

EL CHAMIZAL: THE HISTORY OF A
BOUNDARY PROBLEM BETWEEN
MEXICO AND THE UNITED STATES

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ABSTRACT

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by Karl Hofmann

Since its creation in 1848 the Rio Grande boundary has divided the United States and Mexico. The changing nature of the course of this river has given rise to a number of boundary disputes. One, involving the question of sovereignty over the Chamizal tract near El Paso, Texas, has been especially important for its longevity, the location of the area involved, and its incorporation of nearly all the ideas advanced to solve other boundary disputes along the Rio Grande border. Most of the problems connected with El Chamizal arose, because the treaty of 1848 between Mexico and the United States had neglected to furnish standards for dealing with the frequent changes in the channel of the river. The manner of viewing such changes was left undefined and statesmen were on their own when they had to decide whether they were dealing with a natural boundary subject to international law, or with an artificial boundary, which would remain permanently fixed, despite variations in the course of the river.

The negotiations surrounding the Chamizal dispute often appeared to be a maze of self-contradictory positions. Two ways of approaching the problem of change on the Rio Grande boundary, however, do stand out. The first, most frequently held by the United States, attempted to solve boundary questions such as arose during the discussion of the Chamizal problem by reference to international law. The second way, advanced almost exclusively by Mexico, held that the boundary as established by

the Treaty of Guadalupe Hidalgo in 1848 was astronomically fixed and unchangeable. Both sides, however, complicated matters by changing positions and by setting conflicting precedents.

In treating the history of the Chamizal dispute this paper hopes to present not only an account of the many negotiations which surrounded the attempts at settling the problem, but also intends to enumerate, analyze and clarify the technical, philosophical and legal factors which made up the dilemma. The author tries to achieve this goal by discussing the positions taken by the two parties at each successive stage of the negotiations.

In 1911 both sides adopted positions which seemed practically irreconcilable. For almost fifty years thereafter prospects for a solution of the Chamizal problem looked so forbidding that no earnest attempt was made by either side to reopen negotiations. Yet in 1963 a solution to the Chamizal dispute seems imminent. The nature of this pending solution and its relationship to earlier attempts at solving the Chamizal problem are the topic of the last part of this essay.

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By

Karl Hofmann

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INTRODUCTION

The Rio Grande, as a boundary between the United States and Mexico, has had a history as tortuous as its course. This dividing line was adopted by the Treaty of Guadalupe Hidalgo in 1848¹ and was surveyed by a joint Mexican-American boundary commission in 1852 and 1853. Article V of this treaty relates especially to the boundary between the two countries and contains a definition of the sector following the Rio Grande:

The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying into the sea; from thence, up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico. . . .²

During the thirty years that followed the survey, the river changed course quite frequently. This was especially true in the El Paso-Juarez valley. A number of boundary disputes arose which involved rights of sovereignty over tracts of land transferred from one bank of the river to the other because of a change in course. El Chamizal, the subject of this study, is perhaps the most prominent of the many disputed territories that arose thus in the El Paso-Juarez valley.

¹U. S., Statutes at Large and Treaties of the United States of America, from December 1, 1845, to March 3, 1851; Arranged in Chronological Order; with References to the Matter of Each Act and to the Subsequent Acts on the Same Subject (Boston, 1862), Vol. IX, pp. 922-942--hereafter cited as Statutes at Large.

²Statutes at Large, Vol. IX, p. 925.

Article V of the treaty of 1848 had not considered the well-known capricious behaviour of the Rio Grande. Consequently there was no uniform approach to solving the boundary problems which arose because of changes in the course of the river. Both sides used arguments and interpretations of Article V aimed at furthering their respective claims.

Prominent among these interpretations was the position frequently held by Mexico that the boundary along the Rio Grande was astronomically fixed. No change in the course of the river was to have any effect on the boundary line which would always correspond to the course of the river as charted in 1852 and 1853. The Mexican argument for an immutable boundary was based on the final section of Article V which provided that "in order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground landmarks which shall show the limits of both republics . . . the two Governments shall each appoint a commissioner and a surveyor who . . . shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte." According to the Mexican viewpoint a boundary which was permanently marked and monumented by definition could not be affected by changes in the topography over which it ran. The Rio Grande frontier was as artificial as that section of the border which runs from San Diego eastward across the desert. The middle of the river, therefore, could be the boundary only as long as it matched the line drawn on the surveyors' maps of 1852 and 1853.

The United States most often held that the treaty of 1848 did not create an artificial boundary along the Rio Grande, but took advantage of what was offered by nature. Hence the American opinion was that the Rio Grande was a natural boundary which for its regulation depended on accepted principles of international law.

Geographers generally mark three types of river behaviour. All three forms can be found in the Rio Grande valley. First, there are those rivers in which the channel is actively cutting through rock. This applies particularly to rivers which flow through narrow channels or through canyons. The second type consists of rivers that are more or less stable. They frequently meander through broad valleys, neither cutting down one bank nor building up the other rapidly. The body of international law dealing with changes in the course of rivers most frequently refers to this type of meandering behaviour. Lastly we find rivers which are actively building their beds. They usually carry heavy loads of sediment which fill the channels causing the rivers to overflow. A labyrinth of braided courses develops, ever changing, and often without a persistent main channel.³ The Rio Grande especially the El Paso-Juarez valley is characterized by this last type of river behaviour.

In time the number of unsolved boundary disputes increased, causing continuous friction between the Mexican and American settlers whose properties were affected by the erratic behaviour of the river. An international agreement setting up some standard for dealing with the situation was clearly needed. The result was the convention of 1884⁴ which reaffirmed Article V of the treaty of Guadalupe Hidalgo. It adopted international law as a criterion for dealing with boundary problems caused by changes in the course of the river. Articles I and II of the convention

³Stephen B. Jones, Boundary Making: A Handbook for Statesmen, Treaty Editors and Boundary Commissioners, Carnegie Endowment for International Peace, Division of International Law, Monograph No. 8 (Washington, 1945), p. 119.

⁴U. S., Statutes of the United States of America, Passed at the First Session of the Forty-Ninth Congress, 1885-1886 and Recent Treaties and Executive Proclamations (Washington, 1886), Vol. XLIX, pp. 37-40-- hereafter cited as Statutes.

of 1884 refer to international law and adopt the principles of aluvion and avulsion.

Article I

The dividing line shall forever be that described in the aforesaid treaty [1848] and follow the center of the normal channel of the rivers named, notwithstanding any alterations in the banks or in the course of those rivers [Rio Colorado and Rio Grande], provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of an existing river bed and the opening of a new one.

Article II

Any other change, wrought by the force of the current, whether by the cutting of a new bed, or when there is more than one channel by the deepening of another channel than that which marked the boundary line at the time of the survey made under aforesaid treaty, shall produce no change in the dividing line as fixed by the surveys of the International Boundary Commission of 1852; but the line then fixed shall continue to follow the middle of the original channel bed, even though this should become wholly dry or be obstructed by deposits.⁵

Aluvion can be broken down into two distinct processes of change. First, there is erosion or the cutting away of soil from the river bank. Accretion, the opposite of erosion, is the adding of sediment to a river bank. The combination of these, that is the cutting away of land from one side and the subsequent adding of it to the other, is called aluvion. However, international law seems agreed on an additional factor which must be present to have true aluvion. The erosive and accretive changes must be slow and gradual.

Land which in this manner is transferred from one side of a river to the other belongs to the owner of the bank to which it is added. In other words the property line continues to follow the river banks, the center of

⁵Statutes, XLIX, p. 38.

the main channel, or whatever line may have been provided for in a boundary treaty.

The principle of aluvion as defined above has been stated and accepted by various authorities on international law since the days of the late Roman Empire. The Roman lawyer Gayus states in the Institutas that as long as the addition of sediment is gradual and invisible to the eye it would benefit the person whose property was increased. Another concrete description of the nature of aluvion appears in Law XXVI of Las Siete Partidas or the Laws of Alphonso X of Spain. It defines aluvion very clearly as the increase of property due to sediment originating from another property. To be called aluvion it needs one characteristic however: slowness and imperceptibility.⁶ Lastly, Hugo Grotius, a 17th century Dutch scholar, states in relation to property rights affected by aluvion that "in arcifinious lands, where the bounds are formed by nature, any gradual change in the river makes a change also in the boundary, and whatever accession is given to the river on one side, it will also belong to the possessor of the land on that side."⁷

Avulsion, in contrast to aluvion, covers a variety of rapid and often destructive changes in the course of a river. Article 559 of the Code de Napoleon has the following to say about the nature of avulsive change and its effect on property rights: "If a river or stream, navigable or not, tears suddenly a considerable and recognizable section of river frontage away and leaves it with an inferior land or with the opposite shore, the owner of the torn away part can reclaim his property." Las Leyes de Partidas and the Institutas also treat avulsive changes in the same manner as Article 559.⁸

⁶Alberto Maria Carreño, Mexico y los Estados Unidos de America (Mexico, 1922), pp. 397-398.

⁷Hugo Grotius, The Rights of War and Peace: Including the Laws of Nature and of Nations, trans. A. C. Campbell (Washington, 1901), pp. 106-107.

⁸Carreño, Mexico, pp. 399-400.

Another type of avulsive change is recognized by international law and consists of the river's abandonment of the streambed and the cutting of a new one. The Institutas which recognize the different nature of this type of change, deal with it in the following manner: "If, having abandoned completely its natural course, the river begins to flow somewhere else, the former river bed remains the boundary between properties along its banks, to the extent to which each side had property along the banks. . . ." Article 563 of the Code de Napoleon makes the same provisions as to the ownership of land.⁹

Grotius, who agrees entirely with Gayus and the Code de Napoleon concerning changes in the thalweg or the river bed, makes some very interesting statements as to where avulsion ends and aluvion begins: ". . . in doubtful cases the territories bordering upon the river ought to be considered as arcifinious because nothing can be a more apt mark of distinction than those impassable bounds assigned by nature."¹⁰ In other words, visible but moderate changes could fall under the heading aluvion. This is good to bear in mind for it constituted a part of the American argument during the arbitration of the Chamizal case. The United States at that time insisted that the phenomenon of rapid erosion was distinct from avulsion and properly belonged in the same category as aluvion.

The principles of aluvion and avulsion were adopted by the convention of 1884 in the hope of solving boundary problems caused by changes in the course of the Rio Grande. In most cases the high expectations of the men responsible for the convention of 1884 were borne out. One problem, however, the dispute over the Chamizal tract near El Paso, seemed even more unwieldy after 1884. For almost eighty years after the signing of the convention of 1884, the Chamizal problem was to defy

⁹Carreño, Mexico, pp. 399-400.

¹⁰Grotius, The Rights of War and Peace, p. 107.

all attempts at solution. Only in 1963 was a way found of resolving the question. The turbulent history of El Chamizal, the positions taken by the United States and Mexico during the negotiation of the dispute, and the justification of such positions by treaty and precedent are the subject of this thesis.

GEOGRAPHICAL DESCRIPTION AND SETTLEMENT OF THE EL PASO AREA

The El Paso-Juarez valley, where the Chamizal tract is located, derives its name from the two principal cities in that area. It stretches from the point where the Rio Grande breaks through the pass dividing the Franklin mountains and the Sierra Maestra Oriental to the site of old Fort Quitman. From there on the river again flows through mountainous country.¹¹ The elevation of the river at El Paso is 3710 feet above sea level. At this altitude winters can be quite severe in character and occasionally the river freezes over.¹² The geological characteristics of the valley are those of a flood plain. A flood plain is created by a river which carries a large amount of silt and gravel filling up its bed with sediment. In the past this resulted in frequent overflowing of the channel during the flood season in June and July. New river beds were formed as a result of these floods.¹³ Around the turn of the century and during the nineteen-thirties the river was tamed through diking, levees and canalization. Both governments have spent considerable effort and

¹¹Laura Gilpin, The Rio Grande: River of Destiny; An Interpretation of the River, the Land, and the People (New York, 1949), pp. 162-172.

¹²Paul Horgan, Great River: The Rio Grande in North American History (New York, 1954), Vol. I, p. 248.

¹³U. S. Congress, Senate, 34th Congress, 1st Session, Executive Document No. 108, Vol. XX, pt. 1, pp. 90-92, "Report of the United States and Mexican Boundary Survey Made under the Direction of the Secretary of the Interior, by Major William H. Emory."

money on river rectification and flood control.¹⁴

Several international dams across the Rio Grande provide water for the irrigation of the flourishing agriculture of the valley. In 1949 there were over 82,000 acres under cultivation on the Texan side of the river and 52,000 acres on the Mexican side. The main products grown in the valley are cotton, grapes, fruits, wheat and vegetables.¹⁵

At the site of the present day Ciudad Juarez we find the oldest settlement in the valley. The name of this border city was changed in 1888 from El Paso del Norte to Ciudad Juarez because of the confusion over such similar names as El Paso del Norte, Chihuahua and El Paso, Texas. The Mexican El Paso was renamed after Benito Juarez who had his seat of government in this town during the reign of the emperor Maximilian.¹⁶

Much new building and business activity has taken place at Ciudad Juarez since the nineteen forties and the city has grown in importance because of the increasing commerce between the two countries. Two railway and two automotive bridges span the Rio Grande making the towns of Juarez and El Paso not only important rail centers, but main crossing points for the ever increasing tourist traffic.¹⁷

The city of El Paso, Texas, received its name in 1873. It stands on the site of the former Franklin, which was a small settlement established by Americans on the north bank of the Rio Grande following the treaty of 1848. From an insignificant military and western outpost this settlement grew rapidly into a metropolis with the advent of

¹⁴G. Frederick Reinhardt, "Rectification of the Rio Grande in the Juarez-El Paso Valley," American Journal of International Law, Vol. XXXI (January, 1937), pp. 44-54; Gilpin, Rio Grande, p. 170.

¹⁵Gilpin, Rio Grande, p. 241.

¹⁶Gilpin, Rio Grande, p. 168.

¹⁷Gilpin, Rio Grande, p. 168.

railroads in 1881. Because more than half of its population is of Mexican extraction, El Paso is of doubtful American character.¹⁸

Aside from processing much of the agricultural produce of the valley, El Paso is also a center of heavy industry. Practically the only processing of metal in the entire Rio Grande valley takes place at El Paso, now the largest city along the river. The city has a huge copper refinery and an ore smelter where metals from both the United States and Mexico are processed. A cement factory using clay from the north bank of the river also is of importance.¹⁹

The first mention of the El Paso area appears in the tale of four conquistadores. They were the only survivors of an abortive expedition into Indian territory organized in 1528. Under the leadership of Panfilo de Narvaez this expeditionary force of several hundred men had set out from Havana to explore the unknown land mass between Florida and the Rio Grande. Nothing was heard of the expedition for seven years. Finally in 1535 four ragged men appeared at a Spanish out-post in northern Mexico. From their story we know that they had been picked up by friendly Indians camping in the vicinity of El Paso. These Indians apparently lived a semi-nomadic existence, for they were growing corn in the valley of the Rio Grande during part of the year and went on long hunting trips for months on end.²⁰

Gaspár Castaño de Sosa, a Spanish captain of cavalry, is credited with making the second visit to the El Paso region. In 1590 he engaged in an unauthorized expedition into the pueblo country of the northern Rio Grande. On his way north he travelled through the valley of El Paso.²¹

¹⁸Gilpin, Rio Grande, pp. 162-163.

¹⁹Gilpin, Rio Grande, pp. 164-165.

²⁰Horgan, Great River, Vol. I, p. 96.

²¹Horgan, Great River, Vol. I, p. 157.

Don Juan de Oñate, conqueror and first Captain General of New Mexico, discovered a ford across the Rio Grande at El Paso on May 4, 1598. After his army had crossed he proceeded northward following the river. Within a day he marched through the pass dividing the Sierra Maestra and the Franklin mountains. Accordingly he named the area the ford of El Passo [sic] del Norte.²²

Franciscan missionaries, following in the footsteps of Oñate's conquering army, arrived at the Northern Pass in the winter of 1616 to 1617. They were on their way to the newly subdued pueblo country. At El Paso they encountered parties of Manso Indians engaged in fishing and hunting. From a report sent back by the friars we also know that the river was frozen over solidly. This natural phenomenon caused the leader of the Franciscans to express his belief that the Rio Grande must have its origin at the North Pole.²³

As soon as the missions in New Mexico were established, supply trains heading north crossed the ford and pass with regularity. The Franciscans, worried about safe communication with New Spain, requested that a town be founded at the Northern Pass with a mission station to christianize the local Indians. Nothing came of the request until 1659 when a mission complex was erected near El Paso del Norte. According to a contemporary chronicler it consisted of a church made of "branches and mud and a monastery thatched with straw." In 1668 the makeshift church of the mission was replaced by a more substantial edifice dedicated to "Our Lady of Guadalupe of El Paso."²⁴

El Paso soon became the first wholly Spanish town along the Rio Grande. In the beginning it existed to meet the needs of the mission

²²Horgan, Great River, Vol. I, p. 166.

²³Horgan, Great River, Vol. I, p. 224.

²⁴Horgan, Great River, Vol. I, pp. 248-260.

with its vineyards, its irrigated fields and pastures. As the importance of the pass as a gateway to the north increased, roads drew to it from all directions. By 1670 a town had grown around the mission and the parish books record weddings, baptisms and burials of Spanish settlers.²⁵

In 1680 El Paso became the capital of the province of New Mexico. During the following ten years the missions of Ysleta, Socorro, San Lorenzo and San Antonio de Senecú were founded near El Paso.²⁶ Almost a century later in 1764, a Franciscan inspector called the mission of Guadalupe at El Paso "the flower of them all, both on account of its fruits and garden products and because of its climate." Indian farmers under the supervision of Spanish masters were collecting pears, peaches, apples and grapes. Sacramental wine was manufactured and brandy was distilled to be sold to those crossing at the busy junction of El Paso. To the weary traveller coming from the desert to the north and south of El Paso the valley must have been a Garden of Eden.²⁷ So at least it seemed to this same inspector who praised it as "a beautiful image of the river Nile."²⁸

Yet all was not bliss at El Paso. A report dating from 1795 complains that the Rio Grande was always muddy. It also gives a first account of the river's habit of changing its course. During high water season, the report states, large areas were flooded making traffic in the valley extremely perilous. The river bed was constantly being built up by debris and sediment, until the river rose above its walls and fell into a nearby lower course. The irrigation dams at El Paso had to be rebuilt every year because of such changes in the course of the river.²⁹

²⁵Horgan, Great River, Vol. I, p. 261.

²⁶Horgan, Great River, Vol. I, pp. 264-298.

²⁷Horgan, Great River, Vol. I, pp. 347-348.

²⁸Horgan, Great River, Vol. I, p. 348.

²⁹Horgan, Great River, Vol. I, p. 347.

In the middle of the 18th century El Paso was the largest of the four towns in the north; the other three being Albuquerque, Santa Fé and Santa Cruz. More than half the Spanish population of New Mexico, totaling about 10,000, lived in these four cities. Yet even in 1797 when the first bridge was built across the Rio Grande at El Paso, there were no medical facilities in this largest of the northern cities.³⁰

The first North American known to have seen El Paso was the explorer, Lieutenant Pike. He had been sent by General Wilkinson of Louisiana to explore the plains and mountain areas of Northern New Mexico and to befriend the local Indians. While he was operating near Santa Fé, he was captured by Spanish cavalry. From there he was escorted to Chihuahua for further prosecution. His route of travel took him through El Paso in 1808. Around 1810 many more Americans illegally entered the Northern provinces of New Spain to settle there. Many were captured and sent to prisons in the state of Chihuahua by way of El Paso.³¹

In the early eighteen twenties all settlement at El Paso clung to the south bank of the river. The town itself was an almost continuous village spreading along the banks of the Rio Grande for almost eight miles. But not until 1827 did the town expand to the other side of the river, when a Spaniard named María Ponce de Leon started a farm on the north bank. Others soon followed. Their small settlement was to form the nucleus of the American town of Franklin.³²

³⁰Horgan, Great River, Vol. I, pp. 348, 395.

³¹Horgan, Great River, Vol. I, pp. 414-418.

³²Horgan, Great River, Vol. II, p. 542; to avoid confusion the Mexican El Paso hereafter will be referred to as Juarez, the name it acquired in 1888. The American settlement of Franklin will hereafter be referred to as El Paso, the name it acquired in 1873.

In 1848 Juarez became a border town when the treaty of Guadalupe Hidalgo made the Rio Grande a part of the boundary between the United States and Mexico. Following the ratification of the treaty both sides engaged in setting up surveying parties to map and chart the new border in accordance with Article V of the treaty. The chief commissioner of the Mexican boundary commission was General Pedro García Condé. His assistant and surveyor was José Salazar y Larregui. Colonel John B. Weller of Ohio headed the American commission. Lieutenant A. B. Gray and Major William Hensley Emory were surveyor and astronomer respectively.³³

The American section witnessed several changes in personnel. In 1850 Colonel Weller was removed as chief commissioner and replaced by Colonel John C. Fremont of California.³⁴ Fremont, however, was elected United States Senator from California in the same year. He never joined the commission.³⁵ John R. Bartlett in turn replaced Fremont.³⁶

In July of 1849, seventeen months after the signing of the treaty of Guadalupe Hidalgo, the commissioners met for the first time at San Diego, California. Almost at once they ran into unforeseen difficulties, because the discovery of gold in California had attracted all surplus labor.

³³U. S. Congress, Senate, 55th Congress, 2d Session, Exec. Doc. No. 247, Vols. XXIII-XXIV, pp. 11-12, "Report of the Boundary Commission upon the Survey and Remarking of the Boundary between the United States and Mexico West of the Rio Grande."

³⁴U. S. Congress, Senate, 31st Congress, 1st Session, Exec. Doc. No. 34, Vol. X, p. 10, "Secretary of State John M. Clayton to J. C. Fremont," June 28, 1849.

³⁵U. S. Congress, Senate, 34th Congress, 1st Session, Exec. Doc. No. 108, Vol. XX, pt. 1, p. 5, "Report on the United States and Mexican Boundary Survey, made under the Direction of the Secretary of the Interior, by William H. Emory, 1857."

³⁶U. S. Congress, Senate, 32d Congress, 1st Session, Exec. Doc. No. 119, Vol. XIV, pp. 7-9, "List of the Members of the Mexican and United States Boundary Commission with their Pay."

With little assistance the commissioners managed to demarcate the new international boundary from San Diego to the Rio Colorado. After finishing this assignment they agreed to meet again at Juarez in November of 1850.³⁷

While stationed at Juarez the Mexican commissioner Condé and the American Bartlett were in disagreement over the exact location of the intersection of the southern boundary of New Mexico and the Rio Grande. Their differences of opinion had their origin in the reference of the treaty of 1848 to an inaccurate map of Mexico. This chart was published in 1847 by a Mr. J. Disturnell and among other errors gave a totally false location of both Juarez and the Rio Grande river.³⁸ After the two commissioners had agreed on a compromise solution their decision was challenged by Lieutenant Gray, the surveyor of the American party. When Gray refused to accept the compromise between Condé and Bartlett, he was dismissed by order of the Secretary of the Interior, Stuart. His place was taken by W. H. Emory. Shortly thereafter in 1852 Emory succeeded Bartlett as chief commissioner.³⁹

Work on surveying and charting the Rio Grande continued throughout 1852. Despite many disagreements, not only between Americans and Mexicans, but among the staff of the American commission in particular, the survey of the Rio Grande boundary was completed for the greater part by the middle of 1853. Reports which included maps and surveying data were issued by the commissioners and added to the treaty of 1848 as prescribed in Article V.

³⁷Paul Neff Garber, The Gadsden Treaty (Philadelphia, 1924), p. 12.

³⁸U. S. Congress, Senate, 32d Congress, 1st Session, Exec. Doc. No. 119, Vol. XIV, pp. 392-394, "Commissioner John R. Bartlett to the Secretary of the Interior Alex. H. H. Stuart," Dec. 28, 1850.

³⁹U. S. Congress, Senate, 32d Congress, 1st Session, Exec. Doc. No. 119, Vol. XIV, p. 121, "Alex. H. H. Stuart, Secretary of the Interior to A. B. Gray," Nov. 4, 1851.

Following the agreement to purchase of a section of Mexican territory by the United States, the Gadsden Treaty or Treaty of La Mesilla was signed in 1853.⁴⁰ This addition to United States territory consisted of lands lying to the south of the river Gila in present day New Mexico and Arizona. Except for shortening it a few miles the treaty of 1853 had no effect on the Rio Grande boundary. Article I of the Treaty of La Mesilla contains the provisions for the Rio Grande border which were virtually the same as those stated in Article V of the Treaty of Guadalupe Hidalgo.

A new boundary commission was established to implement the Gadsden treaty. It was headed by W. H. Emory as the American commissioner and by José Salazar y Larregui as the Mexican chief commissioner.⁴¹ Their energies were expended mainly on charting and monumenting the land boundary created by the treaty of 1853. However, there were surveys of certain areas of the Rio Grande as well, especially in the area where the land boundary and the river boundary met one another. Emory followed Salazar's trail six months later. When the two commissioners compared their maps they noted great differences as to the location of the river bed. Within six months the Rio Grande had changed course dramatically. But the commissioners stated that this did not matter and the Salazar map of 1852 was adopted by the treaty of La Mesilla.⁴²

⁴⁰Statutes at Large, Vol. XXXIII, pp. 123-129.

⁴¹U. S. Congress, Senate, 34th Congress, 1st Session, Exec. Doc. No. 108, Vol. XX, pt. 1, pp. 26, 35.

⁴²Charles A. Timm, The International Boundary Commission; United States and Mexico, University of Texas Publication, No. 4134 (Austin, 1941), pp. 148-149--hereafter cited as Int. Bound. Comm.

FIRST INCIDENTS

The boundary problem concerning the territorial status of El Chamizal has existed since the year 1864 when the Rio Grande during one of its floods cut off a considerable section of Mexican territory and subsequently deposited it on the American side of the river.⁴³ The land involved was owned by Pedro I. García, a Mexican resident of Juarez. García's claim of ownership was well documented. The land he claimed was originally acquired by one Ricardo Brusuelas through a grant activated on June 3, 1818. From Brusuelas the property passed into the hands of Lorenzo del Barrio on the 15th of June, 1827. His heir Antonio del Barrio in his testament gave the property to Pedro I. García.⁴⁴

During 1865 and 1866 the Rio Grande continued to erode and tear off sections of land from the Mexican bank. Each year the stream moved closer to Juarez and eventually the city itself was threatened with destruction. To prevent further damage the city administration ordered canals to be dug in order to divert the current of the river north so it would retake its bed of 1863. The digging involved work in the territory now on the American side of the river. It was interfered with and halted by the residents of El Paso who had begun to occupy the newly added land in front of their settlement.

As a result of the American action the military commander of the district of Bravos at Juarez sent a very indignant letter to the governor of Chihuahua on October 17, 1866. The letter contained the commander's interpretation of the nature of the Rio Grande boundary and a number of complaints concerning the interference by Americans with the canal digging operations. It expressed the belief that in 1848 the deepest channel

⁴³Carreño, Mexico, p. 393.

⁴⁴Carreño, Mexico, pp. 394-395.

of the river was named the dividing line and that the commissioners, who had been aware of the erratic behaviour of the Rio Grande, resolved to fix the boundary line along its course astronomically and topographically. The letter went on to mention that the course of the river had changed considerably since the survey of 1852, most notably at San Elizario where it had destroyed most of the woods belonging to that community, and next to Juarez in the Chamizal sector where more than 1500 varas were lost to Mexico. The military commander then proceeded to accuse the American settlers of employing a double standard when they accepted Mexican respect for the American claim to the woods left on the Mexican side of the river near San Elizario and at the same time refused to recognize as Mexican those territories which had been transferred to the left bank or the American side of the river in front of El Paso.. After describing the preventive measures undertaken in the Chamizal territory and the subsequent American actions, the report concluded by saying that only the Mexicans had respected the boundary marked by the commissioners.⁴⁵

From the letter of the military commander of the Bravos district we receive a clue as to the opinion of the Mexicans of the valley of El Paso concerning the nature of the boundary. From their point of view the boundary was artificial, fixed, and permanent regardless of any changes in the course of the river.

To support his contention that the boundary along the Rio Grande was artificial the military commander of Bravos referred to opinions voiced by various commissioners concerning the nature of the boundary. As he did not mention any specific names it is not clear to what opinions he made reference. One of the most probable, however, is that of Gray, the chief surveyor of the American commission. On June 20, 1851, Gray had insisted during a meeting of the two commissions at Santa Rita del Cobre

⁴⁵Carreño, Mexico, p. 347.

that it was necessary to mark and fix the course of the river astronomically and that it was absurd to suppose that should the river change course the boundary would change likewise. Referring to the probable loss of Brownsville, Texas, if the boundary were to change with the river, he demanded that once rivers had been marked as boundaries, the boundary line should remain always as marked. The demarcation agreed upon, he continued, should form a part of the treaty of 1848 as specified in Article V.⁴⁶ In a letter to the Secretary of the Interior Stuart he defends the same position.⁴⁷

John Bull, first assistant surveyor, also was convinced that the Rio Grande should be made into a well marked and monumented artificial boundary. He stated that no river in the northern hemisphere was more variable than the Rio Grande. He pointed out that half the land formerly on the American side of the Rio Grande in the El Paso-Juarez valley had passed from the left to the right, or Mexican bank, within the few months of the two chief commissioners' residence at Juarez. Lastly Bull clairvoyantly predicted a never ending chain of boundary problems which would arise if the river were to be treated as a natural boundary.⁴⁸

When on the occasion of the meeting at Santa Rita del Cobre the Mexican commissioner expressed apprehension to his government concerning changes in the course of the Rio Grande he received the following instructions:

⁴⁶Carreño, Mexico, pp. 355-357.

⁴⁷U. S. Congress, Senate, 32d Congress, 1st Session, Exec. Doc. No. 119, Vol. XIV, pp. 300-305, "A. B. Gray to the Secretary of the Interior Stuart, " Santa Rita del Cobre, July 20, 1851; U. S. Congress, Senate, 32d Congress, 2d Session, Exec. Doc. No. 55, Vol. VII, pp. 14-16, "Report of Captain A. B. Gray Relative to the United States-Mexican Boundary Survey, " February 8, 1855.

⁴⁸U. S. Congress, Senate, 32d Congress, 2d Session, Exec. Doc. No. 38, Vol. III, pp. 2-4, "John Bull to John R. Bartlett, " February 10, 1853.

Concerning the marking of the boundary line in the rivers which change course, the commission will proceed to determine it according to the course which they have at present or which would be the most frequent . . . and will mark it with signs which will correspond with astronomical designations. . . ."49

This note from the Mexican government does not make express reference to the Rio Grande boundary being artificial. But it does demand that it be determined astronomically. This could be interpreted to mean fixed and unchangeable.

Although there were many statements to back up the opinion expressed by the Bravos district commander, opinions demanding a natural frontier along the Rio Grande were heard also. John B. Weller as early as 1849 in a letter to the Secretary of State, Clayton, stated that "as a natural boundary, the Gila and the Rio Grande constitute a large portion of the remainder of the line. It is thought no difficulty will be found in establishing it."⁵⁰ Emory voiced similar sentiments concerning the Gila river boundary, sentiments which equally apply to the Rio Grande. "The Gila," he states, "does not always run in the same bed; whenever it changes, the boundary must change, and no survey, nor anything else can keep it from changing. The survey of that river--as it fixes nothing--determines nothing." Emory's attitude remained the same throughout his work with the boundary commission.⁵¹ Upon his becoming chief commissioner of the American section in 1853 his viewpoint must be regarded as the official position held by the American party. This attitude also

⁴⁹Carreño, Mexico, p. 337.

⁵⁰U. S. Congress, Senate, 31st Congress, 1st Session, Exec. Doc. No. 34, Vol. X, p. 34, "John B. Weller to John M. Clayton," October 5, 1849.

⁵¹U. S. Congress, Senate, 31st Congress, 1st Session, Exec. Doc. No. 34, Vol. X, p. 34, "Emory to the State Department," April 3, 1850; William Hensley Emory, Notes on the Survey of the Boundary Line between Mexico and the United States (Cincinnati, 1851), pp. 5-7.

explains his refusal to worry about the discrepancies between his survey of the Rio Grande and that by Salazar. The neglect of both Salazar and Emory to make provisions for maintaining a fixed boundary could mean that they considered the Rio Grande frontier to be a natural border and subject to the body of international law governing arcifinious boundaries.

The governor of the state of Chihuahua, Luis Terrazas, forwarded the report from the Bravos district to the Secretaría de Relaciones which at the time was in the hands of Lerdo de Tejada. The Mexican Foreign Minister Lerdo made the complaint known to the American Secretary of State, Seward, through the offices of Matías Romero, head of the Mexican legation at Washington.⁵² In this message of December 5, 1866, Lerdo de Tejada took the position that in dealing with river boundary problems changes by accretion could be ignored. Avulsive changes, though, would not deprive owner or nation of property.⁵³

Matías Romero reported personally to Seward, who after listening declared the matter to be potentially grave, but at present quite harmless. He asked Romero for copies of the Bravos district commander's letter for further study.⁵⁴

After having received the information requested from the Mexican minister, Seward presented his written reply to Mexico's complaint. It was forwarded to the Mexican legation at Washington on February 5, 1867.⁵⁵ Included in it was a statement made in 1856 by Attorney General Cushing which, according to the Secretary of State, contained the principles supported by the United States. Cushing's opinion

⁵²Carreño, Mexico, p. 337.

⁵³Timm, Int. Bound. Comm., p. 157.

⁵⁴Carreño, Mexico, p. 349.

⁵⁵Timm, Int. Bound. Comm., pp. 151-152.

in essence was that in a stream subject to avulsion and aluvion the boundary line would be found in the middle of the stream. However, should a river abandon its old bed and chose a new one the boundary would remain in the middle of the old bed. In the case of changes stemming from erosion and accretion the boundary line would stay in the middle of the channel.⁵⁶ The principles voiced by Cushing were none other than those of international and civil law concerning property near rivers.

Matías Romero hastened to express his conditional agreement with Caleb Cushing's opinion, but he reserved for the government of Mexico the right to reject or accept these principles. For his part he stated that he considered them justified. On February 6, 1867, he transmitted Caleb Cushing's statement to Lerdo de Tejada. There was no answer forthcoming from the Mexican Foreign ministry.⁵⁷

The problem of El Chamizal reappeared on June 8, 1874, in a note by Dr. M. O. Samaniego, Mexican Vice-Consul at El Paso, Texas. In this message to the Mexican government Samaniego noted that since 1852 when the boundary was established the river had undercut the right bank every year during floods. This had destroyed the property of many families forcing them to leave Juarez and to settle elsewhere. The Mexican authorities, he continued, had tried to originate several preventive measures to check the destruction, but none had helped. Mainly to blame for this lack of success, he stated, was the attitude of the inhabitants of El Paso who insisted that the Mexicans had no right to alter the course of the river. He also was of the opinion that the dividing line of 1852 had been fixed astronomically and that the boundary as charted in 1852 was about 1000 varas to the north of the present river bed.

⁵⁶Opinions of the Attorneys General of the United States, Vol. VIII, p. 175.

⁵⁷Carreño, Mexico, pp. 354-355.

The Rio Grande therefore was flowing through Mexican territory and the inhabitants of Juarez were perfectly within their rights when they attempted to change its course up to the point where it met the original boundary line.⁵⁸

A letter by Sr. Armendariz, administrator of the custom house of Juarez, followed Samaniego's message. The note which Armendariz sent to the Secretaría de Hacienda on August 3rd of the same year contained a statement of the position which Mexico was to adopt during the arbitral stage of the Chamizal dispute in 1911:

Nothing seems easier, than to have stated in the Treaty of Guadalupe Hidalgo that the perpetual boundary between the two countries should be from the port of San Diego to the Rio Bravo, and along this river to the delta. But instead it was said with great clarity that the boundary in all its course should be marked by the commissions . . . in order that the line as marked on their charts would constitute the perpetual and invariable boundary between the two nations. What would be the purpose of marking the deepest channel of the boundary wherever the river had two arms . . . if the river, changing course from one side to the other, would also change the boundary? Is it possible that the distinguished statesmen of both nations drew up and ratified such a treaty, knowing that it would cause constant discord and insecurity among those living adjacent to the river. . . ?⁵⁹

As a direct result of the two communiques Lafragua, the Mexican Foreign Minister, soon forwarded a series of documents concerning the recent boundary difficulties to Ignacio Mariscal, the head of the Mexican legation at Washington. He attached a letter explaining to Mariscal the position of the Mexican government concerning the nature of the Rio Grande boundary. The border in its entirety, he believed, was made up of mathematical lines which were to be considered invariable since nothing was provided in the treaties of 1848 and 1853 to deal with the unforeseen

⁵⁸Carreño, Mexico, p. 358.

⁵⁹Carreño, Mexico, p. 359.

event of major changes in the course of the river. Some agreement would have to be reached between the two nations to permit speedy settlement of river boundary questions.⁶⁰

Ignacio Mariscal after receiving Lafragua's note went to see the American Secretary of State, Fish, and informed him of the instructions he had received concerning the initiation of negotiations to settle all outstanding boundary questions. Fish promised to think over the problem and agreed to meet again soon to discuss necessary details with Mariscal.⁶¹

On March 25, 1875, Mariscal issued a tentative proposal for a convention. It amounted to a complete negation of the artificial boundary theory. In essence the proposal stated that although the treaty of 1848 presumed the boundary line to remain always as provided for in that treaty, gradual change through the natural work of aluvion would change the boundary line. Mariscal's proposal was nothing less than a restatement of the opinion expressed by the Attorney General Cushing in 1856. As such it represented a complete disregard of the opinions of the Mexican officials whose complaints had initiated the negotiations.

Mariscal's project was forwarded to the Secretaría de Relaciones, and on April 30, 1875 he was informed that it was acceptable to present the treaty project in the general terms in which it was conceived. But it would be necessary, the message continued, to amend it with one or two clauses. The first amendment to be added was to state that "if land gave way from one of the two banks because of violent changes in the course of the river, those people who found themselves in one or the other territory, separated by the new current from their old land, would continue to belong to the country of which they were a part before being

⁶⁰Timm, Int. Bound. Comm., p. 153.

⁶¹Carreño, Mexico, p. 362.

cut off by the change in the course of the river." The other amendment provided that "if in a river with two or more currents one should become so strong that it would abandon the one which served as a boundary line, the rule would be to consider those bancos and lands now transferred to belong to the nation which owned them before the change in current occurred."

Mariscal included these two amendments in his treaty proposal and also added a third one of his own. It contained the provision that "if by the force of the current a part of the territory of one of the two nations would be torn away from its shore and moved next to the border of the neighboring country, such a part would continue to belong to the nation which had owned it before." This proposal was forwarded to the Secretary of State, Fish, but the American government was not in a receptive mood and matters continued in a state of ambiguity for several years. Not until the case of Beaver or Morteritos Island arose was the argument concerning the nature of the Rio Grande boundary resumed.⁶²

The Morteritos or Beaver Island boundary dispute came into existence because of a controversy between the United States and Mexico over rights of sovereignty on this island. Morteritos is located in the lower Rio Grande opposite the Texan town of Roma.⁶³ Although far removed from the El Paso-Juarez valley the impact of statements made during this quarrel influenced the treatment of El Chamizal at a later time. The precedents set up during these negotiations are too important to be disregarded.

⁶²Timm, Int. Bound. Comm., p. 154.

⁶³Humberto Escoto Ochoa, Integracion y Desintegracion de Nuestra Frontera Norte, Universidad Nacional de Mexico, Facultad del Derecho, y Ciencias Sociales, Thesis (Mexico, D. F., 1949), p. 158.

The Morteritos problem became an international dispute when Don Manuel Garça Peña, a Mexican citizen and a resident of the village of Mier, approached the Mexican consul in this town to protest the actions of two American customs officials, Luziano Munoz and Jorge Lowe. The two officers had ordered him to stop farming the island and had confiscated the oxen he had used in his work. The animals had been taken to Roma.⁶⁴ The Mexican government resolved to protest the actions of Munoz and Lowe. It considered the inhabitants of the island Mexican citizens since they had paid taxes to Mexico and not to the United States. The matter was brought to the attention of the American Secretary of State, Frelinghuysen, on March 13, 1884.⁶⁵

In the meantime the American customs officials also had filed a protest with the Department of State. They protested the invasion of American territory, Morteritos Island, by authorities and private individuals from Mexico. Consequently, the letter continued, the American military commander of the Roma sector had ordered the forceful occupation of the island. According to the commander he was acting under orders from the Secretary of War.⁶⁶

On June 12, 1884, Matías Romero, the Mexican Minister at Washington, presented a series of documents concerning Morteritos Island to Secretary of State Frelinghuysen. Included was a report by Garça Peña telling of the invasion of the island by the justice of the peace and fifty other men from Roma. According to Garça Peña's testimony they had committed acts of violence on January 20, 1884, and had threatened the Mexican residents should they remain on the island.

⁶⁴Escoto, Integracion, p. 159.

⁶⁵Carreño, Mexico, p. 368.

⁶⁶Escoto, Integracion, p. 159.

As a result of Matías Romero's protest the two nations agreed on a status quo leaving it up to diplomatic negotiations to decide the sovereignty of the island.⁶⁷

In the ensuing diplomatic war Mexico insisted that the island had always been a part of Mexico since it lay to the south of the main channel of the Rio Grande at the time of the border survey of 1852. Since then the river had changed course leaving the island to the north of the main current. Morteritos, including all aluvial additions, therefore belonged to Mexico. In principle Mexico's position amounted to a restatement of its previously held theory that the boundary line as shown in the maps of the original boundary commission was permanent and immutable. A change in the course of the river could not affect sovereignty over the island.

After the American State Department had been informed of Mexico's position, Frelinghuysen at once consulted the former boundary commissioner, Emory, requesting his opinion as to the status of the island. Emory's decision was in favor of the United States. It was based on evidence from the original charts, which showed according to Emory, that the island had been north of the main current at the time of the original survey.⁶⁸

On July 11, 1884 Frelinghuysen instructed the American minister at Mexico City to follow in his negotiations with the Mexican government the decision made by Emory and to adhere to the principle that in spite of any changes in the river caused by aluvion or for any other reason, the boundary line would remain unaffected and continue to correspond with the line shown in the maps of the original boundary commission of 1852.⁶⁹

⁶⁷Carreño, Mexico, p. 369.

⁶⁸Escoto, Integracion, p. 159.

⁶⁹Escoto, Integracion, pp. 160-161.

The Mexican government upon hearing Emory's opinion had a second look at the maps of 1852 and decided on a different approach. It proceeded to ask Frelinghuysen to reconsider the treaty project offered by Mariscal in 1875. The American Secretary of State had his objections to that proposal and reaffirmed his position that variations of the stream bed, whether they be caused by aluvion or any other means, were not sufficient cause to change the boundary.⁷⁰ Mexico, upon receiving Frelinghuysen's policy statement, did not continue to press its claim and on October 9, 1884 the Mexican Minister, Matías Romero, informed the State Department of Mexico's consent to the loss of Morteritos Island.⁷¹

If it was Mexico's intention to wrest an admission from the United States that the Rio Grande boundary was artificial rather than natural, it had succeeded admirably. For Frelinghuysen's statement not only accepted the idea of a fixed line boundary impervious to changes in the river, but also refuted the opinion voiced by Cushing in 1856 and the related treaty proposal of 1875. Whatever may have been Frelinghuysen's reason for the unnecessary switch in the American position, is unclear. But we may be assured that it reenforced the beliefs of those Mexicans who held that the boundary was astronomically fixed and not subject to change under any circumstances.

EL CHAMIZAL: CASE NO. 4

In 1882 Mexico and the United States entered into an agreement providing for the reconstruction of destroyed and decrepit boundary markers along the land border west of the Rio Grande. A convention

⁷⁰Carreño, Mexico, p. 370.

⁷¹Escoto, Integracion, p. 376.

governing that undertaking was signed on the twenty-ninth of July.⁷² A team of surveyors also was engaged in charting the Rio Grande where it meets the land boundary. They paid little or no attention to the fact that the river deviated considerably from the course it held in 1852 and 1853.⁷³ As it was common knowledge that changes had occurred, the surveyors must have been aware of them also, but they did not consider them to be of any consequence. The philosophy underlying their work seems to have been that the river was a changing "natural" boundary. The "fixed-line theory" agreed upon as the decisive principle in the Morteritos Island dispute and the marking of the river along its course of 1882 set two opposing precedents. The need for an international agreement as to the proper way of dealing with river boundary questions resulted in the convention of 1884.⁷⁴

The proposal for this convention originated in a message from Mexican Ambassador Matías Romero, to the American Secretary of State Frelinghuysen.⁷⁵ In the projected convention the concept of a fixed and immutable boundary was not mentioned. The proposal completely disregarded the position taken by Frelinghuysen in connection with Morteritos Island and de facto accepted Cushing's opinion of a "natural" Rio Grande boundary. On November 12, 1884 the convention was signed.⁷⁶ Aluvial and avulsive changes were to be decided on the basis of international law.

⁷²Statutes, Vol. XLVII, pp. 172-176.

⁷³Carreño, Mexico, p. 376.

⁷⁴U. S. Congress, Senate, 50th Congress, 2d Session, Exec. Doc. No. 144, Vol. IV, 62 pp.

⁷⁵Escoto, Integracion, p. 162.

⁷⁶Statutes, Vol. XLIX, pp. 37-40.

The prospects for a speedy ratification of the treaty by Mexico were none too promising at first. A disagreement between Matías Romero and the Mexican Foreign Minister, José Fernández, over the position to be adopted by Mexico had resulted in an unexpected delay. Fernández had instructed Matías Romero to adhere to the fixed line theory and seemed rather perplexed at the Ambassador's handling of the matter. A short resume of a letter by Fernández to Matías Romero clearly indicates this:

The Secretaría has discovered . . . vascillation in your opinion concerning the true meaning of the instructions which were handed to you. Their purpose was to assist you in reaching an agreement with the United States in order to eliminate the difficulties arising from the frequent changes in the course of the Rio Bravo. But at times you narrow these instructions and at other times you state that they are exactly the same as those advocated by Mariscal in his treaty project . . . of December 2, 1875. The theory of that treaty proposal is exactly the same which the United States would like to see prevail. . . . You held . . . in note No. 437 . . . that with the objective of our government in mind, the basis for a treaty would have to be as follows: "The boundary line from El Paso to the Gulf of Mexico ought to be the channel in which the Rio Bravo ran when the boundary line between the two countries was marked by the Mixed Commission according to Article V of the treaty of February 2, 1948." Despite this statement in note No. 802 you presented to the government of the United States the treaty project of Mariscal in which you accept the change of the line because of slow changes in the river. In this same note you tell of having sent another message to the Secretaría on October 9, [1884] in which one reads that "if the United States wants to retain its rights to the said island, Morteritos, I recognize here that the boundary between the two republics is fixed by the Treaty of Guadalupe Hidalgo, as it was marked by the Mixed Commission without it having been changed by differences in the course of the river or its sources or its number of branches." At the same time I recommend to you that you will be clear about the following: At no time will you stray from the instructions given to you by this Secretaría . . . because what the Mexican Government wants to achieve is to evade further questions, that is to say, although the river may change course, slowly or rapidly, the same course which the Rio Bravo held in 1848 will always remain the boundary line. . . .⁷⁷

⁷⁷Carreño, Mexico, pp. 379-382.

The annoyance evident in the Foreign Minister's correspondence with his Ambassador at Washington shows that Matías Romero signed the Treaty of 1884 without considering the position of his government. The latter, realizing that he had committed a grave error issued a note to the "Encargado de Negocios at interim" in Washington instructing him that "nothing be done which runs counter to the instruction given by Fernández."⁷⁸

Ratification of the convention might very well have been prevented had Fernández remained in office, but at just this critical time he was succeeded in office by Mariscal, the author of the treaty proposal of 1875. Mariscal at once sponsored the ratification of the convention of 1884.⁷⁹

On March 1, 1889, a convention was concluded by Mexico and the United States, establishing an International Boundary Commission to apply to boundary issues the provisions made in Articles I and II of the treaty of 1884.⁸⁰ This commission was set up in 1894 and had its life extended every year by new conventions.⁸¹ Finally it was made a permanent commission on November 21, 1900.⁸²

This International Boundary Commission was the successor of the special commissions created by the treaties of 1848, 1853 and 1882

⁷⁸Carreño, Mexico, p. 382.

⁷⁹Carreño, Mexico, p. 302.

⁸⁰Statutes, Vol. LI, pp. 32-37; International Boundary Commission, United States and Mexico, Treaties, Joint Rules Governing the Commission, Personnel (Washington, 1929), 26 pp.

⁸¹Treaties extending the life of the International Boundary Commission were signed on August 24, 1894; October 1, 1895; November 6, 1896; October 29, 1897; December 2, 1898; December 22, 1899.

⁸²U. S., Department of State, Papers Relating to the Foreign Relations of the United States: with the Annual Message of the President to Congress, December 3, 1900 (Washington, 1902), pp. 786-788--hereafter cited as For. Rel.

for surveying and marking the land and water boundary between the two countries. In contrast to its predecessors the International Boundary Commission was a legal and administrative body, charged with solving all water boundary differences and questions.⁸³ Unchallenged within one month, the decision of the commissioners was to have treaty force.⁸⁴

Article I of the convention of 1889 gives the International Boundary Commission a general and broad grant of jurisdiction over all boundary disputes along the Rio Grande and other river frontiers with Mexico. Article II divides the commission into two sections, American and Mexican respectively. Each section consisted of a commissioner, a consulting engineer, secretaries and interpreters.⁸⁵

Colonel Anson Mills of the United States and José María Canalizo of Mexico were the first commissioners. They were appointed in 1893. The organization of the two sections was effected on January 8, 1894, and rules and regulations were agreed upon at the same time. Colonel Mills remained the head of the American commission until the year 1914. The Mexican commission saw several changes in personnel during the same period. Most important among these were the replacement of José María Canalizo by Francisco Javier Osorno in 1894. Osorno in turn was succeeded by Jacobo Blanco in 1898. Fernando Beltrán y Puga, who took over from Blanco in 1906, was Mexican commissioner until 1914.⁸⁶

Mills' estimate of the commission's work during his time was that "during the sixteen years of our active service (the revolution of 1911

⁸³James D. Richardson, A Compilation of the Messages and Papers of the Presidents (Washington, 1911), Vol. IX, p. 187; Vol. VIII, p. 815.

⁸⁴Timm, Int. Bound. Comm., p. 13.

⁸⁵Timm, Int. Bound. Comm., p. 26.

⁸⁶Timm, Int. Bound. Comm., p. 27.

in Mexico having put an end to our activities), the Commission tried over 100 cases of all kinds, disagreeing only in the Chamizal case, and preserved the peace and quiet of the entire Rio Grande border for these long years to the satisfaction of both governments and the people of the two nations." Mills had good reason to be proud of his record, particularly in respect to the Banco Elimination Treaty of 1905.⁸⁷ As a result of this agreement thousands of acres of land transferred by shifts in the channel from one side of the river to the other were judged to belong to the countries where they found themselves. The Rio Grande once again became the true boundary along most of its course. On the other hand the Chamizal case was badly handled by the International Boundary Commission and remained as a poignant reminder of mutual incompatibility.

As the International Boundary Commission was in the process of being established the Chamizal question was once again brought to the fore. On January 23, 1894, Pedro I. García testified before the District Judge of Bravos and submitted an application for the return of his property, which he claimed was within the limits of the Chamizal tract now on the American side of the river in front of El Paso, Texas. A short excerpt from his testimony explains the basis of his claim of reclamation:

As a consequence of brisk and sudden changes in the current [1864-1867] of said Rio Bravo, this land remained on the other side of the river. From then on I have not dared to occupy my lands, fearful, among other things, that I would suffer personal injury by some North Americans who, considering the land a part of United States territory, had occupied it. Another reason was, because I was not sure which government to recognize in order to pay taxes.⁸⁸

García's testimony was forwarded by the political administrator of the Bravos district to Osorno, the Mexican commissioner. Osorno

⁸⁷Timm, Int. Bound. Comm., p. 28.

⁸⁸Carreño, Mexico, p. 395.

presented the problem to the International Boundary Commission on September 28, 1894. From then on it became known as "El Chamizal, case no. 4."⁸⁹ The documents involving El Chamizal were presented to the commission on November 4, 1895. The commission met in session on November 6.⁹⁰

The U. S. commissioner after viewing the documents stated that the boundary commission was not created to deal with matters of national sovereignty over adjacent territories and that it was not meeting to determine the location of the boundary line. It was to deal solely with boundary changes in their formative stages. The claim therefore should be rephrased in the following question: "Did the Chamizal change over to the United States because of a change due to aluvion or avulsion?"⁹¹

In other words the question as applied to García's claim was whether his land was transferred to the United States bank of the Rio Grande by avulsive or aluvial change. The decision was to be made in accordance with articles I and II of the treaty of 1884 which stated that should the change be through slow and imperceptible accretion and erosion the river would remain the boundary. If the change occurred because of avulsion the boundary would remain as it was prior to that change. The Mexican Commissioner accepted the restatement of García's claim by Commissioner Anson Mills.

A small difference of opinion arose at the outset of negotiations. The point of conflict were two maps of the El Paso-Juarez valley. Both maps supposedly were drawn up by the original boundary commission in 1852 and 1853. However, the location of the river differed from one map

⁸⁹Carreño, Mexico, p. 395.

⁹⁰Comisión Internacional de Limites, entre Mexico y los Estados Unidos, Sección Mexicana, Memoria Documentada del Juicio de Arbitraje del Chamizal (Mexico, D. F., 1911), Vol. II, p. 646--hereafter cited as Memoria Documentada.

⁹¹Timm, Int. Bound. Comm., p. 133.

to the other. This was due to the difference of time between the surveys of Salazar and Emory. The chart presented by the Mexican commissioner was eventually accepted as most authentic and accurate since it alone bore the official signatures of the boundary commissioners Salazar and Emory.⁹²

The American commissioner felt that the evidence presented by García in support of his claim was insufficient to prove the contention that the river had suffered an avulsive change in 1864; he demanded further proof. On April 14, 1896 a number of witnesses were called to the stand to testify in behalf of Mexico. They were Jesús Serna, Inocencio Ochoa and Espiridión Provencio. All had been long time residents of Juarez,, Chihuahua and were there in 1864. Ochoa, a former mayor of the city of Juarez, had personally undertaken preventive measures to stop the advance and destructive action of the river. The American witnesses were two Americans, Samuel Schutz and José Magoffin and a Mexican citizen José M. Flores. Mills very skillfully interrogated his witnesses with the intention of proving that the lands torn away from the Mexican side did not come to the American bank in any recognizable shape. However, as much as the witnesses disagreed with one another they were certain that the river changes had occurred frequently and that in 1864 they had been so violent as to destroy trees, houses and orchards. Pieces up to 50 yards wide were cut away from the Mexican bank in the course of a day.⁹³

At the end of the questioning the commissioners presented their respective positions. They agreed that the Chamizal tract, during the period when the boundary was demarcated by Salazar and Emory, was in one piece and could be found on the Mexican side of the Rio Grande.

⁹²Carreño, Mexico, pp. 401-402.

⁹³Carreño, Mexico, pp. 403-405.

Later because of successive changes in the course of the river the land had passed from the Mexican to the American side. The Mexican commissioner then contended that any change other than slow and gradual would not affect the boundary line. He insisted that the changes in the case of El Chamizal were not slow and gradual but most violent and at periods of time of unequal intermission. The change in the river, therefore, was not in accordance with Article I of the treaty of 1884 and the boundary line was not altered. The American commissioner on the other hand held that the second characteristic of avulsive change had not been present. The land transferred from one side to the other had not arrived in any form resembling the land before its destruction by the river. The changes in the course of the river therefore were caused by erosion and accretion in conformity with Article I of the same treaty. He also held that the phenomenon of aluvion did not have to be uniform in nature, but might be intermittent and perceptive. The boundary line therefore had moved with the river.⁹⁴

The divergent views of the commissioners were duly noted and it was agreed to meet again on June 17, 1896. However, no further action was taken after an attempt by Mexico to reopen the case had failed. Mills declined to answer a Mexican request to that effect following a note by Under-Secretary of State W. W. Rockhill asking Mills to go ahead if an agreement were possible, otherwise to refuse consideration.⁹⁵

Although no solution was reached during this first official consideration of the Chamizal case the positions taken by the two parties were to be of consequence later. Their particular significance lies in Mexico's explicit adherence to the treaty of 1884 as a means of solving boundary disputes which came into existence prior to the ratification of

⁹⁴Timm, Int. Bound. Comm., p. 134.

⁹⁵Timm, Int. Bound. Comm., p. 134.

this treaty. In other words Mexico considered the Rio Grande boundary to be a natural boundary, because the treaty of 1884 was retroactively applicable to all boundary problems since 1848. The statement by the American Commissioner proved to be equally important. For in stating that aluvion could be rapid, intermittent and visible, Mills set a precedent for the theory of rapid erosion which he supported during the arbitral stage of the Chamizal dispute.

On December 30, 1897, the American government made another effort to solve the Chamizal question. Clayton, the American ambassador in Mexico City handed a proposal to Mariscal, the Foreign Minister of Mexico, calling for the addition of a third neutral member to the International Boundary Commission. The function of the third commissioner was to be that of arbiter. The plan, however, was rejected by Mariscal on grounds that the International Boundary Commission was "established only to emit its opinion, which necessitates the ultimate approval, expressed or presumed, of the two high contracting parties. . . ." ⁹⁶

Once resurrected the Chamizal dispute was not left to rest for very long. On February 11, 1898, the Mexican Foreign Secretary in turn made a proposal to Clayton, suggesting arbitration by the chief of a third sovereign state.⁹⁷ Mariscal's proposal found a very cool reception in the United States. The American position as expressed in Clayton's response stated that the question was one of applying ordinary rules dealing with fluctuating river boundaries and that it was not one "involving the element of friendly compromise which is so often apparent in the settlement of international disputes by a neutral arbiter." ⁹⁸

⁹⁶Memoria Documentada, Vol. III, pp. 969-970, 974-975, 980-983.

⁹⁷Memoria Documentada, Vol. III, p. 975.

⁹⁸Memoria Documentada, Vol. III, pp. 977-978.

After rejecting Mariscal's proposal Clayton put forth the suggestion of adding a jurist to the commission to cast a third vote. This was rejected by Mariscal who held that the matter was too important to be left in the hands of a private citizen. Mariscal's answer was forwarded by the American State Department to Commissioner Mills. In a last attempt at reaching common grounds, the American Commissioner in a note to Mariscal expressed his views on the use of a neutral third member to arbitrate disagreements. Mills felt that the problem was solely technical. The arbiter would have to render an entirely intellectual decision, since the question was whether the river, in its movement over some 600 acres during the past 40 years, had changed course by gradual erosion and accretion or by avulsion. No answer was received from Mexico and negotiations came to a standstill.⁹⁹

In 1907 Mexico and the United States entered into a series of negotiations concerning the property rights of Mexicans residing in the Chamizal area. The government of the State of Texas and the administration of the city of El Paso had repeatedly tried to exercise de facto sovereignty in the Chamizal tract. Most important among these actions by the State of Texas was the issuing of land grants within the limits of El Chamizal. Independently of these concessions by the State government, El Paso had granted a right-of-way across the disputed territory to the El Paso Transit Company. The city permitted the enterprise to build bridges across the Rio Grande. One of these bridges was within the bounds of the Chamizal tract. When conflicts arose between people holding Mexican land titles and those with documents of the State of Texas, the marshal of El Paso tried to expel all Mexican property holders from the Chamizal tract and American courts attempted to exercise jurisdiction in these disputes.¹⁰⁰

⁹⁹Timm, Int. Bound. Comm., pp. 134-135.

¹⁰⁰Carreño, Mexico, p. 414.

Enrique C. Creel, the Mexican ambassador at Washington, protested these activities in a letter to the American Secretary of State, Elihu Root. In this message of March 21, 1907, he described how several of the inhabitants of the Chamizal tract had approached the Mexican boundary commissioner asking him for help to prevent the activities of the marshal of El Paso who was acting in the position of a federal official. Creel also made it clear that the Mexican settlers were in a desperate mood and ready to answer force with force to defend what they considered properly their own. Finally the Mexican Ambassador requested that the State Department stop the proceedings of the marshal. A similar appeal by Beltrán y Puga to Creel also was made known to the State Department.

On the 29th of March, 1907, Secretary of State Root acted on Creel's message by informing the Attorney General of the United States that the Chamizal area was disputed territory and as yet of undetermined sovereignty. Consequently, it was the job of the International Boundary Commission to deal with the problem. Any judgments passed by the Federal Circuit Court in questions dealing with the Chamizal tract therefore were inapplicable. The disposition of property, Root continued, which was still subject to international negotiations put the United States in an untenable position. The marshal therefore should be ordered to stop proceedings at once.¹⁰¹

Root's order was complied with by the Attorney General. Yet difficulties did not disappear right away. The local authorities of El Paso continued to order Mexican title holders to leave the Chamizal tract immediately. Creel again had to ask for intervention by the State Department. In his letter of July 19, 1907, Creel also suggested that a special arbitral body be formed. It was to consist of the two boundary commissioners and of a jurist selected by the government of Canada. The Canadian was to

¹⁰¹Timm, Int. Bound. Comm., p. 135.

function as arbiter and cast the decisive vote on all questions the two commissioners were unable to agree on.¹⁰²

While Creel's proposals were discussed much interest centered on a plan for a treaty advanced by Mexico. It was to provide a new basis for settling all river boundary problems between the two nations. Overtures in this direction had been made by José Godoy, the Mexican charge d'affairs, at Washington on May 21, 1908.

The Mexican treaty proposal contained provisions for exchange of territories transferred from one bank of the river to the other. In particular it was advocated to exchange El Chamizal and Cordova Island for San Elizario and the Horcón bar. The last two were to go to Mexico and the first to the United States. Rivers would remain boundaries in the future regardless of any changes except those caused by avulsion and involving more than 400 hectares or 200 people. In such abnormal cases commissioners would be appointed to mark the old river bed and thus preserve it as the boundary. Artificial changes in the course of the river were to be prohibited without provisions for the restoration of the old channel as the boundary.¹⁰³

In a letter of October 22, 1907, Root agreed in principle to Godoy's treaty proposal. The issue was discussed for the following two years, but no decision was reached.¹⁰⁴ On April 6, 1909, De la Barra, the Mexican Ambassador, urged the treaty on the new Secretary of State, Knox.¹⁰⁵ Knox was unwilling to accept the Godoy plan and instead suggested a return to the idea of enlarging the commission by adding a Canadian jurist. Knox also proposed to maintain the status quo in the

¹⁰²Memoria Documentada, Vol. III, pp. 989-991.

¹⁰³Memoria Documentada, Vol. III, pp. 992-994.

¹⁰⁴Memoria Documentada, Vol. III, pp. 997-999, 1000-1004.

¹⁰⁵Memoria Documentada, Vol. III, pp. 1005-1006.

Chamizal tract and to stay proceedings of dispossession against all people able to show prima facie evidence of Mexican titles to land in the Chamizal area.¹⁰⁶

De la Barra's answer to Knox of January 15, 1910, was a re-affirmation of Mexico's old position that the Rio Grande boundary was fixed and immutable. In support of this contention De la Barra cited Frelinghuysen's affirmation of the "fixed line" theory in 1884 and stressed Root's acceptance in principle of the Godoy proposal. Godoy's plan according to De la Barra was based on the fixed-line boundary theory. It seems, however, that Godoy, instead of calling for acceptance of a fixed boundary as a basis of negotiations, advocated the establishment of a fluvial boundary subject to international law. It is not clear, therefore, as to how De la Barra arrived at his interpretation. Knox at once rejected De La Barra's contention and the subject was dropped for the time being.¹⁰⁷

In the ensuing diplomatic correspondence Mexico showed serious interest in a new convention dealing specifically with the problem of El Chamizal. As a result Knox presented De la Barra with a draft of a convention which was to be the basis for negotiating the Chamizal dispute. In essence it was a restatement of the ideas advanced by Creel. In other letters Knox also guaranteed the property rights of settlers with prima facie Mexican land titles. He designated Wilbur Keplinger, an American official on the Commission for the Equitable Distribution of the Waters of the Rio Grande and Colorado, to judge the validity of these titles. The Mexican Government was in an agreeable mood and within two months, on June 24, 1910, a convention was signed putting the Chamizal question up for arbitration.

¹⁰⁶Memoria Documentada, Vol. III, pp. 1006-1008, 1022-1026.

¹⁰⁷Timm, Int. Bound. Comm., pp. 157-158.

ARBITRATION OF EL CHAMIZAL

The convention of June 24th, 1960, provided that "the United States of America and the United States of Mexico, desiring to terminate, in accordance with the various treaties and conventions now existing between the two countries, and in accordance with the principles of international law, the differences which have arisen between the two governments as to the international title to the Chamizal tract, upon which the members of the International Boundary Commission failed to agree, and having determined to refer these differences to the said commission; established by the convention of 1889, which for this case alone shall be enlarged as hereinafter provided, have resolved to conclude a convention for that purpose. . . ." ¹⁰⁸

The preamble of the convention was followed by a list of ten articles which contained more specific provisions:

Article I, gave a geographical description of the disputed area. It stated that "the Chamizal tract . . . is located at El Paso, Texas, and Ciudad Juarez, Chihuahua, and is bounded westerly and southerly by the middle of the present channel of the Rio Grande, otherwise called Rio Bravo del Norte, easterly by the abandoned channel of 1901, and northerly by the middle of the channel of the river as surveyed by Emory and Salazar. . . ."

Article II dealt with the enlargement of the commission by the addition of a Canadian jurist who was to function as a third commissioner and was to preside over the deliberations. The two governments, Mexico and the United States, were to select him by common accord. If they could not agree the Canadian government was to chose him.

¹⁰⁸For. Rel., 1911, p. 566.

Article III provided that the commission was to decide solely on the international title to the Chamizal tract. A unanimous or a majority vote was to be binding on both governments and not subject to appeal.

Article IV gave each government the rights to be represented before the commission by an agent or counsel, who could make oral argument, cross-examine witnesses and introduce new evidence.

Article V prescribed a time table for presenting evidence and for reaching a decision.

Article VI dealt with the financial side of the arbitration procedure. Both sides were to share expenses equally in all cases where they would derive equal benefit for a service, such as that rendered by the third commissioner.

Article VIII provided that if the decision should be favorable to Mexico, it should be executed within two years after the date the award was rendered. In the meantime a status quo should be maintained in the Chamizal tract.

Article IX declared all previous propositions as to the settlement of the case to be null and void. However, it did not forbid their use as evidence.

It is interesting to study this selection of provisions for a variety of reasons. First of all they state very clearly the paradox which the Chamizal question had become. According to the preamble the conflict was to be terminated in accordance with existing treaties as well as with the principles of international law. Since the treaties of 1848 and 1853 had never made mention of international law as the guiding principle for solving river boundary problems, Mexico insisted that up to 1884 the Rio Grande boundary was immutable and artificial. The boundary from the Mexican viewpoint was not subject to international law as far as changes prior to 1884 were concerned. Because of this conflict

between the Mexican interpretation of the treaty of 1848 and the provisions made for international law in the convention of 1910 the beginning statement of the latter treaty became self-contradictory. It brought on a mass of arguments which were based on opposing premises and never came closer than denying the validity of each other's basic assumptions. Yet an exclusive statement in favor of international law might have been quite acceptable to Mexico who had argued its case along these lines in 1895.

The wording of the preamble also creates some doubts as to the legality of the commission created to arbitrate the case. The second article combined with the initial statement declared this body to be a commission set up under the treaty of 1889,¹⁰⁹ changed only by the addition of a third member. Two points, however, made the commission of 1910 radically different from that set up in 1889.

First the decision to be made by the commissioners was given such a degree of finality and conclusiveness to make it wholly at variance with the provision made in Article VIII of the treaty of 1889. This article stated that either government could defeat a decision rendered by the commissioners by simple disapproval within one month. Mariscal in 1897 had expressed this thought when he rejected the American proposal to enlarge the commission and to make it an arbitral body. He held that should such a commission be set up it would be without power to function under the treaty of 1889.

The second point consisted of the unusual practise of using agents to represent their governments, instead of commissioners as required by the treaty of 1889. Altogether the function of the commission was altered considerably and was basically different under the treaty of 1910 from the provisions of the treaty of 1889. Instead of merely ..

¹⁰⁹Statutes, Vol. LI, p. 38.

enlarging an already existing commission to be better able to deal with a knotty problem, the convention of 1910 created an arbitral tribunal which was to secure two of its three members from an already existing boundary commission.

These discrepancies were overlooked and the respective governments entered into the process of selecting a third commissioner from Canada.¹¹⁰ They agreed on Eugene LaFleur, a Canadian jurist from Montreal, as the best candidate. LaFleur accepted,¹¹¹ and on February 15, 1911, the two governments initiated the arbitration of the Chamizal boundary dispute by exchanging well documented arguments for their respective cases. Countercases were presented on April 10, 1911. On May 15th the tribunal met and the agents summed up their arguments. The final verdict was handed down by Eugene LaFleur on June 15, 1911.

One of the key issues raised during these proceedings was whether the treaty of 1884 reaffirmed recognized principles of international law which had been subscribed to by the two governments, or whether this treaty marked a new departure. In the latter case rules of international law would have been substituted for a previously held concept such as the fixed line theory.¹¹² Assuming that the treaty of 1884 was a new departure another question remained to be answered, namely, whether it applied retroactively. Articles I and II of this treaty did not expressly mention its application to past changes, but mainly referred to future changes. Another argument centered around the nature of the changes that took place in 1864 and in the mid-eighteen seventies. Since the treaty of 1884 had defined aluvion as "slow and gradual" erosion or accretion, no real provision had been made for the possibility of rapid

¹¹⁰For. Rel., 1911, pp. 570-571.

¹¹¹For. Rel., 1911, p. 571.

¹¹²Timm, Int. Bound. Comm., p. 156.

erosion. Rapid erosion takes on an in-between position, neither fitting the definition of aluvion as prescribed in Article I of the treaty of 1884, nor sharing the characteristics of avulsive changes as described in Article II of the treaty of 1884 and Article IV of the treaty of 1889. Finally the United States raised an argument for ownership by prescription.

The Mexican agent, Casusus, presented his initial case on February 15, one copy of which went to the American commissioner while another was handed to the presiding commissioner. It stated that the Chamizal case had come into existence prior to 1884 and the treaty of that year. Because of this anteriority the Mexican argument ran that Articles I and II of the treaty of 1884 did not apply to this case. In other words the treaty of 1884 was not retroactive. Next Casusus argued that because of this non-retroactivity the only treaties applicable were those of 1848 and 1853. These, the Mexican agent held, had established a fixed and unchangeable boundary between the United States and Mexico. Because of this permanent nature of the boundary line, changes in the course of the river could have no effect whatsoever on the boundary. The Chamizal tract, therefore, belonged to Mexico.¹¹³

In its presentation of the "fixed-line" theory Mexico anticipated the American contention that the boundary line established in 1848 was artificial or natural. Had the Mexican argument been successful it would not only have won this particular case, but would have set a precedent for re-opening a number of other cases by questioning decisions reached on the assumption that the treaty of 1884 was retroactive. The Mexican argument in support of the "fixed line" theory stated that if Article V of the treaty of Guadalupe Hidalgo were studied only in its first paragraph, it would seem to provide for the establishment of a natural

¹¹³Escoto, Integracion, p. 174.

and arcifinious boundary along the Rio Grande. In this case changes caused by erosion and accretion would place the boundary in the thalweg of the river and a change in channel or an avulsive change would leave the boundary line in the former now deserted bed of the river. Article V, however, in its last two paragraphs provided for the boundary to be marked precisely and accurately on maps and charts. The boundary, therefore, was meant to be astronomically fixed. Otherwise such special provisions would have been superfluous. By referring to the Morteritos Island dispute where Secretary of State Frelinghuysen had proclaimed the fixed line theory Casasus tried to prove official American adherence to his position. He also brought up the treaty suggestion by José Godoy of May 21, 1908 and its acceptance in principle by Elihu Root. It will be recalled that Godoy's proposal provided for the abandonment of the fluvial border set by previous treaties and called for the adoption of the existing river channel instead.¹¹⁴ Casasus, echoing De la Barra, felt that Root's acceptance in principle was further evidence of American support of the "fixed-boundary" theory. The fluvial border set by previous treaties, Casasus said, could be found in the charts of Emory and Salazar. The basis of Godoy's proposal, therefore, according to Casasus, was a boundary line conforming to the charts of 1852. It seems improbable, however, that Root would have given the same weight to the maps of 1852, completely forgetting about the treaty of 1884. Casasus contention, therefore, was logically unsound and unconvincing.

To lend support to his contention of the non-retroactivity of the treaty of 1884 the Mexican agent referred to the preamble of that convention which stated that "to avoid difficulties which may arise through the changes of channel to which those rivers are subject through the operations of natural forces. . ." He interpreted this to mean that only future changes were under the jurisdiction of the treaty of 1884.¹¹⁵

¹¹⁴Carreño, Mexico, p. 442.

¹¹⁵Escoto, Integracion, p. 175.

Dennis, the American agent, presented his initial argument in more general terms. Its main ideas were that the treaties of 1848 and 1853 had established the middle of the river as the boundary between the United States and Mexico. In 1884, Dennis continued, both nations accepted certain rules which were to be used in the interpretation of all changes that had occurred in the course of the river. He also reminded the Mexican commissioner that all during the first discussion of the Chamizal case in 1895 the Mexican commissioners had argued with reference to aluvion and avulsion as established in the treaty of 1884. Mexico herself, he said, had made this treaty applicable to this arbitration. Mexico's frequently held position of a "fixed-line" boundary was irrelevant. The question to be answered during this arbitration was whether the Chamizal tract was formed by slow and gradual aluvion or because of avulsive changes.¹¹⁶

To support his contention that the treaty of 1884 was retroactive the American agent in his initial argument cited many cases of river boundary changes that had occurred prior to 1884 but were tried between 1895 and 1910 with reference to the treaty of 1884. As examples Dennis cited the four original banco cases. The International Boundary Commission which examined these four in 1894 found erosion present at the Banco de Camargo in 1865, and accretion at the Banco de Vela, the Banco de Granjeno and the Banco de Santa Margarita. Of the bancos eliminated by the treaty of 1905, Dennis concluded, thirty-six had existed prior to 1884.¹¹⁷

To bolster his argument that the treaty of 1884 only restated principles of international law already fully accepted by both sides, Dennis referred to the correspondence between Seward and Romero in

¹¹⁶Escoto, Integracion, pp. 176-177.

¹¹⁷Timm, Int. Bound. Comm., pp. 142-143.

in the mid-sixties and the Mexican treaty project of 1875. He also believed that Mexico, by not protesting Cushing's opinion, had in fact accepted it. In all these cases, Dennis argued, Mexico had relied on international law as the criterion for solving river boundary disputes. In fact Mexico had abandoned the concept of a "fixed-line" boundary long before the treaty of 1884.¹¹⁸

After the two sides had studied their respective demands and arguments they prepared their answers and exchanged them on April 10. Both sides restated their previous positions. Dennis produced some additional material to support his position in favor of retroactivity. He cited the case of San Elizario, an island located about 25 miles to the south of El Paso. The dispute over the sovereignty of San Elizario arose when the problem was presented to the International Boundary Commission on November 4, 1895. Testimony by two witnesses showed that in 1857 and 1858 the river had changed course very suddenly leaving the community and island of San Elizario on the Mexican side of the main channel. In accordance with Article II of the treaty of 1884 which covers avulsive changes the International Boundary Commission decided on the basis of the testimony that the boundary was to remain in the channel the river held prior to the avulsive changes of 1857 and 1858. This decision was approved and accepted by both commissioners.¹¹⁹

In answer to the Mexican contention of a "fixed-line" boundary the American commissioner Dennis asked whether it was ". . . reasonable to suppose that commissioners Emory and Salazar would have thought that this slight, but well-known difference in their maps of the river could in no way affect the boundary line if the boundary line were fixed and invariable?" Dennis expressed his conviction that neither the

¹¹⁸Timm, Int. Bound. Comm., p. 159.

¹¹⁹Escoto, Integracion, p. 177.

surveyors nor the commissioners thought that they were marking a fixed line upon a fluvial boundary. Emory's and Salazar's surveys were not identical, although they were made within six months of each other. Yet the commissioners stated that this would make no difference. This attitude, Dennis felt, showed that they were not thinking of the boundary as a fixed and immutable line.¹²⁰

On May 15th a tribunal was set up at the Headquarters of the United States Supreme Court in Washington. Both parties confronted one another for their final arguments. The Mexican agent, Casasus, reiterated all he had said in his initial and in his counter argument. He then entered into a lengthy study of the meaning of the terms avulsion and aluvion by citing numerous private and international boundary disputes. He concluded by stating that international law was agreed that aluvion must be slow and gradual. This, he continued, was exactly what Article I of the Treaty of 1884 had provided. From documents and the testimony of witnesses, however, it had been shown and proven repeatedly that the changes under consideration were not slow and gradual, but rapid and violent instead. The boundary therefore, he concluded, remained unchanged and the Chamizal tract properly belonged to Mexico.¹²¹

The American agent, Dennis, in his final argument once more attacked the Mexican contention that the boundary line was astronomically fixed. He again stressed his conviction that the treaty of 1884 was retroactive. After citing the case of San Elizario and the numerous occasions when Mexico had supported directly or indirectly the retroactivity of the treaty of 1884, he declared the Chamizal tract to be American by right of prescription. This was so, he held, because the United States had occupied the area uninterruptedly for more than fifty years.¹²²

¹²⁰Timm, Int. Bound. Comm., pp. 148-149.

¹²¹Escoto, Integracion, pp. 177-178.

¹²²Escoto, Integracion, pp. 178-179.

On June 10, 1911, the commissioners met to ballot for the purpose of arriving at a decision upon a number of questions.¹²³ The first question presented to the commissioners asked whether the boundary line established by the treaties of 1848 and 1853 along the Rio Grande was fixed and invariable. The Mexican commissioner voted in the affirmative; the American as well as the presiding commissioner voted "no." The second question dealt with the American claim of sovereignty over the Chamizal by right of prescription. All the commissioners, including the American commissioner, denied that the United States had a valid claim because of prescription. Next they voted on the problem of retroactivity by asking whether the treaty of 1884 applied to all changes in the river subsequent to 1852. As was to be expected the Mexican commissioner voted "no," while the American voted "yes." The presiding commissioner voted in favor of retroactivity. Question four considered whether ". . . the whole of the Chamizal tract, as defined in the convention of 1910 was formed by slow and gradual erosion and deposit of alluvium within the meaning of Article I of the convention of 1884." The Mexican commissioner voted "no"; the American commissioner voted "yes" and the presiding commissioner voted "no." The fifth question asked whether the formation of the Chamizal tract up to 1864 was due to slow and gradual erosion and deposit of alluvium within the meaning of Article I of the treaty of 1884. Both the Mexican and the presiding commissioner voted "yes."

Mills knew that the only direct answer to this factual question was "yes." But he also realized that such an answer would open the way for a division of the Chamizal tract into two sections, a very small one created slowly in the years immediately preceding 1864 and another section comprising most of the disputed area, created by the floods of

¹²³For. Rel., 1911, pp. 572-573.

the eighteen-sixties. Such a division would have been much to the disadvantage of the United States, for under the majority interpretation of Articles I and II of the Treaty of 1884 only the smaller section would have become American territory. The American commissioner, therefore, took refuge by attacking the legality of such a division. He declined to vote on grounds that Article I of the Treaty of 1910 specifically bounded the Chamizal tract with technical accuracy, while Article III of the same treaty made it clear that "the commission . . . should decide solely and exclusively as to whether the international title to the Chamizal . . . was in the United States of America or in Mexico." Mills expressed his belief that the commission was not empowered to divide the Chamizal tract between the two countries. He strongly felt that in dividing the disputed area between the two contestants the commission was taking action "which was neither requested nor contemplated by either party."

He also believed that the majority of the commission in dividing the Chamizal tract was about to apply a standard to a portion of the disputed area which was not permitted by the treaties in force between the two countries. He stated that the convention of 1884 recognized only two classes of change in the channel of the river through natural causes. One was through the slow and gradual erosion and deposit of alluvium, or erosion; the other was by the abandonment of an existing river bed and the opening of a new one, or avulsion. The commission, he held, was not entitled to apply one class of change at one time and the second class at another time.

Finally the commissioners were asked to vote on the question whether the whole erosion which occurred in 1864 and after that date was slow and gradual within the meaning of the treaty of 1884. The Mexican commissioner voted that it was not slow and gradual from 1864 to 1868. For the period after 1868, he said, he had no data to enable him to give an answer. The presiding commissioner voted that the erosion

which was caused by the flood of 1864 was not slow and gradual within the meaning of the convention of 1884, nor was the erosion during the succeeding years up to and including 1868 of that character. . . . it is immaterial whether the erosion subsequent to that date was slow and gradual or not, inasmuch as the river had ceased to be the international boundary."

The American commissioner again declined to vote for the reasons he had stated already. In addition he said that it would be wholly impracticable and impossible to locate the position of the river in 1864. Even if the commissioners, he stated, were empowered to render a decision segregating that portion of the tract formed after 1864, their decision would be void "because it is indeterminate, indefinite and impossible of accomplishment" on account of the impossibility of relocating the channel of 1864. He furthermore pointed out that even if the commission were empowered to segregate the Chamizal tract and even if it were possible to relocate the river channel of 1864, the evidence conclusively showed that violent and rapid erosion could have taken place only at certain points where the river impinged upon the banks with peculiar force. It was, in his judgment, the duty of Mexico to establish by the preponderance of evidence the identity of any portion of land within the Chamizal tract alleged to have been formed as a result of violent and rapid erosion. He also questioned that violent and rapid erosion was the same as avulsion.

This closed the voting and the presiding commissioner was asked to prepare the award in accordance with the above votes. The Mexican and American commissioners were asked to submit their opinions on the points on which they dissented.

After studying the diverse documents presented by both sides in the course of argument, the presiding commissioner, Eugene LaFleur, formulated his verdict and presented it on June 15, 1911. The document

analyzed all the theories discussed, rejecting those of a "fixed-line" boundary and the one which advanced right of possession by prescription. It also contained the dissenting opinions of the Mexican and of the American commissioners.

LaFleur came to the following conclusions. He rejected the "fixed-line" theory advanced by Mexico, because he felt that the marking of the boundary in 1853 was primarily for the purpose of creating a record of the original riverbed, should the Rio Grande cut a new channel. The course of the river, as described by the Treaty of 1848 and as it existed at the time of the initial survey, was not at all in discord with the rules of international law. Likewise, he stated that although one might make a case for a fixed line boundary when considering the treaty of 1848 all by itself, the manner in which the commissioners Salazar and Emory disregarded changes in course as insignificant made the artificial boundary theory advanced by Mexico difficult to accept. He also emphasized Mexico's de facto acceptance of Cushing's opinion in 1864 and 1875 and the treatment of San Elizario in 1895 as proof not only of Mexico's repeated acceptance of the natural boundary viewpoint, but of the retroactive nature of the treaty of 1884 as well. The treaties of 1848 and 1853 in the opinion of the presiding commissioner created a natural boundary and the treaty of 1884 applied retroactively to all changes in the course of the Rio Grande since the time of the initial survey.

Concerning prescription the presiding commissioner stated that "upon the evidence adduced it is impossible to hold that the possession of El Chamizal by the United States was undisturbed, uninterrupted and unchallenged from 1848 to 1895. As early as 1856, changes which threatened in the El Paso-Juarez valley, had caused inquiries and had resulted in the opinion of the Attorney General Cushing. Much correspondence concerning El Chamizal occurred between the two nations up

to 1884 which by its very existence precluded title to the area by prescription.

In agreement with the Mexican commissioner, LaFleur held that up to 1864 the changes which created El Chamizal had been slow and gradual. After 1864 the changes could not "by any stretch of the imagination or elasticity of language be characterized as slow and gradual." While accretion to the American bank may have been slow and gradual, he added, the treaty of 1884 provided that both accretion and erosion would have to be slow and gradual.

As to the United States contention that under the treaty of 1910 the commissioners were not authorized to divide the tract, LaFleur quoted the decision of the United States Supreme Court in the case of Iowa vs. Nebraska. In that case the court ruled that up to 1877 the changes in the Missouri were due to accretion, while in that year the river cut a new channel. The decision was that as far as accretion was concerned the boundary had moved with the river. After 1877 the boundary had not changed from where it was when the new channel was cut.¹²⁴

Immediately the American commissioner Mills filed a dissenting opinion on behalf of the United States.¹²⁵ He attacked the legality of the award by stating that the Nebrasks-Iowa ruling of the Supreme Court had no bearing on the Chamizal decision. He pointed out that there was a cross distinction between the Supreme Court and its constitutional power to decide disputes between states, and the powers of the Boundary Commission which was limited not only by the treaty of 1910, but also was bound by the treaties of 1884 and 1889. He stated that "it is axiomatic that 'a clear departure from the terms of the reference' invalidates an international award, and the American commissioner is constrained to

¹²⁴For. Rel., 1911, pp. 573-586.

¹²⁵For. Rel., 1911, pp. 587-594.

believe that such a departure has been committed by the majority of the commission in this case in dividing the Chamizal tract and deciding a question not submitted by the parties."¹²⁶

As to the majority's interpretation of the nature of the change of course which occurred after 1864, Mills held that Article II of the treaty of 1884 made no provisions regarding avulsive changes other than those consisting of "cutting a new bed" or "deepening of another channel than that which marked the boundary at the time of the survey." The changes which occurred after 1864 were not avulsive, Mills held, because "cutting of a new channel" and "deepening of another channel . . ." were specific terms which qualified the general beginning of Article II of "any other change wrought by the force of the current."¹²⁷

Mills also contended that the United States had vested rights in the Chamizal tract. The American land holders in the Chamizal tract for decades had been working a land which not only had been destroyed and completely altered by rapid erosion when being transferred from the Mexican to the American bank, but because of this destruction had lost the property rights of previous owners.¹²⁸

He furthermore expressed his belief that "not by any stretch of the imagination . . . [can] any character of erosion and deposit . . . be brought within the meaning of Article II of the convention." If, as the two other commissioners contended, Article I was not applicable, the whole treaty of 1884 was inapplicable and the commissioners would have to take recourse to the principles of international law for rules to govern their decision. Under international law aluvial change would

¹²⁶For. Rel., 1911, p. 588.

¹²⁷For. Rel., 1911, pp. 588-589.

¹²⁸For. Rel., 1911, pp. 589-590.

carry the boundary with it, no matter how rapid this change might be, provided only that the growth of the other bank was accomplished by the gradual deposit of alluvium. Such he conceived to have been the undisputed fact. Again the rules of the treaty of 1884 were not applied. By failing to apply these rules the commissioners had departed from the terms of submission and had invalidated the award.¹²⁹

Finally Mills stated that the award would be void anyway for uncertainty. It would be practically as impossible to relocate the boundary where it had been in 1864 as "to locate the Garden of Eden. . . ." The American commissioner also felt that even if there were a way of determining the point where slow erosion becomes rapid erosion the practical application of such a distinction would cause nothing but the greatest calamities. The greater part of the Rio Grande had changed intermittently in a rapid or slow fashion since 1853 making every mile potentially another Chamizal. The award, in his opinion determined nothing and settled nothing. It only represented an invitation for international litigation and unauthorized compromise.¹³⁰

The Mexican commissioner also stated a dissenting opinion. However, after voicing his disagreement with the retroactive application of the treaty of 1884 and after reaffirming his belief in a "fixed-line" boundary along the Rio Grande he suffered to be overruled on this point and felt obligated to accept the award.¹³¹

Eugene LaFleur then proceeded to give title to the Chamizal tract in part to Mexico and in part to the United States. The award stated "whereby the presiding commissioner and the Mexican commissioner, constituting a majority of said commission, hereby award and declare

¹²⁹For. Rel., 1911, pp. 590-591.

¹³⁰For. Rel., 1911, pp. 593-594.

¹³¹For. Rel., 1911, pp. 594-597.

that the international title to the portion of the Chamizal tract lying between the middle of the bed of the Rio Grande, as surveyed by Emory and Salazar in 1852, and the middle of the bed of the river as it existed before the flood of 1864, is in the United States of America, and the international title to the balance of the said Chamizal tract is in the United States of Mexico. The American commissioner dissents from the above award." The document was signed by the three commissioners and the arbitral stage of the Chamizal dispute was officially over.¹³²

The United States rejected the arbitral decision and declared itself unable to accept it for the reasons given previously by Mills. While announcing the formal rejection the American government made a number of proposals for solving the apparent deadlock. It suggested that the two nations should enter into a new boundary treaty to settle the Chamizal dispute on the following basis. First, there should be a recapitulation of all pertinent boundary treaties and differences in their interpretation. Secondly, formal declaratory statements should be issued agreeing that the treaties of 1848 and 1853 established an arcifinious river boundary and that the treaty of 1884 applied retroactively recognizing only erosive and avulsive changes. Thirdly, provisions should be made for the settlement of the Chamizal question. Lastly private parties were to be indemnified for damages incurred through such provisions. The temporary Mexican President De la Barra refused to accept any departure from the award. On August 31, 1911, the State Department notified Mills not to join in any further discussion of river changes unless specifically authorized.¹³³

¹³²For. Rel., 1911, pp. 586-587.

¹³³For. Rel., 1911, pp. 598-600.

On June 28, 1912, the United States presented to Mexico another plan for solving the Chamizal dilemma. The plan contained a proposal for a convention which centered around the mutual rejection of the theory of rapid erosion as interpreted by LaFleur. It also asked for mutual recognition of a boundary line in the middle of the river channel at El Chamizal, the Cordova tract and the Horcon bar, thus recognizing United States sovereignty over the first and providing for mutual exchange of the latter two. The new convention was to include also guarantees by the United States of Mexican titles in the Cordova tract and by Mexico of United States titles at Horcón.¹³⁴

In a letter of January 27, 1913, Mexico replied to the United States treaty proposal and suggested in turn a treaty of its own. Mexico proposed that both countries adhere to the same attitude as before. It asked that equal tracts of land be exchanged and that the Chamizal award should not be considered a precedent. Three officials, one American, one Mexican and one neutral, were to examine property titles. The United States was to pay off those whose titles to land in the Chamizal tract were valid. The Chamizal award itself was to be invalidated, and Mexico was to recognize United States sovereignty in the area in return for the deliverance of an equal area elsewhere along the Rio Grande. This counter proposal marked the end of efforts by the Madero administration. No response was forthcoming from the United States.¹³⁵

In January, 1913, H. L. Wilson, the American Ambassador to Mexico, informed Secretary of State Knox that the provisional government of Victoriano Huerta had tentatively offered relinquishment of El Chamizal in exchange for San Elizario and Morteritos Island. De la Barra, who made this proposal, however added that Mexican sentiment

¹³⁴For. Rel., 1913, pp. 968-969.

¹³⁵For. Rel., 1913, pp. 971-972.

and public opinion would have to be prepared first.¹³⁶ A telegram by Henry Lane Wilson to Knox marks the end of negotiations in 1913:

"President Huerta has in effect refused further to consider the Chamizal question until such time as the United States recognizes his administration." ¹³⁷

In 1918 the International Boundary Commission discussed a river rectification project which called for mutual exchange of special areas. During the discussions the American commissioner Hill offered the Mexican commissioner Prieto portions of San Elizario in return for Mexico's relinquishment of the Cordova tract. The United States also would carry all the expenses of river rectification if Mexico were to give up its claim to El Chamizal. Prieto's answer that he was not authorized to discuss El Chamizal ended this short lived attempt at reopening the issue. On and off the Chamizal question appeared in newspapers or magazine articles. Often an imminent solution was predicted. But no real progress was made until the year 1962.¹³⁸

SOLUTION

For fifty years after 1911 neither side seemed prepared to change the position adopted during and immediately following the arbitration award. Mexico continued to adhere to the fixed line theory and demanded execution of the award of 1911. The United States seemed quite happy with things as they stood. As years passed it became less and less likely that either side would budge from a position taken so long ago that it had become traditional.

¹³⁶For. Rel., 1913, pp. 972-973.

¹³⁷For. Rel., 1913, p. 976.

¹³⁸Timm, Int. Bound. Comm., pp. 171-172.

Yet on July 18, 1963, the Presidents of Mexico and the United States announced their agreement to conclude a convention for the settlement of the Chamizal dispute.¹³⁹ The settlement they recommended adopted the solution proposed in the international award of 1911. Accordingly the United States would transfer to Mexico 437 acres in the vicinity of El Paso. Referring to previous exchanges of territory, such as the 1933 agreement to straighten the river just below El Paso, the 1963 convention proposal states that the problem of maintaining the river as the boundary existed here as well as in previous boundary adjustments on the Rio Grande and similar transfers of territory would be involved.

Next to the Chamizal tract, Cordova island, an area of about 386 acres under the jurisdiction of Mexico jutted into El Paso north of the river. Simply transferring the Chamizal tract to Mexico would only have increased Mexican territory on the north side of the Rio Grande. For this reason the two governments agreed that in any settlement the Rio Grande should be relocated. This would restore the river as the international boundary for its entire course in the vicinity of El Paso.

The recommended terms of the presidential agreement called for a net transfer to Mexico of 437 acres of territory now under the jurisdiction of the United States. Of this area 366 acres would actually come from the disputed Chamizal tract. Another 71 acres would be taken from the American territory to the east of Cordova Island. Cordova itself would be divided equally between the United States and Mexico. The United States would transfer to Mexico from the 193 acres it would receive out of Cordova Island an equal acreage from the American territory to the east of Cordova. Channelization would relocate the course of the Rio Grande and once again make it the boundary between the United States and Mexico. Cordova Island would therefore be eliminated.

¹³⁹U. S., Department of State, Press Release, No. 375, July 18, 1963, 9 pp.

All private titles within the areas to be exchanged would fall to the respective governments. Land and improvements would be transferred without encumbrances of any sort. Neither country was to make any payments to the other for lands exchanged. A private Mexican bank, however, would pay the United States for the value of the structures passing intact to Mexico. Costs for relocating the river channel would be borne equally by the two governments.

Once the convention was approved and was in force the International Boundary Commission would agree on a time for the transfer of the areas. The actual relocation of the Rio Grande and the transfer of sovereignty would take place when the United States Commissioner had certified that the acquisition of the properties and the evacuation of the occupants had been completed.

CONCLUSION

The unsatisfactory outcome of the Chamizal arbitration of 1911 poses two questions. First we can ask ourselves whether the United States was justified legally in its rejection of the award, because it was "rendered outside of and beyond the terms of agreement" stated in Article III of the convention of 1910. The second question depends on a negative answer to the first and inquires into the real meaning of Article III.

The American and English Law Library, one of the standard guides to international and public law of that period, tends to answer question one in the affirmative. It describes international arbitration to be "a mode of settling disputes between two or more states by submitting the controversy to the ultimate decision of third parties . . . the award of the arbitration is as binding upon the parties to it as any

treaty obligation." The same work continues to list circumstances under which an arbitral award might be avoided as when "the tribunal has clearly exceeded its powers as conferred by the treaty of arbitration. . . ." ¹⁴⁰

The United States rejected the award because it felt that the arbitral decision was unrelated to the terms of submission and therefore had invalidated the award. This was not the first time that the United States or any number of nations had rejected arbitral decisions on the grounds just stated. A good example is given by the abortive settlement of the Northwest Boundary controversy between the United States and Great Britain in 1828. In that case the arbitrator, the King of the Netherlands decided that "neither the line claimed by the United States nor the line claimed by Great Britain so nearly answered the requirements of the treaty that a preference could be given to the one or the other." Instead the arbitrator recommended a line of convenience thereby disregarding the line described in the arbitration convention of September 12, 1827 between the United States and England. The Senate of the United States in turn voted against the award and rejected it because the arbiter had departed from the terms of submission. ¹⁴¹

Yet the quoting of precedent and international law does not in itself lend any support to the position adopted by the United States in 1911. The crux of the matter lies in the interpretation of Article III of the treaty of 1910.

Article III "provided that the Commission shall decide solely and exclusively as to whether the title to the Chamizal tract is in the United States of America, or in Mexico." The United States felt that the award had divided the Chamizal tract, creating a development which was

¹⁴⁰Arnold Bennett Hall, "International Law, American and English Law Library (La Salle Extension University, 1913), Vol. X, p. 65.

¹⁴¹John Bassett Moore, "History and Digest of the International Arbitrations to which the United States has been a Party (Washington, 1898), Vol. V, pp. 4740-4742.

not intended by those who drew up the treaty of 1910. Mexican opinion expectedly stressed the legality of the award. This viewpoint is expounded in the writings of the Lic. Cesar Sepulveda, the Director of the Faculty of Law of the National University of Mexico. Sepulveda insists that the intent of Article III "was simply to insure that the Commission dealt only with the territorial question, rather than with ancillary matters such as water rights."¹⁴² In other words the Commissioners were left free to solve the problem in a manner acceptable to a majority of the arbitral tribunal provided only they stayed within the limits of the territorial question.

It is difficult to read a clear meaning into the provisions of Article III standing by itself. On this basis alone one could justify or reject the American rejection of the award depending on one's loyalty. However, if one considers that it was well-known to those concerned with the arbitration that the changes which had taken place in the river bed near El Paso since 1852 had been both avulsive and aluvial at different times in various places, matters take a turn in favor of Mexico. It becomes rather hard to believe that the United States when signing the arbitration treaty had expected a decision solely in favor of aluvion or solely in favor of avulsion as the cause and creator of the Chamizal tract. Such would have been necessary to dispose of the Chamizal tract in its entirety. Yet to make a decision in favor of aluvion to the exclusion of avulsion or vice-versa was obviously impossible. On the basis of the weak American argument for rejection of the award we continue to ask ourselves: "If no solution could be expected, why then did the United States enter an arbitration agreement in the first place?" A plausible answer is not to give El Chamizal as a complete unit either to Mexico or to the United States, but to dispose of the territory in an atmosphere of compromise.

¹⁴²Gladys Gregory, "The Chamizal Settlement, A View from El Paso," Southwestern Studies, Vol. I, No. 2 (Summer, 1963), pp. 34-35.

Perhaps the American delegation hoped for a larger share or most of the tract on the basis of their position that a change involving rapid erosion, but gradual deposit of aluvium was properly classified as aluvion. It is possible that the American statesmen found it politically unwise or detrimental to the prestige of the United States to cede territory to a second rate power. The true cause of the rejection of the award can only be guessed at..

The accord which Mexico and the United States achieved in 1963 does not mean that the two nations have reached common ground as to their views concerning the nature of the Rio Grande boundary. Instead it represents a wise attempt at removing a traditional reminder for Mexico of American expansionism. When President Kennedy admitted that the position held by the United States since it rejected the award of 1911 was in error he not only opened the way for a settlement of the controversy but also wiped away decades of distrust by Mexico of America's Latin American policy. The manner in which the Chamizal question is approached in 1963 makes discussion of the nature of the river boundary an academic subject. By providing for a channelled and concrete-lined Rio Grande both nations found a face saving way out of an unwanted dilemma.

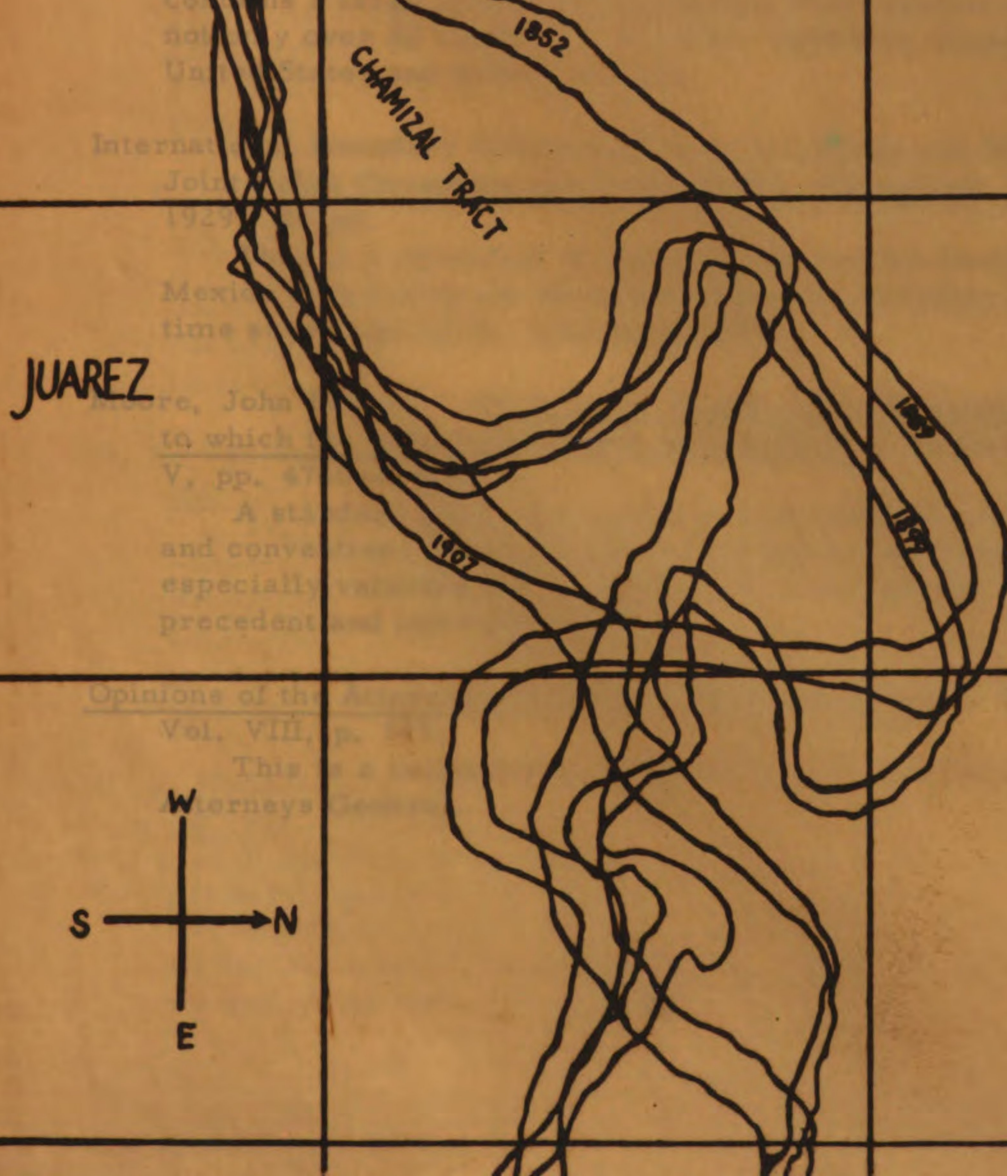
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RELATIVE POSITIONS OF THE RIO GRANDE
NEAR EL PASO BETWEEN 1852 AND 1907

SCALE 1:5000



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Senate Documents

U. S. Congress, Senate, 31st Congress, 1st Session. Executive Document No. 34. Vol. X, 53 pp.

To those interested in the history of California immediately following the treaty of Guadalupe Hidalgo this series of letters between the American Boundary Commission and the Department of State will be an interesting source. While primarily dealing with the problems encountered in marking the boundary between San Diego and the Colorado River Doc. No. 34 also gives a first hand account of the difficulties encountered in securing laborers because of the California gold rush.

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This is a very complete collection of official and personal correspondence relating to the work of the boundary commission along the Rio Grande. It proved extremely valuable to this author, because it contained a large number of Mexican documents as well, thereby giving some insight into the basis of latter boundary positions held by Mexico.

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