



Summer 1990

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Recommended Citation

Stephen P. Mumme & Scott T. Moore, *Agency Autonomy in Transboundary Resource Management: The United States Section of the International Boundary and Water Commission, United States and Mexico*, 30 Nat. Resources J. 661 (1990).

Available at: <https://digitalrepository.unm.edu/nrj/vol30/iss3/11>

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ABSTRACT

This article examines the organizational politics of the United States Section of the International Boundary and Water Commission, United States and Mexico (IBWC). The political basis of the United States Section's success is a function of the unique form of institutional autonomy the Section has acquired over the years. Its autonomy derives from both the legal and political elements of its organizational standing in the executive branch of American federal government. This "situated autonomy" has benefitted the development of the United States Section as well as the IBWC as an international commission functionally focused on boundary and water issues, but limits its ability to absorb new responsibilities outside this functional sphere.

INTRODUCTION

On March 2, 1989, one of the most prestigious international resource management agencies in the world, the International Boundary and Water Commission (IBWC), United States and Mexico, celebrated a century of successful diplomacy. This diminutive and little-known binational commission, whose respective national sections are headquartered in El Paso, Texas and Ciudad Juarez, Mexico, can take credit for a host of accomplishments. It is the architect of six major treaties including the 1889 Boundary Convention¹ and 1970 Boundary Treaty² which fix and regulate

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1. Convention on Boundary Waters: Rio Grande and Rio Colorado, March 1, 1889, United States-Mexico, 26 Stat. 1512, T.S. No. 232.

2. Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary, November 23, 1970, United States-Mexico, 23 Stat. 373 (1970), T.I.A.S. No. 7313 [hereinafter 1970 Boundary Treaty].

the international boundary between Mexico and the United States, the 1944 Water Treaty³ which apportioned the waters of the two major rivers transecting the international line, the Colorado and the Rio Grande Rivers, and the 1963 El Chamizal Convention⁴ which settled the thorniest territorial dispute between the two countries in the twentieth century. In addition, it has presided over nearly 300 lesser agreements.⁵

The Commission supervises and operates three major dams, two hydroelectric power facilities, numerous flood control works, and nearly a dozen sanitation facilities along the international boundary. The range and breadth of the Commission's work spans the entire 1952-mile boundary separating these two great North American republics. An example to the world of successful functional diplomacy between two countries otherwise divided by history, culture, and great disparity in economic development, the IBWC has rightly earned the praise of the international diplomatic community. Thus, the centennial celebration is an appropriate occasion to consider the basis of the Commission's success.

As an international resource management agency, the work of the IBWC has attracted the attention of students of international relations, international law, and transboundary resource administration.⁶ Scholarly concern has centered on the legal foundations of the Commission's power, its formal authority, and its functional development. Unfortunately, the political and institutional foundations of the IBWC's power have received less attention.⁷ Yet it is precisely this aspect of the Commission's behavior as an organization that best explains its functional success in the modern era.

3. Treaty regarding Utilization of Waters of Colorado and Tijuana Rivers and of the Rio Grande, February 3, 1944, United States-Mexico, Stat. 1219, T.S. No. 994 [hereinafter 1944 Water Treaty].

4. Convention for the Solution of the Problem of the Chamizal, August 29, 1963, United States-Mexico, 15 U.S.T. 21, T.I.A.S. No. 5515 [hereinafter Chamizal Treaty].

5. Such lesser agreements include the IBWC's Minute No. 242, Permanent and Definitive Solution to the International Problem of the Salinity of the Colorado River, August 30, 1973, United States-Mexico, 24 Stat. 1969, T.I.A.S. No. 7708 and Minute No. 261, Recommendations for the Solution to the Border Sanitation Problems, September 24, 1979, United States-Mexico, 31 Stat. 5099, T.I.A.S. No. 9658.

6. Basic sources on the IBWC are the following: Eldridge, *A Comprehensive Approach to U.S.-Mexico Border Area Water Management*, 4 S.W. Rev. Mgmt. & Econ. 89-101 (1985); J. Mueller, *Restless River: International Law and the Behavior of the Rio Grande* (1975); C. Timm, *The International Boundary Commission, United States and Mexico* (1941); Timm, *Some Observations on the Nature and Work of the International Boundary Commission, United States and Mexico*, 15 Soc. Sci. Q. 1 (1932); Jamail and Mumme, *The International Boundary and Water Commission as a Conflict Management Agency in the U.S.-Mexico Borderlands*, 19 Soc. Sci. J. 45 (1982); Mumme, *Regional Power in National Diplomacy: The U.S. Section of the International Boundary and Water Commission*, 14 *Publius* 115 (1984); Mumme, *Engineering Diplomacy: The Evolving Role of the International Boundary and Water Commission in U.S.-Mexico Water Management*, 1 *J. Borderlands Stud.* 73 (1986); Piper, *Two International Waterways Commissions: A Comparative Study*, 6 *V. J. Int'l. Law* 98 (1965); Smedresman, *The International Joint Commission (United States and Canada) and the International Boundary and Water Commission (United States and Mexico): Potential for Environmental Control Along the Boundaries*, 6 *N.Y. U. J. Int'l. L. and Pol.* 499 (1973).

7. Smedresman, *supra* note 6, at 529.

This article examines the organizational politics of one of the IBWC's national sections, the United States Section, in order to better illuminate the basis of the Commission's success. Its essential premise is that the United States Section acquired a unique form of institutional autonomy within the structure of American foreign policy administration which accounts for its diplomatic effectiveness and the functional development of the Commission as an international body. The United States Section's institutional autonomy rests on both legal and political elements of its organizational standing and behavior and should be understood as "situated" autonomy in relation to the executive branch of American federal government. Understanding the political basis of the United States Section's institutional autonomy not only helps explain the IBWC's success as an international body, but is essential for judging the Commission's future prospects. A brief discussion of the concept of agency autonomy is given below to inform our analysis of the Commission's behavior.

AGENCIES, POWER, AND AUTONOMY: SOME GENERAL OBSERVATIONS

Students of public administration have long been concerned with the concept of agency power. The policymaking activities of any executive agency, called its "autonomy,"⁸ are vested in both formal authorization and informal conditions. Formal, statutory authority may bestow policy discretion on an agency in specific decisionmaking arenas. Formal authority normally delineates the boundaries and limits of agency power in relation to other government bodies and society at large, and specifies the conditions under which that authority is effective.⁹ In contrast, informal authority arises not by statute, but from the resource endowment, substantive functions, political context, and other variable and subjective factors such as leadership which affect the practical influence and policy discretion of the agency in its administrative and political environment.¹⁰

Many scholars have sought to identify the factors which enhance agency autonomy within the context of United States government.¹¹ They generally agree that two key dimensions of agency power are expertise and public, or constituency, support.¹² Both dimensions of power are best understood as relating to the informal bases of agency authority, since they operate independently of, or in addition to, the stipulated jurisdiction

8. E. Nordlinger, *On the Autonomy of the Democratic State* 8-27 (1981).

9. F. Rourke, *Bureaucracy, Politics, and Public Policy* 13-15 (1976); K. Davis, *Discretionary Justice* 219 (1971).

10. F. Rourke, *supra* note 9, at 18-20; Davis, *supra* note 9, at 3-20.

11. *See, e.g.*, H. Seidman, *Politics, Position, and Power: The Dynamics of Federal Organization* (1970); P. Woll, *American Bureaucracy* (1977); F. Rourke, *supra* note 9, at 13-41; J. Nienaber & D. McCool, *Staking Out the Terrain* (1984).

12. F. Rourke, *supra* note 9, at 81.

and formal authority of agencies. In their study of major United States natural resource agencies, Nienaber and McCool identified various elements contributing to agency power within the domains of expertise and public support.¹³ Among the administrative characteristics they identified as contributing to an agency's autonomy are: 1) a mission established by an organic act, preferably one that is potentially expandable and pro-development, or utilitarian in nature; 2) expertise grounded in scientific or military knowledge; 3) scientific or military leadership and recruitment from within the organization; and 4) *esprit de corps* grounded in a coherent public image, well-defined agency character, and integrated organization.¹⁴ Among the bases of political, or constituency, support they identify: 1) a large, evenly distributed, and well-educated constituency; 2) concrete economic interests or defense contracting; 3) a service rather than a regulatory orientation; and 4) strong congressional or presidential support.¹⁵

Agencies with such legal endowments, expertise, leadership, and well-defined character are well-poised to execute their mandates and influence their own development as institutions. The ability of an agency to control its institutional destiny and shape the development of policy in its domain is enhanced, though not determined, by the presence of these factors. These factors must be integrated into coherent strategies which attain and preserve operational integrity and consistency. This subtle, dynamic aspect of organizational influence involves defending agency authority and legal jurisdiction, establishing and preserving prestige and good will among beneficiaries of an agency's decisions and routine operations, and prudently altering its agendas to achieve tangible successes. This also implies rejecting commitments by which the agency must share authority. Such commitments are risky in terms of operational success and may weaken the political good will of those impacted, rendering the cooptation and cultivation of opposing constituencies difficult or impossible.

"Autonomy" is, then, a rather capacious and somewhat misleading term if taken to mean a total independence from external influences.¹⁶ It is unlikely to be observed among public organizations. More apparent will be a strategic adaptation of an agency's official resources and its strategic "conditioning" or alteration of its political environment to achieve its ends.¹⁷ Thus, whatever stability, continuity, and operational economies

13. J. Nienaber & D. McCool, *supra* note 11, at 5-7.

14. *Id.*

15. *Id.*

16. H. Kaufman, *The Administrative Behavior of Federal Bureau Chiefs* 161 (1981) and J. Wilson, *The Investigators: Managing FBI and Narcotics Agents*, C. 6, 163 (1978)

17. H. Kaufman, *supra* note 16, at 45, and P. Heymann *The Politics of Public Management*, C. 1 (1987)

may be observed are achieved by institutional leaders and "situated" in a specific strategic environment. Failure to achieve such operational continuities and successes likewise reflects poor strategic resources and/or the unsuccessful use of resources to influence the external environment. Seen from this perspective, the IBWC's location within a foreign policy institutional environment is one of the crucial elements underlying its strategic success.

Foreign Policy and the IBWC: The Anomaly of Autonomy

Few arenas in the United States government would seem less promising a foundation for institutional autonomy than foreign policymaking. While a sizeable number of independent, autonomous agencies flourish within the fractionated system of public administration characterizing the constitutional separation of powers, executive authority and central administration predominate in foreign policy. The President's authority is concentrated here like few other spheres of policymaking.¹⁸ Though the President must seek congressional consent in the making of treaties¹⁹ and appropriation of funds,²⁰ and while Congress is expected to advise and consent on presidential appointments,²¹ the President is expected to exert special leadership in the foreign policy domain.

However, presidential authority in foreign policy has become increasingly fragmented and attenuated. Although the State Department is generally expected to be the President's special province, its functional fragmentation, institutional norms, and bureaucratic proceduralism often combine to frustrate presidential policy leadership.²² These frustrations have given form to newer, "irregular," and specialized foreign policy bodies like the National Security Council that respond more directly to the leadership styles and agendas of individual Presidents.²³

Within the State Department, however, decisionmaking and policy authority function with a considerable degree of hierarchy and formal emphasis on chain of command.²⁴ Subordinate officials' discretion in all but the most routine matters is highly restricted. Although policy making and implementation may be highly fragmented, the authority of individual offices and bureaus within the department is far from autonomous; if

18. J. Campbell, *The Foreign Affairs Fudge Factory* 128 (1971); J. Spanier & E. Ulsaner, *How American Foreign Policy is Made* 28 (1974).

19. U. S. Const. art. II, § 2.

20. U. S. Const. art I, § 8.

21. U. S. Const. art II, § 2.

22. Rockman, *America's Departments of State: Irregular and Regular Syndromes of Policy Making*, 75 Am. Pol. Sci. R. 915 (1981).

23. *Id.* at 911-912.

24. *Id.* at 916-918.

anything, the contrary is true. Agencies are subject to a formidable network of procedural and policy constraints. Even routine decisions require the horizontal clearance of multiple units before advancing to higher levels for ultimate approval.²⁵ Moreover, the State Department is quite insulated from "the rough-and-tumble" of domestic bureaucratic politics. Such political insulation reinforces the proceduralism and hierarchy within the Department, but comes at a price. As Rockman observed, "officials in State lack domestic constituencies to help them weather episodic storms."²⁶ Thus, the State Department is generally thought to be inhospitable to policy autonomy from the presidential establishment.

There is, however, an important exception. Matters pertaining to the administration of national boundaries have always been something of an anomaly within the structure of American foreign policy making.²⁷ By their nature, boundaries symbolize the integrity and sovereignty of the state, and their administration carries significant domestic political implications. The management of boundaries is a key strategic and diplomatic function. The resources divided by boundaries are of direct interest to domestic constituencies who benefit by their appropriation and management. Moreover, both fixed and fugitive resources divided by boundaries typically require a considerable amount of technical expertise to administer. These and other factors endow boundary management with at least some of the important elements that are commonly associated with agency autonomy.

Autonomy, however, is not guaranteed by boundary administration. Any number of factors may diminish a boundary agency's functional authority and policy discretion. Administrative subordination to superior national authority, assumed in all cases short of supra-national agency jurisdiction, diminishes potential autonomy. The assignment of specific functions to different agencies subdivides jurisdiction and diminishes potential autonomy. The division of executive power within a single agency diminishes potential autonomy, as does ineffective or complacent leadership. Finally, the absence of a supportive constituency or clientele may diminish the agency's autonomy.

Within the formal jurisdiction of the State Department are a number of administrative entities entrusted with managing boundaries and trans-

25. J. Campbell, *supra* note 18, at 126.

26. Rockman, *supra* note 22, at 915.

27. The anomaly arises from the need to specify policy jurisdiction over problems that have both domestic and foreign policy aspects. While the Department of State has formal jurisdiction over foreign policy, along the borders numerous ambiguities may be found with respect to the specification of decisionmaking and administrative authority for specific classes of problems. The literature on United States-Mexico border management is replete with examples of the ambiguities associated with the administration of binational problems. For several recent examples see E. Stoddard, *U.S.-Mexico Diplomacy: Its Latent Consequences in the Borderlands* (1980); T. Price, *Standoff at the Border: A Failure of Microdiplomacy* (1989).

boundary resources of interest to the United States. Because these functions are international by nature, requiring the participation of two or more national parties, the prevailing approach to boundary and trans-boundary resource management has been by international commission. Such commissions are composed of discrete national sections representing their member governments, whose policy behavior, unless otherwise stipulated by formal treaty, is subject to the superior authority of their respective governments. Contingent on their specific authorization in treaty or protocol and the discretion of member governments in fulfilling such commitments, the national sections of these commissions may be independent agencies with standing among the domestic agencies of their governments. Alternatively, they may be less formally structured, operating as *ad hoc* appendages to the established foreign policy machinery. The United States participates on over a dozen such commissions, whose national sections or representatives are subject to the policy authority of the President and the Secretary of State (see Table 1).

Of the agencies listed in Table 1, only two have some autonomy from the executive branch of their member governments—the International Joint Commission (IJC), and the International Boundary and Water Commission (IBWC). The other commissions are excluded because they do not enjoy sufficient formal authority in relation to their member governments or they lack substantial policy discretion arising from their situated political relations in a particular country, or both.²⁸

Of the two truly autonomous agencies, the IJC's autonomy is vested primarily in its organic act, the 1909 Boundary Waters Treaty,²⁹ which provides it with special judicial powers to decide all cases involving the "uses or obstructions or diversions, whether temporary or permanent, of boundary waters . . ." with respect to the relevant and defining articles of the treaty.³⁰ Its decisions are binding on the member governments in all cases excepting a tie vote of the Commissioners.³¹ The IJC is further empowered to arbitrate policy disputes between Canada and the United States, with binding results, though this power has never been utilized.³²

28. Virtually all of these other commissions have diminished autonomy arising from the lack of formal independence from the State Department, small budgetary allocations, limited staff, and highly restricted jurisdictions. In a number of cases, those of the fisheries commissions, for instance, the regulatory function of the commissions reduces the level of clientele support for the agency. The fisheries commissions also suffer from the lack of a permanent administrative post—Commissioners do not draw a salary and serve on an intermittent basis as required by the Commission. For discussion of the fisheries commissions see W. Willoughby, *The Joint Organizations of Canada and the United States* 82-83 (1979).

29. Treaty Relating to Boundary Waters, and Questions Arising Between the United States and Canada, January 11, 1909 United States-Great Britain, 36 Stat. 2448, T.S. No. 548 [hereinafter 1909 Boundary Waters Treaty].

30. *Id.* at art. 3.

31. *Id.* at art. 10.

32. *Id.*; Piper, *supra* note 6, at 106.

TABLE I

United States Participation in Bilateral and Multilateral Boundary and
Resource Management Commissions

<i>Major Commissions*</i>	<i>Number of Commissioners</i>	<i>Total Personnel</i>	<i>1986 Budget</i>
International Boundary and Water Commission, U.S. and Mexico	1	275	10,814,000
International Joint Commission, U.S. and Canada	3	24	2,879,000
International Boundary Commission, U.S. and Canada	1	7	715,000
Inter-American Tropical Tuna Commission			2,538,000
U.S.-Canada Pacific Salmon Commission (A)			2,129,000
Great Lakes Fisheries Commission			4,532,000
International Pacific Halibut Commission			721,000
<i>Minor Commissions*</i>			
International Pacific Salmon Commission			444,000
Inter-American Whaling Commission			55,000
Inter-North Pacific Fisheries Commission			103,000
North Pacific Fur Seal Commission			12,000
International Commission for the Conservation of Atlantic Tunas			65,000
Northwest Atlantic Organization			60,000
International Council for Exploration of the Sea			54,000

*Distinction between major and minor commissions is based solely on whether the budget exceeded \$500,000 annually in recent years.

A) This commission was established in 1985 and assumes the duties of the International Pacific Salmon Commission, abolished in 1986.

Source: Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1987, Part 8. Hearings before the Subcomm. on Commerce, Justice, and State, the Judiciary, and Related Agencies of the House Comm. on Appropriations, 99th Cong., 2d Sess. 957-1150. Fiche No. Y-4.AP 6/1:C, 73/2/987. Pt. 8.

In all other respects, the functions of the IJC are subject to the approval of its member governments.³³

By comparison, the IBWC's autonomy does not derive from special judicial powers in relation to its member governments, but is vested in its mandate,³⁴ its technical expertise, its clientele, its leadership, and its historic and strategically adroit pattern of development. Its autonomy is distinctly political, a product of its situated relations with the executive branch, with Congress, and with its domestic clientele in the performance and development of its assigned jurisdiction and functions.

Unlike the IJC, which in constitution and practice is more of a regulatory body engaged in determining the appropriate utilization of boundary waters, the IBWC is constituted primarily as a service and operations management agency.³⁵ In the United States, these features of the Commission's mandate have allowed consecutive United States Section Commissioners to strengthen its jurisdictional claims and increase the scope of its functions in cooperation with its Mexican counterpart. The Commissioners succeeded because they adroitly pursued two basic political strategies. First, they grounded the Commission's actions firmly and consistently in the authority of its organic act. Second, they assiduously cultivated a domestic political clientele to ensure the Commission's political security and operational consistency. A closer look at the specific sources of the United States Section's autonomy helps explain the rationale behind these strategic choices.

THE U.S. SECTION AND THE COMMISSION: SOURCES OF AUTONOMY

To better appreciate the significance of the United States Section's strategic orientation as a domestic federal agency, it is necessary to examine the sources of its modern authority. Since 1944, the United States Section's powers have been vested in the formal jurisdiction of the IBWC as a binational commission and the informal, or political, relationship the United States Section has forged with domestic clientele. Each dimension of the agency's authority has contributed to its survival and growth as well as to the success of the IBWC as a whole. The foundation of the United States Section's authority is the 1944 Water Treaty. This document, the basic organic act of the modern Commission, charges the IBWC with both diplomatic and technical functions. Article 2 of the 1944 Water Treaty specifies that:

33. 1909 Boundary Waters Treaty, *supra* note 29, art. 10.

34. 1944 Water Treaty, *supra* note 3.

35. Smedresman, *supra* note 6, at 503.

1. The International Boundary and Water Commission is entrusted with the functions of its antecedent agency, the International Boundary Commission, specified in the Convention of 1889, which provides that all differences or questions that may arise on the portion of the frontier between the United States of America and the United Mexican States of which the Rio Grande and Colorado River form the boundary line . . . shall be submitted for examination and decision to an International Boundary Commission, which shall have exclusive jurisdiction in the case of said differences and questions.
2. The application of the present Treaty (1944), the regulation and exercise of the rights and obligations which the two Governments assume thereunder, and the settlement of all disputes to which its observance and execution may give rise are hereby entrusted to the International Boundary and Water Commission. . . .
3. The jurisdiction of the Commission shall extend to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary, each Section of the Commission retaining jurisdiction over that part of the works located within the limits of its own country (1944 Water Treaty).³⁶

The treaty thus provides the Commission and its United States Section with exclusive authority to maintain the boundary line between the two countries, to settle all disputes pertaining thereto, and to supervise and manage all public works expressly situated on the boundary or within one or the other country which are dedicated to the performance of its assigned functions. The 1944 Water Treaty further provides for the specific allocation of the waters of the Rio Grande and Colorado Rivers between the two countries, for the priority of uses to which those waters may be put in any subsequent decisions related to the need to allocate water, for the investigation and development by the Commission of any needed works to be constructed "in accordance with the provisions of this and other treaties in force between the two governments," for the Commission to enforce the treaty's provisions, and for the Commission to "settle all differences that may arise between the two Governments with respect to the interpretation and application of this [t]reaty. . . ."³⁷ These passages and others provide the United States Section with several sources of agency power and autonomy. Among the foremost elements of autonomy that derive from its formal empowerment are 1) its exclusive jurisdiction, 2) its technical expertise, 3) its diplomatic expertise, and 4) its administrative independence from the State Department.

36. 1944 Water Treaty, *supra* note 3, art. 2.

37. *Id.* at art. 24.

The Commission's exclusive jurisdiction is the bulwark of the United States Section's administrative and policy autonomy. Virtually all of the United States Section's specific policy endowments as an agency may be traced to it. As seen in the treaty provisions above, the IBWC alone, as an international commission, is entrusted with the authority to interpret and apply the provisions of the 1944 Water Treaty and earlier treaties subsumed therein. Because this mandate is constituted by treaty, it overrides domestic legislation and therefore buffers each national section from encroachments by strictly domestic competitor agencies. Exclusive jurisdiction also provides the United States Section with a strong presumption favoring its autonomy from other domestic agencies with respect to other functions which, arguably, are not as central to its basic mission.

The Commission's functions as stipulated by treaty embrace a wide range of activities of an operational, data gathering, accounting, assessment, and investigatory character that are essentially technical in nature. The technical cast of the Commission is recognized in the requirement that each Commissioner be a certified engineer, and that each Commissioner be assisted by two principal engineers, a legal advisor, and a secretary.³⁸ Together, these officials comprise the management team at each national section of the Commission.

The technical mandate of the United States Section in the context of its exclusive jurisdiction gives the agency what is, in effect, a monopoly on the technical data and information that is essential for understanding and interpreting treaty provisions and discharging the functions of the Commission. While the United States Section regularly cooperates with other domestic agencies with whom its jurisdiction overlaps,³⁹ it remains the primary repository of specific engineering data and the principal accounting unit for the functions expressly falling within its jurisdiction. Other domestic agencies are obliged to provide the United States Section with data necessary to discharge the functions of the Commission.⁴⁰ Such a monopoly and associated technical powers and functions give the United States Section considerable authority, which is duplicated nowhere else in the complex of domestic government agencies.

The exclusive jurisdiction and technical authority of the United States Section are complemented by a third source of agency autonomy—its

38. *Id.* at art. 2.

39. Such agencies include the United States Geological Survey in the case of boundary maintenance, and the United States Bureau of Reclamation and United States Army Corps of Engineers with respect to the management of boundary waters.

40. The 1944 Water Treaty stipulates that "[t]he authorities of each country shall aid and support the exercise and discharge of these powers and duties, and each Commissioner shall invoke when necessary the jurisdiction of the courts or other appropriate agencies of his country to aid in the execution and enforcement of these powers and duties." See 1944 Water Treaty, *supra* note 3, at 24, 1188.

diplomatic functions and expertise. As a branch of the IBWC, the United States Section functions as the lead diplomatic agent of the federal government in matters within its jurisdiction. As noted above, the IBWC is charged with the investigation and settlement of all disputes related to the interpretation and application of the 1944 treaty and agreements subsumed thereunder. The IBWC acquired additional diplomatic authority from the 1963 Chamizal Treaty and the 1970 Boundary Treaty.

The diplomatic functions of the Commission are expressly recognized in the 1944 Water Treaty which endows the officers of the Commission with unique diplomatic status.⁴¹ The Commissioners of each country have diplomatic status and they and their staffs enjoy all diplomatic immunities and privileges, with complete freedom to travel and conduct commission work in both countries.⁴² No other United States commission enjoys a similar distinction.

The diplomatic character of the IBWC endows the United States Section's officials with unique foreign policy expertise. The United States Section's personnel are in regular contact with their Mexican counterparts and know the institutional history of diplomacy along the international boundary better than any other set of individuals in United States government. Unlike foreign service personnel, who rotate in and out of the Office of Mexican Affairs, the IBWC-United States Section's personnel are career officials with cumulative experience in the work of the agency. The Commissioners of the United States Section have traditionally enjoyed unlimited tenure in office. For example, Ambassador Joseph Friedkin, the recently retired U.S. Commissioner, served from 1963-1987, a sum of twenty-four years.⁴³ These features of the United States Section have reinforced the functional expertise of the agency and enhanced its prestige and authority at the State Department in matters related to its functional domain.

A fourth source of the United States Section's autonomy as an agency is the degree of administrative and policy independence from the State Department that the Section enjoys in the ordinary conduct of the Commission's affairs. Although the United States Section scrupulously emphasizes its formal subordination to the State Department, it has considerable flexibility in shaping the Commission's agenda, as well as complete

41. *Id.* at art. 2.

42. *Id.*

43. By contrast, Commissioners of the International Joint Commission serve variable terms of office—typically three years, but this is nowhere stated in the IJC's Rules of Procedure or the 1909 Boundary Waters Treaty—and with the exception of the section Chairman are seldom reappointed. Section Chairmen themselves do not serve lengthy terms of office and their reappointment is determined primarily by political considerations. The IJC's Section Chairmen do draw a regular salary, unlike their peers who are compensated on the basis of the time they devote to the Section's duties. Interview with David Chandler, Legal Advisor to the United States Section of the International Joint Commission, in Washington, D.C. (July 16, 1980). See also W. Willoughby, *supra* note 28, at 18.

independence in administrative matters. Under the Commission's procedural rules, matters concerning jurisdiction or the application and interpretation of the treaties are brought directly to the Commission and need not be channeled first through the State Department.⁴⁴ The United States Section does have the responsibility to inform the department of its activities, and the department may place concerns on the Commission's agenda.⁴⁵ The Department's approval is required for all policy decisions taken by the Commission as an international body.⁴⁶ In all routine matters, however, which comprise the vast majority of the Commission's concerns, the United States Section has a virtually independent role in shaping the IBWC's agenda.

The United States Section has, however, exercised its policy autonomy judiciously, assuming the role of mediator between the Department of State and other domestic interests and conservatively limiting its functional claims to the express terms of the treaty. While its conservatism has been criticized by those who would prefer to see the Commission innovate by developing a more comprehensive environmental management regime, its caution has helped sustain the support of the State Department for its independent initiative and self-management along the border.

The evidence of this is seen in the United States Section's unusually broad range of administrative and operational functions. In 1932, during its earlier incarnation as the International Boundary Commission (IBC), the United States Section acquired exclusive operational authority over the construction of mandated international works, independent control over its payroll, procurement, and retention of consultants, and other discretionary authority that might be justified in the discharge of its functions.⁴⁷ These authorizations were not made "through the Secretary of State," but were conferred directly on the United States Commissioner, who has the statutory status as "head of agency."⁴⁸ The IBWC'S authority was subsequently carried over and reinforced in the contemporary era by the 1944 Water Treaty which gives the IBWC exclusive authority to

44. The United States Section's independence in such matters is both a function of its formal mandate and informal practice. As seen above, the 1944 Water Treaty gives the Commission authority to collect data and information, summon witnesses, and employ the courts in matters related to its jurisdiction. It also empowers the Commission to establish its own rules and regulations to govern its procedure subject to the approval of its member governments. And it provides that decisions of the Commission are binding on the two governments if a communication of approval or disapproval by one of the other party is not received within thirty days of any decision. The effect of these provisions is to give the Commission the power of initiative in conducting its affairs and, conversely, to make the State Department's role a reactive rather than assertive role in policy development. See, 1944 Water Treaty, *supra* note 3, art. 24; M. Whiteman, 3 Dig. Int'l. L. 712 (1964).

45. 1944 Water Treaty, *supra* note 3, art. 24.

46. *Id.* at art. 2; *Id.* at art. 5, 25, 29.

47. Dep. of State Mem. (June 18, 1954). U. S. Nat'l. Archives, Record Group 49, 611-12311/4-1354. (Administrative Relationships between Departmental Offices and the U.S. Section, Int'l. Boundary & Water Comm'n. United States-Mexico.

48. *Id.*

"construct works agreed upon and to supervise their construction, and to operate and maintain such works or to supervise their operation and maintenance, in accordance with the domestic laws of each country."⁴⁹ No other commission to which the United States is party enjoys such direct administrative and operational control over public works.

Together, then, these formal sources of agency power provide the United States Section with substantial policy initiative and discretion in the conduct of its boundary maintenance and water management functions along the United States-Mexican border. They are complemented by informal bases of agency authority which derive from the political relations the agency has cultivated with domestic clientele. The ability of the United States Section to serve a domestic clientele directly through diplomacy, dispute settlement, and the provision of tangible public works has been instrumental in the functional development of the IBWC since 1944. It is also a key source of the United States Section's institutional and policy autonomy. Since the signing of the 1944 Water Treaty, the IBWC's functional competence increased beyond boundary rectification, flood control, and maintenance to embrace an array of water management concerns. The 1944 Water Treaty provided the IBWC with jurisdiction over water storage and apportionment along the Rio Grande and Colorado rivers, as well as an expanded mandate in its previous functional domain. Since the Treaty was signed, the IBWC acquired new functions in the areas of water quality and border sanitation, salinity, and the allocation of unapportioned groundwater resources.⁵⁰

The functional expansion of the Commission is based on the mutual support of its member governments. In the United States, this support is contingent on the political support of the United States Section's domestic clientele. It is here that the United States Section's operational functions and leadership provide leverage in defense of the agency's administrative powers and its functional development as part of the Commission.

Although the United States Section's activities on behalf of the Commission are relatively small by comparison with major public works agencies like the Army Corps of Engineers or the Bureau of Reclamation, the agency does provide concrete material benefits to the border states. Between 1947 and 1980, the agency invested nearly 236 million dollars in border states in various public works activities; 98 percent of this sum was directed to projects located in the state of Texas.⁵¹ Successive Commissioners have energetically lobbied for the United States Section, working closely with the border states' governors and their congressional

49. 1944 Water Treaty, *supra* note 3, art. 24.

50. Jamail and Mumme, *supra* note 6, at 57-60.

51. See Mumme, *Regional Power in National Diplomacy*, *supra* note 6, at 124, table 1.

delegations.⁵² While the United States Section has maintained a low profile with the general public along the border, it has effectively cultivated the support of the elite political clientele that is crucial to decisionmaking affecting the Commission's functions. In so doing, the agency managed to accomplish what few other United States sections of international commissions have done—build a strong base of domestic support for the discharge of its international functions.

Such clientele relationships have arguably held the United States Section captive to its domestic constituency and prevented it from pursuing a broader agenda of comprehensive environmental planning along the United States-Mexican border.⁵³ This criticism has some foundation. The United States Section's boundary management approach, like that of the Commission as a whole, has proceeded on an ad hoc, non-comprehensive basis. The United States Section has been reluctant to advocate the Commission's functional expansion in areas that do not have a referential basis in the 1944 Water Treaty. The United States Section has been particularly reluctant to assume functions like air quality or hazardous waste regulation which fall outside the functional limits of present treaty language, and which would introduce a regulatory component into the agency's fundamental distributive and service missions. The Section, however, has never enjoyed a formal mandate for comprehensive boundary management and is highly sensitive to the practical political limitations associated with functional expansion. By carefully cultivating border state interests, it has kept pace with its clientele in dealing with matters on its diplomatic and operational agenda. This attentiveness to local concerns has enhanced the regional reputation of the agency and the Commission as a whole. It has enabled the United States Section to garner state support in Congress for new initiatives that are based on the language of the 1944 Water Treaty or which may be reasonably extrapolated from that Treaty.

No better example exists of benefits accruing from careful nurturing of clientele support than the settlement of the highly controversial and enduring binational dispute over the El Chamizal zone between the City of El Paso, Texas and Ciudad Juarez, Chihuahua. This dispute, which successive United States and Mexican administrations had labored to

52. Interviews with border states' congressmen in 1980 indicated that then Commissioner Joseph Friedkin routinely visited each border state congressman at least once a year, often more frequently, to brief them on the ongoing work of the IBWC and its United States Section. These congressmen were unanimous in their praise for the United States Section's relations with the Congress. Congressman interviewed were Morris Udall (Arizona), Robert Stump (Arizona), Lionel Van Deerlin (California), Clair Burgener (California), Harold Runnels (New Mexico), and Richard White (Texas).

53. See, Utton, *Overview*, 22 Nat. Res. J. 735 (1982); Bath, *U.S.-Mexico Experience in Managing Transboundary Air Resources: Problems, Prospects, and Recommendations for the Future*, 22 Nat. Res. J. 1147 (1982); M. Jamail and S. Ullery, *International Water Use Relations along the Sonoran Desert Borderlands* 18-21 (1979).

resolve since 1911, was finally settled in 1963.⁵⁴ Its settlement is attributable to the United States Section's ability to fashion a solution based on the distribution of material benefits which secured the support of Texas' congressional delegation—a fundamental condition for the treaty's acceptance by Congress.⁵⁵ The United States Section's twin strategies of conservatively grounding its functional claims in the organic language of the 1944 Water Treaty and cultivating a strongly supportive political clientele have enabled the Section to make the most of its intrinsic powers under the 1944 Water Treaty. Although the Section functions subject to the policy authority of the Department of State, it enjoys a wide range of policy initiative. Moreover, it is strategically placed in the policy chain to function as a broker between the State Department and its border state clientele, and as a strong advocate of border state interests. The "situated autonomy" of the United States Section has been evident in the agency's capacity to avoid overt politicization, to resist functional predation, and to evade functional initiatives that threatened to impair the credibility and effectiveness of the IBWC as a commission.

THE UNITED STATES SECTION'S AUTONOMY IN ACTION

Since its inception in 1889, the IBWC has acquired an international reputation as a successful transnational resource management body. Its functions have steadily broadened, developing from a single purpose boundary management commission in the early years to a multifunctional boundary and water management agency today. Most of its functional development has come in the modern, post 1944, phase of the Commission's history. That the Commission has grown and prospered as an organization during these years is attributable in large part to the strategic leadership of the United States Section.

The legal and administrative autonomy of the United States Section and its value to the Commission as a whole is evident in various respects. Insofar as autonomy has increased the viability of the United States Section's activities and strengthened its role in transboundary resource management along the border, it has contributed to the functional development of the Commission. More specific evidence of autonomy in action is needed, however, to avoid the pitfall of overgeneralization. Although a number of examples may be cited, the autonomy of the United States Section is most evident in three areas crucial to the Commission's success. First, the United States Section has avoided overt politicization that might reduce its functional effectiveness. Second, the United States

54. A. Lamborn and S. Mumme, *Statecraft, Domestic Politics, and Foreign Policy Making: The El Chamizal Dispute* (1988); Jessup, *El Chamizal*, 67 *Am. J. Int'l. L.* 423 (1973).

55. A. Lamborn and S. Mumme, *supra* note 54, at 130.

Section has resisted functional predation by other domestic agencies. And third, the United States Section has disencumbered itself of domestic obligations that might impair the credibility and effectiveness of the IBWC as a commission.

Avoiding Politicization

The institutional autonomy of the United States Section has insulated the agency and the Commission from excessive and debilitating politicization. The requirement that Commissioners each be licensed engineers with professional expertise⁵⁶ was explicitly included in the Commission's organic act as a hedge against using the Commission as a source of patronage. United States Commissioners, once nominated by the President and confirmed by the Senate, have enjoyed life tenure in their positions.⁵⁷ Appointments on the Mexican side have more recently been susceptible to political considerations but likewise tend to defy the norm in Mexico's foreign service with longer durations of tenure.⁵⁸

Avoidance of politicization has served the IBWC well in three respects. First, it has supplied the Commission with continuity in leadership. This resulted in fewer disruptions in agency administration, the accumulation of expertise related to the Commission's functions, and more skillful management of interpersonal diplomacy between the two national sections of the IBWC. Second, it has enabled successive United States Commissioners to cultivate the border clientele with an eye to the best interests of the United States Section as a binational agency, rather than a partisan prize. Overt politicization could damage the bipartisan support of the agency's border state clientele. Third, it has enhanced the prestige of the United States Section and the Commission. By emphasizing the Commission's technical activities and expertise, successive commissioners have successfully deflected attention from its diplomatic and political functions. While the United States Section through the Commission enjoys a dominant role in policy development within its jurisdiction, its

56. 1944 Water Treaty, *supra* note 3, art 2.

57. The tenure of IBWC Commissioners is nowhere specified in treaty. The pattern of unlimited tenure, however, was set during the earlier phase of the United States Sections development prior to 1944 and has been continued since.

58. Mexican Commissioners have served varied terms ranging from a few months to 32 years. It is common, however, for Mexican Commissioners to exceed the typical foreign service assignment of three years even though they are more directly integrated into the Mexican foreign service than their United States Section colleagues. Since 1947, only four men have served at head of the Mexican Section. The longest term of office was held by Ambassador David Herrera Jordan who held his post for 32 years, retiring in 1979. For background on the Mexican Commission see, *International Boundary and Water Commission, United States Section, Chronological Outline of the Various International Boundary and/or Water Commissions with an Index to Pertinent Treaties, 1848-1970* (1972). (A xerox copy of this unpublished paper may be obtained from the United States Section office in El Paso, Texas.)

apolitical image helps the agency play down its policy independence, strengthening the IBWC's effectiveness as a binational commission.

Resisting Predation by Other Domestic Agencies

The United States Section's autonomy is evident in its ability to defend its organizational integrity against the predatory initiatives of other domestic agencies. Over the years various critics of the agency have recommended transferring its operational functions to either the Army Corps of Engineers or the Bureau of Reclamation, arguing that these operational functions were redundant with the operational capacities of those agencies, and hence, duplicatory and inefficient.

The principal initiative in this regard occurred shortly after the modern Commission was established in 1944. Officials in the Bureau of Reclamation, utilizing the opportunity afforded by the Hoover Commission on Administrative Reform, argued that the United States Section's operational, non-diplomatic functions could be better performed by the Bureau. In March 1949, the Hoover Commission recommended transferring the United States Section's operational functions to the Bureau of Reclamation.⁵⁹ With the support of powerful allies in Congress, and the intervention of Secretary of State Dean Acheson, the United States Section successfully forestalled implementation of the Hoover Commission recommendations. The Bureau of Reclamation continued to press for transfer, and in 1953, the Rockefeller Committee (President's Advisory Committee on Governmental Organization) affirmed the earlier recommendation to President Dwight D. Eisenhower. Eisenhower signed the recommendation on March 14, 1953.⁶⁰

The fight over the United States Section's operational functions then continued in Congress, pitting the Bureau of the Budget and the Department of the Interior against the State Department and the United States Section. The United States Section's primary line of defense rested on

59. Letter from Deputy Director of the Bureau of the Budget, Rowland Hughes, to Secretary of State, John Foster Dulles (Nov. 16, 1953) (available in United States National Archives, Record Group 49, 611.1231/11-1653.) It should be noted that the Hoover Commission's recommendation came on the heels of a 1947 Budget Bureau initiative to transfer the U.S. Section's operational functions to the Bureau of Reclamation. This proposal was also successfully resisted. See Department of State, Memorandum of Conversation on Proposed separation of the International Boundary and Water Commission from the Department of State (October 26, 1948) (available in United States National Archives, Record Group 49, 711.12153/10-26-48), Department of State, Memorandum, Papers Relating to Efforts by the Bureau of the Budget to Assign to the Bureau of Reclamation Certain Functions of the United States Section, International Boundary and Water Commission (October 28, 1947) (available in United States National Archives, Record Group 49, 711.12153/10-2247); and letter from Acting Secretary of State Robert A. Lovett to Director of the Bureau of the Budget, James E. Webb (December 18, 1947) (available in United States National Archives, Record Group 49, 711.12153/12-1847).

60. Letter from Hughes to Dulles, *supra* note 59.

its claim to a unique jurisdictional endowment and the performance of functions stipulated in the 1944 Water Treaty. The Hoover Commission's recommendations assumed the feasibility and practicability of separating the diplomatic and operational functions of the United States Section. The agency and its mentor, the Department of State, took the opposite tack, arguing first that the two functions were logically and practically joined under the 1944 Water Treaty and, second, that any division of labor contemplated by the Hoover Commission would require a fundamental revision of the treaty. It would, therefore, run afoul of the many international and domestic pitfalls of treaty negotiations and ratification in Mexico and in the United States.

Secretary of State John Foster Dulles' reply to the Budget Bureau's inquiry on the status of the United States Section reveals how the Section's autonomy has insulated it from domestic political threat. The Secretary argued that:

The treaty of 1944 precludes the administrative transfers you mention. While an attempt could be made to amend the treaty, it would not be in the interest of the United States to propose a modification, and Mexico would be almost certainly unwilling to renegotiate it in a manner satisfactory to the United States. Even if amendment of the treaty were feasible, I would be opposed to the attempt on both administrative and foreign policy grounds.

Sixty years of experience have demonstrated the value of the Commission as presently organized and supervised. The Department exercises foreign policy supervision over the United States Section, which is otherwise independent and an integral part of the international body. This experience over engineering matters has proven to be indispensable to the fulfillment of the Commission's responsibilities. Through it is realized the location of an international operation outside the Department and in an agency where it can be handled most effectively, while the Department retains direct control over foreign policy and foreign relations.⁶¹

On these grounds, the United States Section, supported by the Department of State, reversed the Eisenhower administration's decision to transfer its functions to the Interior Department.

The dispute also provided an opportunity to clarify the United States Section's organizational status within the executive establishment. In defense of the unique operational powers of the United States Section, an internal review of the agency's status by the Legal Office of the State

61. Letter from Secretary of State John Foster Dulles to Deputy Director of the Bureau of the Budget, Rowland Hughes (Dec. 18, 1953) (available in United States National Archives, Record Group 49, 611.12311/11-1653).

Department found that "the pertinent treaties and statutes do not clearly indicate the organizational status of the U.S.-IBWC within the Executive branch of the Government. . . ." ⁶² It further found that "it is necessary to ascertain as nearly as possible the intent of Congress in this respect." ⁶³ The Legal Advisor concluded that, "[w]eighing all the circumstances, the Legal Advisor's office is of the opinion that U.S.-IBWC is not sufficiently independent to be classed as an 'independent agency' in the sense that term is used in statutes and Executive Orders, yet there is sufficient independence provided for in administrative matters that it cannot be considered as an organizational part of the Department." ⁶⁴ Thus, the United States Section retained its operational functions.

In sum, relying on the State Department as its policy patron and its border clientele for reliable political support has provided the agency with a unique and exclusive organizational niche. The United States Section's capacity to defend its jurisdiction and functions has both drawn upon its organizational autonomy as created by treaty and reinforced that autonomy in the process. In doing so it has strengthened the Commission as an international body.

Avoiding Unwanted Functions

In addition to avoiding politicization and predation by other federal agencies, the organizational autonomy of the United States Section has likewise enabled the agency to avoid functions that might have hindered the diplomatic effectiveness of the Commission. The case of the ill-fated United States border fence is a worthwhile illustration.

In 1935, the United States Section was authorized to undertake the construction of a land boundary fence extending from San Diego, California to El Paso, Texas. ⁶⁵ The ostensible purpose of the fence, which had only lukewarm support by agency officials, was to stop the spread of equine encephalitis and, more controversially, to regulate transit across the international line. ⁶⁶ Shortly after construction of the fence began, agency officials recognized the volatility of the border fence as a symbol of unilateral and uncooperative relations between the two countries and sought to divest themselves of its jurisdiction. When several domestic agencies, including the Department of Agriculture, the Customs Service, and the Immigration Service, expressed an interest, the United States Section quickly lent its support to divestment. Section officials felt the fence was a strictly domestic function since it did not have the support

62. Dept. of State Mem. (June 18, 1954), *supra* note 47.

63. *Id.*

64. *Id.*

65. M. Whiteman, *supra* note 44, at 703.

66. *Id.*

of the Mexican government and was located three feet inside United States' soil. Further, the United States Section regarded the fence controversy as drawing adverse attention to the Commission as a whole. The United States Commissioners persuaded their border clientele of the wisdom of divestment and passed jurisdiction to the Department of Agriculture and the Immigration Service in 1951. The subsequent bilateral imbroglio over the border fence, which became tainted with racism and anti-Mexicanism in the "tortilla curtain" controversy of the mid-1970s, amply justified their decision.⁶⁷

In sum, the United States Section's policy autonomy and independence as a resource management agency within the complex of American federal agencies has fortified the agency's jurisdictional claims, enhanced its prestige, and enabled the United States Section to effectively advocate the functional growth of the Commission. Autonomy has thus buttressed the functionalist logic underlying the Commission's fundamental purpose.

SITUATED AUTONOMY AND THE FUTURE OF THE COMMISSION

The situated autonomy of the United States Section is central to an understanding of its success and effectiveness as an agency, and to an explanation of the Commission's success as a transboundary resource management agency cut in the functionalist mold. As seen above, the United States Section's political autonomy has enabled it to assume new functions, to defend its jurisdiction and functional turf, to divest itself of harmful activities, and to avoid politicization. Each of these achievements strengthens the institutional capacity of the IBWC as a whole.

The United States Section's political autonomy is the product of certain institutional endowments and context-specific strategies employed by the agency to maximize its influence in this policy arena. More than most areas of policy formation, the boundary and water arena draws together every level of government, international and domestic, national, state and local in the process of policy development. Within this decentralized, fragmented milieu, the United States Section has acquired a substantial degree of policy autonomy by asserting its claim to an exclusive jurisdiction, stressing its technical expertise, conservatively interpreting its functional entitlements, and solicitously cultivating the support of its border state clientele.

Drawing on the IBWC's specialized treaty mandate and the unique powers conferred upon the Commission as a whole, the Section's leadership has astutely pursued strategies of agency survival which reinforce the reputation and policy authority of the agency and avoid debilitating

67. E. Stoddard, O. Martinez, and M. Martinez-Lasso, *El Paso—Ciudad Juarez Relations and the Tortilla Curtain: A Study of Local Adaptation to Federal Border Policies* (1979).

controversies that might tarnish its prestige and reduce public support for its core administrative functions. In the process, the United States Section has acquired a range of administrative and operational functions and a level of policy independence from its ostensible superior, the Department of State, that is extraordinary among the permanent international commissions to which the United States is a party.

The situated political autonomy of the United States Section has proven to be an important asset for the IBWC as a binational resource management agency. Its policy autonomy has reinforced the United States Section's diplomatic capabilities, particularly its capacity to take the initiative in monitoring, responding, and setting the agenda with respect to transboundary resource problems arising within its jurisdiction. It has assured policy creativity in the discharge of the Commission's functions and has enhanced the ability of the two national sections to perform this role with minimal controversy and a high level of public confidence in the Commission's overall approach to border diplomacy. The strength of the United States Section in dealing with its nominal policy superiors has, in fact, strengthened the position of its Mexican counterpart in dealings with its own government.⁶⁸ Most important, the accumulation of political autonomy in this context has enabled the Commission to maneuver politically in ways that reinforce its basic jurisdiction, grounding old and new functions on the solid bedrock of reliable constituency support.

The United States Section's political autonomy is nevertheless a context-bound autonomy that limits its capacity to absorb functions presently outside the framework of its formal jurisdiction. The Commission's agenda has shifted from its earlier involvement in the development of large reclamation projects to a contemporary preoccupation with operations and maintenance.⁶⁹ The most active new sphere of policy development has been in the field of transboundary sewage and sanitation management. Here, through extrapolation of treaty language, the Commission's functions have been extended to deal with virtually all classes of transboundary water pollution.⁷⁰ The Commission has likewise seen its functions broad-

68. The United States Section's prominence as a diplomatic broker between the border states and the federal government in arranging boundary and water agreements with Mexico has focused greater attention on the Mexican Section within the Mexican Foreign Ministry. The Mexican Section, and its supervisory body, the Directorate General for Boundaries and International Rivers, are administratively separate from the Directorate General for North America which deals with bilateral affairs. See L. Koslow, *Mexican Foreign Policy Decision-Making: The Mutual Adjustment of Needs and Independence* (1969) (Ph.D. Dissertation, U. of Cal. at Riverside). Moreover, as seen above, there has been an emphasis on administrative continuity at the Mexican Commission that is unusual within the Mexican foreign service. These indicators are at best impressionistic, but suggest that the situated autonomy of the United States Section has served to enhance the prestige and importance of the Mexican Section within Mexico's foreign affairs establishment.

69. Jamail and Mumme, *supra* note 6.

70. Mumme, *The Background and Significance of Minute 261 of the International Boundary Commission*, 11 Cal. W. Int'l. L. J. 228 (1981).

ened in the area of water apportionment and the management of salinity along the Rio Grande and Colorado Rivers.⁷¹

The IBWC's success in matters falling within its formal jurisdiction, however, has drawn the attention of advocates of enhanced environmental management across the spectrum of transboundary environmental concerns. In the past decade, numerous voices have urged the Commission to tackle solutions to air pollution, hazardous and toxic wastes, and other environmental problems with binational implications along the international border.⁷² The situated character of the United States Section's organizational autonomy is apt to prevent the Commission from tackling these issues for several reasons. First, the agency's success is predicated on the assertion of exclusive jurisdiction over a specific class of boundary and water issues. The United States Section has carefully based its functional claims in the script of the 1944 Water Treaty. Moving beyond these bounds would require a modification of that treaty or a new treaty authorizing new functions. The United States Section is not likely to support a non-treaty extension of its functions unless the extension is tentative, aimed at a formal protocol, and grounded in solid border state support.

Second, the United States Section has sustained its clientele support largely due to its record of performing material services for its border state clientele. Unlike its northern counterpart, the IJC, the IBWC has never sought to assume a major regulatory role. Moving into a broader realm of environmental management would engage the Commission, and the United States Section, in the business of policing domestic interests, which would provoke controversy. It would raise the public profile of the Commission and expose it to criticism, potentially undermining the united front clientelism critical to its effectiveness as an agency. The leadership of the United States Section may not be willing to expose the agency, and the Commission, to those risks.

In sum, the United States Section is a highly effective multiple purpose functional agency with a dual domestic and international mandate. It will probably continue to absorb new functions within its present jurisdiction in light of the rapid urbanization and the profusion of policy needs generated by the development of the United States-Mexico border region. The present menu for functional expansion includes the apportionment of unapportioned surface and groundwater along the border, further expansion in the realm of binational sanitation and sewage management, transboundary groundwater pollution, salinity control, additional flood control measures, and technical advising and coordination with other domestic agencies with boundary-related functions. In 1983, the United States-Mexico Border Environmental Cooperation Agreement provided

71. Jamail and Mumme, *supra* note 6.

72. Utton, *supra* note 53, at 745; Bath, *supra* note 53, at 1165.

further impetus in this regard.⁷³ The United States Section will also continue to discharge major responsibilities in the sphere of boundary maintenance under the 1970 Boundary Treaty as well as operation and maintenance of its principal reclamation and flood control works along the border.

The IBWC and its United States Section, now a century old, is an exceptional example of situated autonomy in the performance of an international resource management mandate. The United States Section's limited political and policy autonomy has served the Commission well, enabling it to functionally develop and better serve its clientele within the limits of the Commission's jurisdiction. This same autonomy limits the Commission's capacity for development in certain policy directions and provides a good case for a multi-agency approach to binational resource management. Nonetheless, at its centenary, the Commission deserves ample praise for its accomplishments and appreciation for the role it will play for both countries into the 21st century. It is an excellent exemplar to the world community of what can be accomplished in the border policy arena, sovereignty and national imperatives notwithstanding.

73. Agreement on Cooperation for the Protection and Improvement of the Environment in the Border Area, Aug. 14, 1983 United States-Mexico, T.I.A.S. No. 10827; 19 Weekly Comp. Pres. Doc. 1137; Sinclair, *The Environmental Cooperation Agreement Between Mexico and the United States: A Response to the Pollution Problems of the Borderlands*, 19 Cornell Int'l L. J. 122 (1986).