instrumental in arranging the details of the settlement. The Commission was then entrusted with the implementation of the Convention.

The failure of a technical settlement in the case of the Chamizal has been the exception that proved the rule. Under the 1905 Boundary Treaty, the Commission was able to resolve the majority of problems conventionally, i.e., technically. The Chamizal settlement proved pivotal in this respect by laying up political capital for the 1970 Boundary Treaty.

The 1970 Boundary Treaty purports to settle the principal issues unresolved at that time and provides a concise formula for the resolution of future disputes which might occur. It also provides for the fixation and restoration of those reaches of the Rio Grande and Colorado River requiring work to preserve their character as the international boundary, as well as the delimitation of the maritime boundary between the two countries. Under the treaty, the Commission has now assumed comprehensive functions in the field of channel rectification which amount to a substantial increase in its jurisdiction. Its construction and oversight activities are likewise enlarged. The terms of the treaty place the Commission's boundary-fixing role even more than before on a strictly technical basis. Barring major unforeseen difficulties, the intrusion of political considerations is virtually eliminated, rendering its activities in this sphere custodial and perfunctory.

Water Management. The Commission's jurisdiction has come to embrace a wide array of activities related to the consumptive uses of water in the borderlands. As seen above, the 1944 treaty firmly established the Commission's role in the sphere of reclamation and flood control along the international boundary and provided for the Commission's involvement with public sanitation in contiguous border communities. However, water has presented the Commission with a more dynamic, less predictable range of problems than has the area of boundary maintenance. Some of these problems derive from the fact that the 1944 treaty was neither comprehensive nor plain. Deliberate ambiguities in that document have been at the bottom of various problems since 1944 and continue to irritate bilateral relations. Other issues stem from a shifting pattern of consumptive uses and related politics in the border region. Since the mid-1960s, these dynamics have involved the Commission in a wider range of water-management activities, with a concomitant increase in its jurisdiction. Other

problems loom on the agenda. These developments are visible in the issue areas of salinity, sanitation and pollution, and apportionment of shared waters.

Salinity. An area in which the language of the 1944 treaty was vague is that concerning the quality of the water which might be used to satisfy treaty obligations. The treaty stipulated that water "from any and all sources" could be utilized, without specific reference to quality. This ambiguity became the single most important source of contention between Mexico and the United States for a decade after 1962, as Mexico protested the use of saline drainage waters used by the United States to fulfill its treaty obligations on the Colorado River. Salinity, however, is a general problem which has not only affected the Mexican reach of the Colorado, but also the greater reaches of both the Colorado and the Rio Grande. As diplomatic solutions to these problems have been realized, salinity control has become an expanding sphere of functional involvement for the Commission.

The specific areas in which the Commission has become involved in salinity control are the lower Rio Grande and the lower Colorado as it borders upon and enters Mexico. In both cases, and underlying salinity problems generally, the source of the difficulty lay in the discharge of saline irrigation drainage upstream. In the case of the lower Rio Grande, the high incidence of saline water discharged from the Morillo drain--which drains the San Juan Irrigation Project in Mexico--and entering the Rio Grande at a point just above the Anzalduas Diversion Dam, presented a threat to both U.S. and Mexican farmers downstream. The matter was brought to the attention of the Commission in 1962, shortly after the Mexican government had protested in the Colorado case. Although the United States was unwilling to concede that water quality was guaranteed in the 1944 treaty, mutual interest, technical feasibility, and economics enabled the Commission to reach a technical solution in that case. The Commission's Minute 224 (1967) provided for the construction of a 23-mile diversion canal through Mexico to convey the saline drainage to a discharge point on the Gulf of Mexico. The Commission is responsible for overseeing the operation of this conveyance channel, although actual operation and maintenance are under the auspices of the Mexican Section. The channel was finished and went into operation in 1969.

The Colorado case need only be summarized here. The problem of salinity on the Colorado River antedated the Rio Grande situation by several years, becoming a serious issue in 1961. For several years previous, irrigators in the Wellton-Mohawk irrigation district, a Bureau of Reclamation project in southern Arizona, had been pumping saline groundwaters into the Gila River channel where they were discharged into the Colorado River at a point near Yuma, Arizona, and used to satisfy part of the treaty obligation to Mexico. A Mexican protest, in November 1961, accused the United States of violating the water-quality provisions of the 1944 treaty. Mexico asked that the United States lease its discharge of saline drainage and guarantee the delivery of water whose quality was equivalent to waters above the Imperial Dam--the last U.S. dam before the river enters Mexico.

Settlement of the Colorado salinity problem thus hinged on interpretation of the water-quality provisions of the 1944 treaty. The U.S. was adamant in denying any water-quality guarantees in the treaty, while Mexico insisted that these were implied in the text as well as the circumstances incident to its adoption. The problem was politically complex due to the nature of the alliances and commitments agreed upon at the time of the treaty's adoption.

The political character of the problem confined the Commission's principal role to its familiar posture of technical advisor to its foreign ministries. Nevertheless, the Commissioners were among the principals for their respective governments in the subsequent negotiation of both the technical and political aspects of the issue. These negotiations extended over a decade, producing two interim agreements and a final "definitive" solution. Under the terms of an agreement reached in 1965 (Minute 218), the two countries agreed to a temporary five-year expedient whereby the United States would engage in selective pumping of the Wellton-Mohawk wells to reduce salinity and at its expense construct a conveyance channel permitting Mexico to separate and bypass saline waters, discharging them into the Gulf of Mexico. While this solution did not bear on the political questions, it did have a beneficial effect on actual water quality. The agreement was extended after 1970 pending a permanent settlement.

As in the case of the Chamizal a decade earlier, the breakthrough on the salinity question came with presidential initiatives in 1972. Prompted by President Echeverria's nomination of the issue as the most serious in U.S.-Mexican relations, then-President Nixon joined the Mexican chief executive in a joint communique asserting their intention to seek a permanent and definitive solution. Another interim agreement (Minute 241) was signed in 1972, further increasing the quantity of saline waters bypassed to the Gulf and substituting for them fresh waters from above the Imperial Dam.

The eventual solution, spearheaded for the U.S. by a joint presidential task force headed by former U.S. Attorney General Herbert Brownell, was both political and technical in substance. The United States conceded in principal on the political question of water quality, while Mexico accepted slightly less than full parity in quality, and the United States agreed to desalinate water rather than replace it in order to placate the interests of domestic users. These provisions and other ancillary agreements were formalized in the IBWC's Minute 242 in 1973.²¹

Under Minute 242, the Commission has formal oversight of the implementation of the Minute's terms, although sharing the operational aspects of implementation in each country with other domestic agencies. The U.S. Section, for instance, will monitor delivery and quality of water, although construction and operation of the desalinization facility--the world's largest--are under the Bureau of Reclamation. In Mexico, the Ministry of Agriculture and Hydraulic Resources (SARH) is sharing in oversight of the rehabilitation and reclamation features of Minute 242's mandate.

The Colorado case, in sum, has added to the formal jurisdiction and operational functions of the Commission in the domain of salinity control. Further, the Commission's functions in this area are apt to expand. As noted above, the problem of salinity is endemic to the Colorado and Rio Grande river basins where irrigated agriculture predominates. At present, salinity, although not yet an international problem, is a concern in the upper Rio Grande basin where both New Mexican, Texan, and Mexican agriculturists utilize the stream flow. The IBWC is monitoring this situation, which may eventually lead to another agreement.

Sanitation and Water Pollution. Closely related as an area of functional expansion is that of sanitation and pollution. The Commission's mandate in this area dates to the 1944 treaty (earlier with respect to the U.S. Section), Article 3 of which charges the Commission to undertake "any sanitary measures or works which may be mutually agreed upon by the two governments," and commits the United States and Mexico, acting through the Commission, to "give preferential attention to the solution of all border sanitation problems."²²

As originally considered, the "border sanitation problems" phrase was developed with several specific problems in mind and was narrowly construed to apply to the sewage problems of twin cities lacking facilities to prevent health hazards from spilling over the border and creating an international problem. While most border cities, including at the time El Paso-Juárez and San Diego-Tijuana, were processing their sewage independently of each other without difficulties, several areas were not adequately doing so, posing an international health hazard. Shortly after the 1944 treaty was adopted, four specific border sanitation problems had received the attention of the Commission: these were located on the Arizona-Sonora border at Douglas-Agua Prieta, Ambos Naco, and Ambos Nogales, and on the California-Baja California border at Calexico-Mexicali. Under earlier enabling legislation, an international sewage-processing facility was constructed in Douglas-Agua Prieta between 1946-1948, and in Ambos Nogales sewage treatment and collection facilities were constructed between 1950-1951. The Commission, after careful study, recommended a joint facility at Ambos Naco, while other difficulties inhibited an agreement at Calexico-Mexicali.

The Commission's role in border sanitation continued to be limited mainly to existing works until the mid-1970s. By 1961, however, the press of population was beginning to tell on the adequacy of existing facilities. In Douglas-Agua Prieta, for instance, the earlier facility was serviceable for 16,000 inhabitants. By 1964, when the Commission assumed direct operation of the plant, its engineers recommended expansion to accommodate a 1980 population of 44,000. At Nogales, facilities designed for 20,000 were taxed with the sewage of 50,000 in 1967, prompting the Commission to expand and modify those works to accommodate a population of 102,000 in 1980. Elsewhere, growth of the city of Tijuana caused an emergency discharge drain--built as an emergency facility to connect with the system in San Diego in 1961--to be utilized almost continuously as an adjunct to Tijuana's own decrepit facilities.

In the last decade, the Commission has seen these problems magnified, and has witnessed the occurrence of other types of pollution of an international character. Two instances of the latter situation are seen in the pollution of the San Pedro River and the contamination of the Rio Grande from effluent discharges at Nuevo Laredo. In the case of the San Pedro River, which crosses the Arizona-Sonora border near Sierra Vista, Arizona, overflow and seepage from the Cananea copper mine's tailing-ponds in Sonora caused severe contamination of San Pedro waters between 1977 and 1979, destroying the river's wildlife and threatening agriculture on the U.S. side. Nuevo Laredo, with a population currently estimated in the range of 240,000, dumps its sewage at the rate of 2.6 million gallons a day into the Rio Grande, presenting a serious hazard to downstream communities. Both of these cases have been studied by the Commission in cooperation with the U.S. Environmental Protection Agency (EPA), and, in the case of Nuevo Laredo, Mexico's SMA, with the Commission recommending remedial action. Further problems are forecast by both the Commission and the EPA, which will require an international response.²³

These pressures have recently led the Commission to reevaluate the narrow construction it had previously placed on the "border sanitation problems" phrase, as well as its ad hoc approach to these issues. Part of the impetus for a more comprehensive approach has come from the EPA in the United States, which, since the mid-1970s, has increasingly drawn attention to the international sanitation problems along the border. The EPA has gone so far as to develop separate contacts with Mexican authorities, signing a special memorandum of understanding on U.S.-Mexican environmental problems with the Mexican SMA in 1978.²⁴ A heightened environmental sensitivity was not confined solely to the U.S., however. Pursuant to the Mexican Environmental Pollution Law adopted in March 1971, some initiatives for environmental improvements, if modest, have originated with agencies such as the SMA and the Ministry of Health. Of related concern, the continuing problems of salinity have added to the Commission's perception of the need to strengthen its mandate in this sphere.

Accordingly, the matter of border sanitation and pollution problems was raised during the Carter-López Portillo meeting in Mexico City in February 1979. The joint communique issued at the end of the discussions instructed the Commission, "in the context of existing agreements to make immediate recommendations for faster progress toward a permanent solution to the sanitation of waters along the border." As a consequence of the presidential initiative, the Commission signed Minute 261, September 24, 1979, entitled "Recommendations for the Solution to Border Sanitation Problems." The new minute provides for an extension of the Commission's jurisdiction in this area and ratifies the urgency and importance of such matters taken as a group. The Commission is enjoined "to give permanent attention to border sanitation problems and give currently existing problems immediate priority attention."²⁵

While its terms still need further strengthening to conclusively assert the Commission's jurisdiction over certain types of water pollution, Minute 261 represents a significant extension of the Commission's formal functions.

Apportionment. The least definite among the evolving water-management functions of the Commission are those relating to the yet-unapportioned waters along the frontier. Although the 1944 treaty dealt with the surface waters of the two largest international rivers, the waters of several lesser streams remain unapportioned. In addition, the Commission has been concerned with seeking a solution to the important issues of groundwaters underlying the international boundary.

The principal surface waters yet unapportioned include the waters of the Tijuana River across the California-Baja California border, and those of the San Pedro and Santa Cruz rivers crossing the Arizona-Sonora border, both of which are secondary tributaries to the Colorado. The problems of the Tijuana River--which drains an area of 1,679 square miles, 72 percent of which lies in Mexico--were considered in the negotiations leading to the 1944 treaty. The negotiators at that time failed to reach agreement on those waters because, according to Hundley, they lacked information.²⁶ The treaty provided, however, that the Commission should study and recommend the equitable distribution of those waters. These studies were undertaken during the 1950s, although no serious negotiations were forthcoming. In the interim, on both sides, unilateral measures were taken to capture waters within the Tijuana drainage system for domestic consumption. In the mid-1960s, however, a series of floods prompted the Commission to agree, in Minute 225 (1967), to a program of flood control and channelization of the Tijuana.²⁷ No further progress has been made concerning the status of the Tijuana's resources.

Similarly, although not mentioned in the 1944 treaty, the waters of the Santa Cruz River were studied in the 1950s, and those of the San Pedro and the Santa Cruz in the late 1960s and 1970s, with a view toward reaching an international agreement on the apportionment and development of these waters. Development on both streams, however, has proceeded independently, and no definite agreements have been reached. More recently, in the case of the Santa Cruz, there has been concern to reach some joint understanding on use in order to conserve the water supply of Ambos Nogales, which is pumped from groundwater fields in the Santa Cruz River aquifer.²⁸

The most active work currently being done by the Commission in the apportionment area concerns groundwater aquifers underlying the frontier. The problem of groundwater was mentioned in the 1944 treaty discussions but was put aside for fear it would handicap agreement on the principal issues. It was recognized at the time, however, that the groundwater question was intimately bound up with the hydrology of the Colorado and would have to be faced in the future.²⁹

The occasion for a renewal of the Commission's interest in international groundwaters was the salinity crisis on the Colorado River. As a result of the salinization of croplands, Mexico stepped up its development of groundwater aquifers along the frontier, threatening to draw down reserves on the U.S. side of the boundary. The negotiations leading to Minute 242 consequently addressed the problem of groundwaters as a secondary issue.³⁰

Under Sections 5 and 6 of Minute 242, both governments consented to limit the development of their groundwater in the immediate border area of the Colorado zone to 160,000 acre feet annual withdrawal, "pending the conclusion by the Governments of the United States and Mexico of a comprehensive agreement on groundwater in the border areas..." and "to consult with each other prior to undertaking any new development."³¹ The Commission is thus provided, for the first time, with a quasi-formal basis for its groundwater activities and a clear directive to work toward a comprehensive agreement.

The issue of groundwater, as suggested by the situation of the two Nogales, is not confined to the Colorado area and is extremely difficult. Hydrologist Morton Bittinger has identified at least six other zones along the frontier which are or may be disputed in the near future.³² A number of the twin cities along the border are dependent to some degree on groundwater for their water supply, suggesting the extent of the stakes and the political problems which may affect the negotiations. The issue of water pollution is also intrinsically linked to a consideration of the groundwaters in the border area. The most pressing difficulty, however, is the inadequacy of technical knowledge concerning the groundwater hydrology in the border area. The Commission's current work is concentrated on this aspect of the groundwater problem.

The Institutional Context. The Commission's modus operandi, particularly that of the U.S. Section, has been gradually affected by a number of institutional developments in the borderlands. The underlying forces at work in the border area (e.g., urban, industrial, and commercial growth, northward migration as it impacts on the border communities, etc.) have drawn attention to its neglect on the U.S. side and to its economic potential in Mexico. Major federal initiatives have followed on both sides of the boundary to direct and promote the development of the national frontiers. These have been recently accompanied by new initiatives in bilateral cooperation aimed at the border area. A summary overview, focusing mainly on the U.S. Section, is warranted for purposes of understanding the larger institutional circumstances affecting the Commission's diplomacy.

At the federal level, the initiatives mentioned include domestic regulatory legislation, new agencies, and more active domestic efforts to innovate and engage in bilateral coordination and planning. Such efforts as a whole have had their greatest impact on the water-management functions of the Commission, although its boundary functions have not been untouched.

With respect to regulatory policy, a very visible vehicle of change has been the National Environmental Policy Act (NEPA) of 1969 in the United States, and the Federal Environmental Pollution Law of 1972 in Mexico. Both statutes have spawned new federal agencies, EPA in the U.S. and SMA in Mexico, and have produced domestic regulations affecting the work of the Commission.

In the United States, NEPA has affected the U.S. Section directly, requiring the IBWC to prepare Environmental Impact Statements (EIS) and Assessments for those aspects of its operations which involve structural modifications in the domestic environment. The EIS procedure has not only the direct effect of widening the range of the IBWC's interagency relations, but also the subsidiary effect of providing a regularized process whereby the interested public might express their concerns with respect to the major projects of the Commission having domestic impact. In a similar vein, the Endangered Species Act of 1973 has also required the U.S. Section to consult with the Fish and Wildlife Service and environmental groups on those works affecting fauna and flora along the border.

How these regulatory changes have affected the U.S. Section can be seen in the preliminary consultations leading to the Commission's most recent boundary rectification project under the 1970 treaty, in the Texas reach of the Rio Grande between Hudsmeth and Presidio counties. According to the report, the Commission held a total of five public meetings between September 1976 and September 1978 "to describe the need for a means to preserve the river channel as the boundary, the alternatives being considered, and to obtain inputs from interested individuals, associations and agencies." In addition, the Commission conducted representatives of environmental interest groups and agencies on three on-site field trips. The report further noted that "helpful inputs were received at the meetings and in letters, and their observations and suggestions were considered in later analyses."³³ Contributing in the discussions and environmental impact studies were the Fish and Wildlife Service, the Texas Parks and Wildlife Department, the Soil Conservation Service, the Science and Education Administration of the U.S. Department of Agriculture, the EPA, the Texas Water Commission, the Texas Department of Water Resources, and the West Texas Regional Council of Governments, in addition to national and local environmental associations and private citizens.

In Mexico, the effect of the new Environmental Pollution Law on the Mexican Section is less clear. There are no similar procedural requirements, and it would seem that CILA does not consult independently at the border level on domestic environmental matters; rather, it may do so at the federal level through its contacts with SMA and the Ministry of Health and Welfare.

With respect to agencies operating along the U.S. side of the border, the EPA and the recently created (1977) Southwest Border Regional Commission (SWBRC) are newer agencies at the federal level which have interacted with the Commission's U.S. Section. Pursuant to NEPA, the 1972 Water Pollution Control Amendments, and the 1977 Clean Water Act, the EPA has become involved in the Commission's sanitation and pollution work through its own domestic mandate in those areas. It likewise provides regulatory oversight of the Commission's compliance with the NEPA guidelines on EIS studies. EPA's aggressive development of its own ties with Mexican agencies for the purpose of dealing with transboundary pollution problems created some turf problems following the signing of its memorandum with SMA, problems since resolved through interagency deliberations under the aegis of the newly formed Border Cooperation Working Group (to be discussed below). Under the terms of Minute 261, the U.S. Section is clearly

specified as the lead agency in bilateral sanitation and water pollution, but will continue to consult with EPA on these matters.³⁴

The SWBRC, under the Commerce Department, reflects the U.S. Government's very recent appreciation for the integral and unique aspects of the border region, and is oriented to promoting its economic development. An attendant consideration behind the SWBRC has been its diplomatic utility, since, as Clement has observed, "states cannot sign treaties or agreements, but the federal government can."³⁵ At the present time, the interactions of the two commissions (SWBRC and IBWC) have been largely advisory, with IBWC providing special assistance to the SWBRC in its initial efforts to develop a binational element within its regional planning agenda.³⁶ Insofar as SWBRC is now a major actor in the newly constituted Border Cooperation Working Group, its alliance with the Commission is bound to be a useful one for both agencies.

Beneath the federal level, a number of local or specifically regional agencies have also been born recently which interface with the Commission as its work affects their specific functional domains. Worth mentioning, but beyond the limitations of this paper, are the Organization of U.S. Border Cities and Counties and ten regional councils of government which have been established in the last decade along the border.³⁷

Institutional developments on the Mexican side are similar in some respects to those in the U.S. at the federal level, although administrative centralization in that country has throttled the development of local institutional initiatives. The SMA is authorized to investigate hazards and recommend action within the guidelines established by Mexican law. However, it has been limited in the range of its enforcement powers, and acts more as an advisory agency at the higher levels of policy than as an independent regulatory force. While it has actively consulted with the U.S. EPA and other agencies regarding border health problems, it has not been an active policy implement along the border.³⁸ Still, the environmental mandate of the Mexican Section is--in its operational dimension--a function of SMA, which cooperates closely with CILA.

By comparison with the United States, the federal promotion of regional development is longer-standing in Mexico, dating from the inauguration in 1961 of the Program for Border Development (PRONAF) and including the short-lived Commission for Border Friendship and Development (1966-1970). A recent innovation, however, is the Commission for the Development of the Border Area and Free Zones (CODEF). The CODEF is the functional counterpart to the SWBRC in the U.S., although it is more of a consortium of federal agencies in the border zone than an independent regional agency. While its specific relationship to CILA is unclear, the CODEF has emerged as a powerful and favored border agency.³⁹

The institutional development with perhaps the greatest potential impact on the Commission is a very recent initiative to integrate and coordinate the bilateral relations of federal agencies in the United States and Mexico under the auspices of the Border Cooperation Working Group of the U.S.-Mexico Consultative Mechanism. Created in the spring of 1977 by Presidents Carter and López Portillo, the Consultative Mechanism is a

major innovation in bilateral relations, substantially aimed at improving U.S.-Mexican border relations. Both the SWBRC and CODEF have been developed incident to the Consultative Mechanism and, along with the Sections of the Commission and other agencies, have been integrated in the Border Cooperation Working Group of the Consultative Mechanism.

Some background is needed to place this development in perspective. According to Department of State estimates, some 85 different U.S. agencies have variously been active in U.S.-Mexican relations. The proliferation of such relations has developed on an ad hoc basis with little inter-agency coordination, producing typical problems of duplication, redundancy, and contradiction in policy development. The problems created by such dysynchronous initiatives are suggested by recent efforts to develop new bridges along the international border. Here, some 12 different agencies on the U.S. side alone are involved in the issuance of a bridge permit.

The Border Cooperation Working Group is one of eight such groups created since 1977 within the Consultative Mechanism which functions under the overall guidance of the Coordinator for U.S.-Mexican Affairs, Ambassador-at-Large Robert Krueger, and the Mexican Undersecretary for Foreign Relations, Alfonso de Rosenweig-Diaz. The fundamental purpose of the Border Cooperation Working Group is the development of a common framework of understanding on major policy issues relating to the border area and better internal--domestic--coordination of agencies' activities to achieve bilateral policy objectives. Since the Border Cooperation Working Group became operational in November 1979, it has met three times in plenary session, with various of its functional subgroups meeting more frequently.

The IBWC has been actively involved in the Border Cooperation Working Group. It has participated in all three of its plenary sessions to date and the subsidiary technical meetings of EPA-SMA. That the Commission is influential is attested to by various State Department spokesmen familiar with the Border Cooperation Working Group's meetings, as well as by policy outcomes where the Commission's interests have been at stake. The arrangements between EPA-SMA and the Commission leading to Minute 261, for instance, were worked out in the context of the Border Cooperation Working Group, which suggests that the Commission has been able to form institutional alliances within the group. On the other hand, the Group has also broadened the institutional context in which the Commission has previously functioned and will subject it to a more strenuous structure of consultation than before. The limiting features of this structure are perhaps suggested by the Commission's recent sacrifice of a functional claim to monitor and combat marine pollution problems (such as the recent Ixtoc oil spill). These functions technically fall within the purview of its jurisdiction over the maritime boundary but had never been exercised by the Commission. The Commission cooperatively relinquished its hypothetical powers--which will henceforth be exercised by the bilateral Environmental Response Teams created under the recently-agreed Joint Maritime Pollution Contingency Plan--although it continues to retain its substantive jurisdiction with respect to the maintenance of the maritime boundary.

Summary. In sum, the last decade has witnessed the emergence of new issues, structures, and actors in the border milieu which impinge on the jurisdiction and structure of the Commission. These changes have begun to affect the Commission's traditional pattern of conflict management in the borderlands and indicate further modifications as the Commission attempts to cope with its shifting mandate. The changes also draw attention to some of the present limits and contradictions in the Commission's approach to these problems.

Reflections on the Traditional Approach:
Implications of Change

It is yet premature to fully evaluate how these changes are shaping the Commission. Most of the events and circumstances mentioned above have taken place in little over a decade; several are only now beginning to tell on the Commission's performance. Moreover, the basic framework underlying the Commission's approach to border land and water affairs remains the 1944 treaty. Despite the significant augmentation of powers since, the conditions of the treaty bearing on the constitution and procedures of the Commission have not been amended. Furthermore, the majority of the Commission's duties continue to be those routine functions of maintenance and operation associated with existing works within its jurisdiction.

Nevertheless, new conditions are having some effect on the Commission's traditional approach to managing the boundary and its waters. The discussion that follows attempts to suggest some of the more obvious effects and implications of recent changes, as well as some of the challenges posed for the Commission in the near future.

Exclusive Jurisdiction. The cornerstone of the Commission's approach to land and boundary problems in the U.S.-Mexican borderlands has been its monopoly in this realm. The statutory basis for this monopoly has been developed through the expansion and elaboration of the Commission's functions in the border area since 1944. In just the last decade, the Commission has accrued important new functions in the area of boundary maintenance, salinity control, groundwater investigation, and sanitation and pollution control.

As the Commission has developed, however, the political geography of its jurisdiction has undergone concomitant expansion. The effect of NEPA, as seen above, involves a wider range of interests in the border region in the work of the Commission's U.S. Section. Likewise, the Commission's concern with water quality has expanded the number of agencies with which the Commission must deal. The IBWC's involvement in the Border Cooperation Working Group extends the range of its interagency relations further, and, significantly, imposes a structured framework for interaction on issues of bilateral concern, subjecting the agencies involved to the general guidance of their respective foreign ministries.

The expanding sphere of reference may operate as a constraint on the policy space of the IBWC in some areas. On the other hand, it affords the Commission further possibility for innovation and entrepreneurship--

for example, with respect to its constituency and future functions. The net effect of the Commission's accommodation of more agencies and interests of late is, however, the diminution of its monopoly in this sphere, a diminution offset by the expanding scope of its jurisdictions and functions.

Brokerage. The bilateral brokerage functions of the Commission are fundamental to both its operations and diplomacy. It is unlikely that the intensive and intimate pattern of liaison and consultation developed over the years by the two Sections will change markedly due to the changing milieu surrounding the Commission's work. Instead, the more complex and dynamic setting will pressure the Commission to maintain its close working ties, while its expanded range of functions provides even more opportunity for the Commission to interact in the settlement and implementation of border solutions.

It should be noted, as a related matter, that the brokerage of the Commission has depended rather heavily on the leadership of engineer-commissioners enjoying lengthy tenures in their offices. Such tenure enables the individual Commissioners to put their personal stamp on the functioning of the Commission, developing a special expertise and building relations--bilateral and domestic--which contribute to the success of both the respective sections and the Commission as a joint body. A change in leadership may, for a time, put the new incumbent at a comparative disadvantage pending the formation of the personal ties that facilitate the Commission's functioning.

Technical Expertise and Pigeonholing Political Issues. The Commission's operational orientation as a technical body is essential to its brokerage role and to its reputation for seeking impartial solutions on the basis of technical feasibility and mutual interest. The statutory and functional basis for this orientation remains unchanged by the evolving circumstances discussed earlier. However, it is clear that the Commission has increasingly found itself relying upon its expressly diplomatic as well as technical expertise. Commissioner Friedkin, for instance, recently described the U.S. Section's responsibilities as extending "well beyond the technical responsibilities for providing and operating reservoirs and controlling and monitoring water quality to representing the U.S.'s best interests in development."⁴⁰ This represents something of a modification of the Commission's self-concept in comparison with its earlier years.

The relative increase in politics as the basis of the Commission's diplomacy is evident first in the changing nature of the issues themselves. The Commission, as seen, has augmented its water-management functions in relation to boundary-maintenance functions. This development is empirically evident in the formal minutes of the Commission, where 8 of the 11 minutes dealing specifically with water management since 1945 have been adopted since 1965. Furthermore, the open horizons for future development of the Commission's functions are in the water-management area. These issues are inherently political. They involve both the volatile issues of consumptive rights to water, they are more directly affected than land issues by the shifting demographic and political structures on

the border, and--more critically--they are not now adequately specified within the terms of the 1944 treaty or subsequent treaties and agreements. The resolution of these questions will, in short, require creative diplomacy by the Commission.

The growth in the range of interests affecting the Commission also requires emphasis on the public-relations aspect of its brokerage style. Domestically, the U.S. Section must now interact with a wider range of groups, individuals, and agencies than has been its wont in the past. And at the level of the Border Cooperation Working Group, the Commission must likewise represent itself in an expanded arena of bilateral policy-making.

In short, it is increasingly difficult for the Commission to pigeon-hole politics in the broader sense of the phrase. The tendencies described above are not easily reconciled with the traditional technical and apolitical thrust of the Commission's approach. As has been stressed earlier in this paper, the Commission's policy authority has been enhanced as it has been able to reduce the problems encountered to solutions involving its technical expertise. Where expressly political considerations of rights and obligations have been contested, the Sections have conspicuously shared the policy stage with their respective executive ministries. It is possible, therefore, that current trends will produce a more active ministerial presence in the diplomacy of the Commission. To some extent, the evidence of Ambassador Krueger's role in resolving the interagency differences between EPA and the U.S. Section suggests this development, as does the general oversight of border policy in the context of the Border Cooperation Working Group. On the other hand, the policy space of the Commission will hinge on how the Commission's diplomat-engineers are able to frame the evolving issues they confront. To the extent that they are able to defuse overtly political questions, they are less apt to lose discretionary ground.

Ad Hoc Diplomacy. The record of the Commission's performance shows that--relative to other issue areas in U.S.-Mexican affairs--it has been relatively successful in disaggregating land and water problems and treating them discretely. This approach reflects the fact that boundary and water issues are locally centered and the political and economic cost too great to allow comprehensive solution.

Recent trends, however, have shown the limitations of the ad hoc approach and brought about modifications as well. Technological and environmental developments in the last decade have drawn attention to the hydrological integrity of drainage basins and the disutilities of ad hoc management of these resources. Thus there has been a general intellectual shift in the direction of considering comprehensive solutions to water resource issues.

On a more pragmatic level, the virtues of comprehensive management are now being seen in the boundary maintenance functions of the Commission. This has come about largely as a result of the 1970 Boundary Treaty.

There is also indication that a comprehensive approach is evolving with respect to the water-management activities of the Commission. As seen above, the groundwater provisions of Minute 242 mandate a comprehensive solution to these issues. In the sphere of sanitation and pollution, Minute 261 points to the aggregation of these problems according to type with a reinforced commitment to seek their solution, albeit incrementally and piecemeal.

Offsetting these indicators of change are the political character of basic resource issues and changes in the bilateral environment. The evolving agenda of the Commission encompasses a range of water-quality and apportionment questions which directly affect the economic development of the border region. The settlement of such conflicts is apt to defy comprehensive solution considering the pattern of political deference to local interests on water issues in the United States, and the ideological, as well as economic, relevance of these issues in Mexico. Furthermore, in bilateral affairs, Mexico's new strategic leverage in energy and its recently forcible foreign policy suggest it might well seek to link these issues to matters outside the more limited arena in which they have traditionally been resolved. It is relevant to note in this regard that Mexico has previously shown an inclination to link concessions on such resource issues with other matters of interest, but that the U.S. has eschewed these initiatives. In the recent debate over implementation of the salinity accords, however, attention was drawn to the energy importance of a satisfactory settlement--in a preview of what may become more common. This linkage to issues outside the water arena is further apt to complicate a comprehensive solution within the arena of water and land relations.

Conclusions

Over the last 91 years, the IBWC has exercised a dual mandate encompassing both boundary and water resources in the borderlands. This dual mandate is unusual, and has given the Commission operational and diplomatic functions exceeding those of other commissions to which both the U.S. and Mexico are party. Since the ratification of the 1944 treaty, the Commission has seen its formal functions and jurisdiction expand through the provisions of two treaties and its formal minutes.

The Commission's ability to develop and acquire new functions in both boundary and water-management spheres attests to its effectiveness as a diplomatic agency serving the mutual interests of both countries. The basis for the Commission's success is attributable to both its formal powers under the 1944 treaty and to a range of informal practices pragmatically adopted to serve the Commission's needs in the border region. The combination of these formal and informal elements is evident in the main features of the Commission's diplomacy, which stress its exclusive jurisdiction, brokerage functions, emphasis on technical expertise, pigeonholing of political issues, and construction of agenda on an ad hoc basis.

Although the basic elements of its diplomatic approach remain unaltered, the Commission's agenda and institutional context have changed noticeably over the last decade. The most significant of these changes

are the Commission's expanding functions in the sphere of water resources, which confronts the Commission with an inherently problematical set of issues not yet fully specified in the context of the 1944 or subsequent treaties. Other important changes include a much expanded range of institutional actors, new statutes which broaden the Commission's domestic political relations (most pertinent to the U.S. Section), its new comprehensive maintenance functions regarding the land and water boundary, and a new superstructure for bilateral relations under the aegis of the foreign ministries of the respective nations.

While it is still too early to fully discern the way these changes are apt to affect the basic approach of the Commission, some changes are evident. The Commission's jurisdiction has been expanded by the 1970 Boundary Treaty, Minute 242, and Minute 261. That jurisdiction is not, however, as fully exclusive as it has previously been due to the wider range of interests and actors involved in the Commission's affairs. Although its brokerage style remains unchanged, the political aspects of the Commission's diplomacy have recently been accentuated in relation to its traditional technical expertise. This development implies greater participation of the foreign ministries in resolving the issues on the Commission's agenda. Finally, the ad hoc approach to border issues has been modestly altered in the direction of greater comprehensiveness, although further developments toward comprehensive planning are likely to be complicated.

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