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Leonard B. Dworsky*

Institutional and Planning Opportunities and Alternatives: A Commentary

The charge given by the co-chairmen of the United States–Mexico Working Group to guide the preparation of this commentary suggested that specific attention be given to practical and implementable institutional proposals to carry forward the water, air, land, and associated environmental management challenges identified by the four sessions of the Working Group, 1977–1982.

At the conclusion of the first two sessions which were concerned with problems and issues related to the Juarez–El Paso/Tijuana–San Diego portion of the boundary region, I outlined some alternatives for improving the management of the resources encompassed by the boundary region.¹ At that time, I indicated that the proposals were presented to stimulate debate and discussion, and that the deliberations and final recommendations agreed upon by the Working Group could be of value in stimulating further formal action by the two governments.

No action was taken at the first two sessions, pending development of further information that would result from a consideration of conditions along the remainder of the border region from Juarez–El Paso/Matamoros–Brownsville. Sessions in April, 1981, and January, 1982, completed the schedule of four to assess and, in some degree, to anticipate trans-boundary resource needs.

The time has come to determine how we are to use the information we have accumulated. The balance of this commentary first reviews the salient elements of the proposals made in 1977. It then proposes a procedure for a critique of the two governments and the International Boundary and Water Commission (Commission) as a means of ensuring that the governments and their agent, the Commission, are adequately prepared to meet the future needs of the boundary region. Finally, it suggests the establishment of a small entity and defines its basic tasks to provide practical implementable measures to further the interests of the Working Group as it acts to serve the public on both sides of the border.

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1. Dworsky, *The Management of Water-Land-Environmental Resources at International Boundary Regions*, 18 NAT. RES. J. 143–51 (1978).

REVIEW OF THE 1977 PROPOSALS

The 1977 paper cited above identified a number of forces for change. These included:

- the continuously increasing rate of change on matters affecting society;
- the interdependent consequences of one problem on others;
- the increased recognition of land use as a driving force determining water use; and
- the changing scene with respect to urbanization and economic development, resources scarcity (land, water, energy, clean air, and other environmental amenities), and the increased vulnerability of society to resource scarcity and high technology.

It also made reference to ideas, too, which are acting as forces for change. Note was made of the views of: Lynton Caldwell² and his reference to five socio-ecological concepts: (1. Unity of the biosphere, 2. Unique nature of the earth, 3. Universality of man's heritage, 4. Limitations of political fiat, 5. Man's obligation as custodian of the earth) and his conclusion that the future, whatever it may be, cannot resemble the past that man has experienced in his relationship to a seemingly endless and inexhaustible Earth. David LeMarquand³ and his reference to five factors that contribute to national policy in international relations (1. image, 2. international law, 3. linkage, 4. reciprocity, 5. sovereignty). These factors, he suggests, illustrate a number of the objectives that might be pursued by governments when seeking international cooperation. Thought needs to be given to planning strategies appropriate to the policies/physical realities and the information requirements of negotiations and political leaders. He concludes that, otherwise, without a full understanding of the consequences of interest to them from accepting particular alternatives, they may be reluctant to commit their countries to an agreement. Ludwik Teclaff⁴ and his comment that the era when water resources could be developed in comparative isolation without regard for the effect on other elements of the environment is finally coming to an end, both on a national and an international plane.

The question, I suggested, that confronts the United States-Mexico Working Group is not whether there are forces for change in the physical

2. Caldwell, *Concepts in Development of International Environmental Policies*, 13 NAT. RES. J. 190 (1973).

3. LeMarquand, *Politics of International River Basin Cooperation and Management*, 16 NAT. RES. J. 883 (1976).

4. Teclaff, *Harmonizing Water Resources Development and Use with Environmental Protection in Municipal and International Law*, 16 NAT. RES. J. 807-58 (1976).

world and the world of ideas, but whether we can propose practical ways to allow existing institutions to adjust to these forces while maintaining the strengths they have provided in the past.

The paper then turned to institutional response of the two governments in addressing problems of boundary water management. As a backdrop to assess the activities of the International Boundary and Water Commission, a list of ten tasks postulated by Enzo Fano of the United Nations for international boundary regions⁵ was presented.

This was followed by a review of the specific responsibilities of the Commission.⁶ In addition to the well known measuring, storing, allocating, and monitoring water supplies of the major rivers, the Commission has some responsibility for groundwater in relation to the Colorado River Salinity Agreement. Under this Agreement, the Commission will study and explore the advisability of a treaty covering groundwater. The Commission is also exchanging groundwater data in basins where there are problems. The salinity agreement opened the door also to the acquisition of information concerning economic development in parts of the boundary region. The Commission also has a start in the joint publication of information since it makes consolidated reports on stream-flow, water in storage, and similar data available for the use of both countries. These are all substantial tasks and provide a clear indication of the value and trust that the two governments place in the IBWC.

But, the paper concludes in this section, there is need to reevaluate the needs of the two governments for an institution capable of meeting some of the current stresses as well as those that certainly will occur in the future.

There can be little disagreement with the views expressed by Ambassador Cesar Sepulveda⁷ that "the Commission has been good, but it needs to be better in order to face imperative and serious conditions, in order to avoid conflicts as well as to solve them where they arise."

Three specific proposals were made in the 1977 paper.⁸ These suggested that the two governments, building upon the base of the existing IBWC, grant carefully specified authority to the Commission to allow it to operate, as appropriate, as a center for:

1. information collection, analysis, and dissemination;
2. alerting governments to emerging problems; and
3. integrating problems of land, water, and selected environmental

5. Fano, *The Role of International Agencies*, 16 NAT. RES. J. 957 (1976).

6. Dworsky, *supra* note 1.

7. Sepulveda, *Instituciones Para La Solucion de Problemas de Aguas de Superficie Entre Mexico y Los Estados Unidos*, 18 NAT. RES. J. 131-32 (1978).

8. Dworsky, *supra* note 1.

concerns and the required planning to facilitate solutions and, when specifically authorized by governments, to engage in programs to implement solutions.

Information Collection

The acquisition of information and its analysis and dissemination consistent with a set of objectives is essential if the two governments are to be kept informed of trends and developments and issues that now need resolving or may need resolution in the future. The Commission already has shown its capacity to undertake tasks of this kind in parts of the water area.

It is recommended that the two countries vest authority in the International Boundary and Water Commission, either directly, or acting as an umbrella agency with respect to other existing governmental planning entities (comprising federal agencies or federal/state/local cooperative arrangements), to bring together the planning activities of the boundary region as they concern land, water, and selected environmental matter, for the purpose of developing a "watching brief" over such matters in the region.

Alerting Governments

The IBWC has from time to time alerted governments about potential problems as they impact on the water resources of the boundary region.

It is recommended that the two countries vest the International Boundary and Water Commission with explicit authority to advise the two countries on courses of action to be taken by them on current or potential problems. The advisories that may be made should result from the information and planning activities (the "watching brief") authorized in the previous recommendation.

Joint Action

The International Boundary and Water Commission operates on two levels. Each country maintains its own Commission office; yet, for some kinds of information the IBWC compiles, analyzes, and publishes information on a joint basis for the benefit of both countries.

It is recommended that the two nations establish a Joint Center for the purpose of carrying out the above recommendations and such other responsibilities that may be desirable in order to provide more effectively for the integration as necessary of land, water, and environmental management in the boundary area. The integration activities of the Joint Center would involve multipurpose and multiagency interests. The rate of development of such integration could proceed under a scheduled program

of priorities with experience as a guide. An important aspect of the Joint Center activities should be the development of information concerning the boundary region as a whole, rather than separately, by countries. (The experience of the Joint Office of the International Joint Commission of the United States and Canada, at Windsor, Ontario, may be viewed as a guide to the implementation of this recommendation.)

Two additional proposals are suggested for consideration at the close of the fourth session of the United States–Mexico Working Group. The first is addressed to the two governments; the second represents a practical and implementable process to allow this valuable forum (the Working Group) to continue into the future.

To the Two Governments

The forces that are impacting on the international boundary region of Mexico and the United States need to be managed more effectively. The existing Commission has provided a very important and useful vehicle in selected aspects of the water area until the present. For the future, foresight and carefully designed programs can provide a basis for action to prevent international issues from occurring with concomitant benefits to both countries.

It is recommended that the two governments authorize a critical analysis of the problems, existing and potential, of the boundary region considering, among other matters, the topics examined by the four sessions of the United States–Mexico Working Group. Participants in this analytical process should include officials of both countries, the Commissioners of the IBWC and Senior staff, and public nongovernmental persons knowledgeable and interested in the boundary region. The analytical group should be structured so as not to exceed twenty persons. An appropriate agenda can be developed to focus the discussion.⁹ The essential purpose of the analysis would be to provide a review and guidance to the two governments relative to the future management of the boundary region.

To the University of New Mexico

The U.S.–Mexico Working Group is an example of several existing groups engaged in studies to promote the welfare of the U.S.–Mexico boundary region. The value of such nongovernmental groups is high and ways need to be found to utilize their skills. Benefits are derived from the open agenda they can promulgate, the lack of restraint of legislative mandates, and the openness of their critique function. More importantly,

9. The agenda used by a comparable United States–Canada analytical group convened by the International Joint Commission in June 1974 is provided in "Summary of the International Joint Commission Seminar on the IJC, Its Achievements, Needs, and Potential" June 20–21, 1974, Montreal, Quebec.

such groups provide a continuous flow of ideas and information that benefit government supported entities such as the recommended Center.

It is recommended that the University of New Mexico, based upon the experience of its School of Law, the *Natural Resources Journal* (during the last twenty years), its Natural Resources Center, and its leadership role in organizing and supporting the United States–Mexico Working Group, be encouraged to:

- a) establish (or seek support to establish) a relatively small entity to carry forward the work of the U.S.–Mexico Working Group in the boundary region. The basic organizational arrangement of a joint United States–Mexico planning council should be maintained;
- b) undertake the following illustrative tasks:
 - maintain the file of the Working Groups;
 - establish a communications network among interested United States–Mexico agencies of Universities, State, Federal, Local, and Regional governments, and of private and other entities as useful;
 - collect and disseminate information on ongoing and proposed boundary region research;
 - formulate and disseminate through appropriate collaborators a recommended boundary region research agenda to facilitate public and private sector policies of benefit to both governments and their people;
 - encourage the establishment of periodic working sessions to update the boundary region file on problems and issues;
 - encourage the formation of seminars and symposia and conferences on topics pertinent to the border region; and
 - seek to implement the institutional recommendations that may be formulated at this session, or as soon thereafter as possible by the planning committee of the United States–Mexico Working Group.

The Working Group during its four sessions has provided a firm base from which to proceed. Decisions should be taken now to prepare for the next step. I hope this paper will help to define these steps.

OPORTUNIDADES Y ALTERNATIVAS INSTITUCIONALES Y DE PLANEACIÓN: UN COMENTARIO

Este comentario es una continuación y extensión de la ponencia presentada en la segunda y última sesión de la primera serie de reuniones del Grupo de Trabajo México–Estados Unidos. En esa

oportunidad se hicieron recomendaciones con la intención de estimular la discusión y el debate, y para promover la acción del Grupo de Trabajo. Este comentario resume los argumentos que llevaron a las recomendaciones originales; reafirma aquéllos que se consideran pertinentes; y hace dos recomendaciones adicionales.

Las tres proposiciones formuladas en 1977 sugerían que los gobiernos, partiendo de la base de la existente Comisión Internacional de Límites y Aguas, otorgaran cuidadosamente autoridad específica a la Comisión, que la permitiera operar, según se estimara adecuado, como un centro para 1) recopilación de información, análisis y difusión, 2) para advertir a los gobiernos sobre problemas más emergentes, y 3) para integrarle problemas de tierras, aguas y problemas ambientales selectos y la necesaria planeación para facilitar soluciones y, cuando estuviera específicamente autorizada por los gobiernos, para elaborar programas para llevar a cabo las soluciones.

Las dos recomendaciones adicionales sugeridas al final de la cuarta sesión del Grupode Trabajo en Querétaro, México, fueron dirigidas, la primera, a los gobiernos, y la segunda, a la Universidad de Nuevo México.

A los dos gobiernos: Se recomienda que ambos gobiernos autoricen un análisis crítico positivo de los problemas, existentes y potenciales, en la región fronteriza, considerando, entre otras cosas, los puntos explorados en las cuatro sesiones del Grupo de Trabajo México-Estados Unidos. El propósito esencial del análisis sería proveer una revisión y una guía para los dos gobiernos en relación a la futura administración de la región fronteriza.

A la Universidad de Nuevo México: El Grupo de Trabajo México-Estados Unidos es un ejemplo de varios grupos existentes involucrados en estudios para la promoción del bienestar de la región fronteriza México-Estados Unidos. El valor de tales grupos no-gubernamentales es elevado, y deben encontrarse caminos para utilizar sus experiencias. Se obtienen beneficios de la agenda flexible que pueden adoptar, de la falta de restricción por mandatos legislativos, y de la franqueza de su función crítica. Más importante, tales grupos proporcionan un flujo continuo de ideas y información que benefician a las entidades que reciban apoyo gubernamental, tal como el centro recomendado en este trabajo.

Se recomienda a la Universidad de Nuevo México establecer una entidad relativamente pequeña para llevar adelante los trabajos del Grupo México-Estados Unidos en la región fronteriza. El arreglo básico de organización de un consejo binacional de planeación México-Estados Unidos debería mantenerse.