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Commentary

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JOAQUIN R. BUSTAMANTE*

Commentary

The fundamental *raison d'être* of the International Boundary and Water Commission between the United States and Mexico and its mandate is the protection of each country's sovereign rights to its territorial boundaries and its international waters. This should be kept in mind.

As Dr. Mumme suggests, I firmly believe that the Commission has been able to conserve its credibility and prestige precisely by its resisting popular pressures to expand its activities beyond those specifically adjudicated to it by the 1944 Water Treaty.

Many individuals as well as some businesses, professional and governmental groups, including the press, have exerted pressure to induce the Commission to intervene in border problems patently foreign to its legal authority, as defined in the 1944 Treaty. These range from broad environmental conditions such as air pollution to immigration control, an issue not even remotely related to the Commission's legal mandate.

The Commission is primarily a technical body, as exemplified by the treaty requirements that the commissioners of the two national sections be engineers. However, it is interesting to note that the treaty does not specify which kind of engineers the commissioners must be, which might be interpreted by some as giving the Commission a certain leeway to attend to a wide variety of problems.

Nonetheless, it is apparent that the 1944 Treaty, by its very name, is intended to refer solely to the solution of boundary disputes and of problems related to the use of international waters. The use of these waters involves matters regarding not only quantity but also quality, and here is where the Commission, within its mandate, has become involved in environmental problems.

Within the environmental sphere the Commission has attended to problems of salinity contamination and chemical contamination of international waters as well as to sanitation problems arising from the flow of sewage laden waters across the international boundary. In this field, the Commission has had some successes, but has not been able to resolve these problems in a radical and definite manner. In recent years the two governments have agreed on the intervention of other agencies in the field of international sanitation problems, with little improvement, since these

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agencies in nearly ten years have had no more success than has the International Commission.

I firmly believe that more could be achieved if, respecting one of the provisions of the La Paz agreement, this field were reserved to the Commission, and greater importance were attached to the principles of judging proposed projects on the basis of their respective cost-benefit ratios as has been the Commission's policy. This of course would require providing the two sections with the necessary specialized technical personnel and adequate funds.

Another field in which the two governments and the Commission's effectiveness and response could be expanded or improved in the attention to transboundary problems, staying within its treaty authority, is in regard to the control of use and conservation of transboundary ground waters, especially in the Mexicali-Imperial valleys and in the Ciudad Juarez-El Paso areas. Here, however, the effectiveness of the Commission would be limited by problems of a judicial nature, since the 1944 Water Treaty does not contain specific rules for the handling of ground water problems. I do not know of any international treaties now in effect that deal with these problems on an operational basis, although several distinguished jurists in the United States as well as Europe and South America have studied the problem and proposed draft treaties. The subject is extremely difficult from the technical viewpoint, since waters under the surface cannot be easily quantified, nor can their exploitation be as readily measured and controlled, as can surface waters. These characteristics of ground waters arouse great uncertainties as to their management and greatly limit the confidence with which governments can delegate their control to an international body such as the Commission. However, the rapid growth of the border communities and the arid character of the border area, with very limited surface water resources, will result in a growing dependency on ground waters and sooner or later will require urgent attention to their use in both countries.

One of the limits to the Commission's effectiveness is the disparity in the economic strengths of the two countries, with resulting differences in national priorities.

With respect to the improvement of the responsiveness and efficiency of the Commission's two national sections, I cannot comment regarding the United States section; however, I do believe certain actions could be taken with regard to the Mexican section to make it a more effective decisionmaking and problem-solving body.

In the past, both nations seemed to hold the Commission in high regard, as demonstrated by the granting to each commissioner the diplomatic rank of ambassador. However, in recent years I seem to feel a certain neglect of the Commission by each of the two governments, especially in the case of Mexico.

Recent years have seen an apparent policy of reducing the Mexican section's importance and influence within the Secretariat of Foreign Relations, resulting in reduced budgets and a lowering of the professional capacity of its personnel at all levels. This situation requires a greater recognition of the Mexican section's status as an integral part of an international semi-autonomous body, as foreseen in the 1994 Treaty, rather than merely as another office within the internal bureaucracy of the Secretariat.

The correction of this unfortunate condition would result in the Mexican section's having a greater voice and influence in the allocation and exercise of its budget as well as in the selection of its personnel, the border area and its problems, which in turn would permit greater initiative and aggressiveness in studying and resolving the problems foreseen in its treaty-assigned authority.