

THE CHAMIZAL SETTLEMENT

The Honorable J. F. Friedkin^{1/}

On January 14, 1964, President Johnson proclaimed the Treaty between the United States and Mexico for solution of the nearly 100 year old Chamizal boundary dispute between the two countries, at El Paso, Texas and Ciudad Juarez, Chihuahua. The dispute involved less than one square mile. Yet it was as tough and thorny as its namesake - the Chamizo bush which was native to the area.

The story of the dispute and its settlement is one of many interests:

- a) The principal is the river - the Rio Grande, flowing in its alluvial bed, and it all started with a relatively simple change in the course of this river.
- b) It has a very real human interest - some 5,000 people reside in the disputed area.
- c) The settlement will cost an estimated \$45 million.
- d) Local and state authorities are directly concerned.
- e) It involved the question of national sovereignty of two great nations over their lands.
- f) At stake was the important principle of arbitration as a means of settlement of disputes between nations.

And so, while in a narrow physical sense the dispute and its settlement may be a small matter, in a larger sense it is a big matter. As perhaps many of you noted, the settlement received national and international news coverage.

I believe the settlement was an outstanding example of the moral strength and character of our Government to do what it believed fair and right - our late President Kennedy and President Johnson - our Senate, Republican and Democrats alike - the Senate Foreign Relations Committee was unanimous in recommending approval. On the floor the Senate voted 79-1 in expressing its advice and consent to the Treaty. The Department of State and particularly your former Ambassador to Mexico, and now Under Secretary of State for Economic Affairs, the

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Honorable Thomas C. Mann, played a leading part. The International Boundary and Water Commission, of which I am a member, played a technical part.

I should like to trace for you this true story of local, national and international significance:

HISTORY OF RIVER CHANGE

It began in 1848 when the Treaty of Guadalupe Hidalgo was signed establishing the Rio Grande as the boundary between the United States and Mexico, starting at a point just above where the City of El Paso, Texas is now situated on the north bank. El Paso was then only a few scattered adobe huts. On the Mexican side, the present city of Juarez was an important community, having been established in the 1600's by early Spanish missionaries.

The Rio Grande in its southward course makes a bend through the two cities, with the United States bank on the convex side - the accretion side; and the Mexican bank on the concave side - the eroding side of the channel. Pursuant to the 1848 Treaty, joint surveys were made in 1853 by engineers for the two Governments, which established definitely the location of the river at that time. In the period 1853 to 1896 the river shifted its course in its alluvial sands to cut into the Mexican bank and effect accretion to the United States bank to the extent of about .75 miles at the maximum point. By 1896, the total land area transferred from the south bank to the north bank was about 630 acres - just under one square mile. This is the land involved in the Chamizal dispute.

MEXICAN CLAIMS

In 1867, Mexico filed its first notice of claim and in 1896 filed an official protest and claim for the Chamizal tract. The claim was referred to the International Boundary Commission for settlement. This was a joint international body consisting of a United States Commissioner and a Mexican Commissioner, established by the two Governments in 1889 with the then primary responsibility of the settlement of boundary disputes incident to changes in the course of the river. It has a record of settlement of 219 cases involving boundary questions incident to river changes, involving more than 27,000 acres. But it was unable to reach agreement on the Chamizal tract - because of differences in views and interpretations of the governing treaty.

THE 1910 ARBITRATION TREATY

On June 24, 1910, the Governments of the United States and of Mexico entered into a Treaty to arbitrate the Chamizal dispute. This Treaty provided for an Arbitration Commission consisting of three members--the United States Commissioner, the Mexican Commissioner of the International Boundary Commission, and the third neutral member--a Canadian jurist selected by the two Governments by common accord. They selected Mr. Eugene LaFleur, one of His Britannic Majesty's Counsel, Doctor of Civil Law, and former professor of International Law at McGill University. He was well recognized internationally for his juridical ability.

The Treaty provided that the Arbitration Commission shall decide whether the international title to the Chamizal tract is in the United States or Mexico. It provided that the decision of the Commission, whether rendered unanimously or by majority vote of the Commissioners, shall be final and conclusive upon both Governments, and without appeal.

The hearings were held in 1911 in El Paso, Texas. The two outstanding questions considered by the arbitrators were:

- 1) Had the United States of America acquired title to the Chamizal tract by prescription--that is, by its having occupied and exercised jurisdiction over the area. Upon this question, all three Commissioners voted no.
- 2) The second question related to the manner of movement of the river channel from the time of the initial surveys in 1853 until 1896. On this question the determination of the Commission turned upon the interpretation of the 1884 Treaty between the United States and Mexico which was designed to lay down rules for determination of questions and difficulties which may arise due to natural changes of the channel of the Rio Grande. This Treaty provided that:

The boundary line shall follow the center of the normal channel of the river, notwithstanding changes in its course provided that such alterations be effected through slow and gradual erosion and deposit of alluvium and not by the abandonment of the existing river channel and the opening of a new one.

Any other change wrought by the force of the current shall produce no change in the dividing lines but that the line shall continue to follow the middle of the bed of the old channel even though it become wholly dry or obstructed by deposits.

And so, the question turned on the character of the movement of the river. The substance of the evidence and arguments presented may be of special interest to those concerned with the mechanics of alluvial rivers.

It was the United States view that there are only two types of river changes, 1) "erosion and accretion" changes where a river shifts its course more or less continuously, and 2) "avulsive" changes where the river suddenly abandons an old channel and adopts a new one. Evidence was presented showing that the river did not abandon its old channel, that it did in fact more continuously by erosion and accretion. Therefore, the United States contended that the boundary moved with the river and the entire tract should properly be under the sovereignty of the United States.

The Neutral Arbitrator directed attention to the wording of the Treaty of 1884 - that the boundary changed with the river only when its movement was "slow and gradual." He noted from the testimony that during the 1864 flood, the caving of the Mexican bank was very rapid and at times even violent, and that this could hardly be considered "slow and gradual."

On this basis it was the finding of the majority of the Commission, the Neutral Arbitrator and the Mexican member, that:

- 1) The river moved by slow and gradual erosion from 1853 until 1864, a year of large floods; that therefore, during this period the boundary moved with the river and hence, the lands north of the 1864 channel belonged to the United States.
- 2) During the 1864 flood, the river movement was rapid and violent and the changes that took place in that year did not result in a change in the boundary. The old channel before the 1864 flood remained the boundary. Accordingly, the land lying to the south of the 1864 channel belonged to Mexico.

This determination awarded to the United States the northerly approximately one-third of the Chamizal tract and to Mexico the southerly approximately two-thirds of the tract.

UNITED STATES REJECTION

The United States rejected the award on three legal points, taking the view that the findings of the majority of the Commission were outside of the terms of reference of the Arbitration Treaty. Since this rejection by the United States in 1911, the Chamizal dispute

has been a most difficult and a most sensitive problem between the two countries.

It is important to note, however, that the United States in its note of rejection, proposed that the two Governments settle the issue by negotiation through diplomatic channels.

EFFORTS TO SETTLE 1910 to 1961

In the years immediately following the arbitration, Mexico was heavily concerned with its internal problems which at times involved armed revolutions. But beginning in the 1920's, each administration in Mexico has approached each administration in the United States for settlement of the Chamizal dispute -- requesting that the United States recognize the arbitration award. In 1925, the Government of Mexico proposed in a note that the legal validity of the award be submitted to the Hague Tribunal for discussion. The United States considered it preferable to negotiate a settlement. And with almost each administration in the United States, Republican and Democratic, instructions have been issued and efforts have been made toward a solution, but without success until the recent effort.

AGREEMENT OF TWO PRESIDENTS IN JUNE 1962

At their meeting in Mexico City in June of 1962, the Mexican President, Lopez Mateos, urged to our President Kennedy, a settlement of the dispute. They agreed at that meeting to instruct their respective executive agencies to recommend a complete solution to this problem which, without prejudice to their juridical positions, takes into account the entire history of this tract.

There followed an intensive study, conferences and discussions with the civic interests of the City of El Paso and with the State of Texas, in an effort to formulate a United States position for a fair and equitable solution to the problem. Probably no treaty has ever been negotiated which took into confidence and worked with the local interests, as was done in the case of the Chamizal negotiations.

CRITERIA AND BASIS FOR SETTLEMENT

The basic criteria for the settlement was to give effect to the 1911 award to the extent practical in today's circumstances, and to reestablish the river channel as the boundary between the two countries.

The first agreement negotiated was to establish the probable location of the 1864 river channel - since this dividing line established by the Arbitration Commission had not been surveyed and was not specifically known. Agreement was reached on the basis of surveys before and after the 1864 flood resulting in the determination that the area south of that channel to be transferred to Mexico amounted to 437 acres.

There were two criteria for relocation of the boundary to effect such transfer:

- 1) The boundary should be relocated in a manner to minimize insofar as practicable, disturbance to the United States residential and commercial developments which had built up in the Chamizal tract, and
- 2) The alignment of the new boundary must meet the hydraulic requirements for relocation of the river channel - particularly there should not be excessive curvatures - there should not be excessive head losses.

The new alignment for the boundary and relocation of the river was recommended and approved by the two Presidents as a basis for the settlement. It provides for 4.3 miles of new concrete lined channel - capacity 18,000 c.f.s. It will effect transfer of a gross total of 630 acres from the United States to Mexico; it will effect a transfer of 193 acres from Mexico to the United States; making a net to Mexico of 437 acres.

1963 TREATY

The approved recommendation was the basis for the Treaty signed August 29, 1963. Its preamble states that the "United States of America and the United Mexican States animated by the spirit of good neighborliness which has made possible the amicable solution of various problems which have arisen between them and desiring to give a complete solution to the problem of the Chamizal resolved to conclude this Convention."

The relocation of the river will be accomplished jointly by the two Governments through the International Boundary and Water Commission, with the cost of the relocation of the channel and bridges shared equally by the two Governments. The Treaty provides that the new boundary shall not become effective until all the private properties in the United States have been acquired. It provides that the transfer of lands shall not affect the citizenship of people who now reside or who have resided in the area, nor the jurisdiction which

United States authorities have in the past exercised over the area. It provides that while the lands will pass from one country to the other without cost, a Mexican bank shall pay to the United States the value of the improvements which pass intact to Mexico. It provides that the cost of relocating the river and the cost of the new bridges shall be divided equally between the two countries.

THE UNITED STATES ENABLING LEGISLATION

To carry out the United States part of the Treaty will require acquisition of some 800 privately-owned properties. This will include about 650 residential and apartment properties housing some 5,000 people, and 150 business properties. There will be required relocation of schools, railroads and other public facilities. The Congress, at this session, authorized the necessary acquisition and relocation of properties and authorized appropriations therefor, not to exceed the estimated cost of \$44.9 million.

Of special note, the legislation contains provisions designed to guard against economic injury or damage to the El Paso residents and businesses of the area. The Congress recognized that this settlement of a dispute with a foreign country should not impose a hardship upon our private interests of the area.

IMPLEMENTATION OF THE CHAMIZAL TREATY

The carrying out of the Chamizal Convention began in January 1965. The first phase of the project is the acquisition of the private properties on lands to pass to Mexico and required for relocation of public facilities on land which pass to Mexico. This phase is about 75% as expected to be practically complete by July 1, 1966. The second phase of the project is the relocation of the public facilities located on the lands to pass to Mexico. These include the United States Port of Entry facilities, railroads, canals, and bridges. This phase is scheduled to be completed within 18 months - by January 1968. The third and last phase - the relocation of the river channel will be completed in 1968.

BENEFITS OF THE SETTLEMENT TO THE CITY OF EL PASO, TEXAS

- 1) It will remove the cloud of international title to lands in the Chamizal tract remaining in the United States which has retarded their development, and thus permit their improvement.

- 2) The 193 acre tract of Mexican land which will pass to the United States is strategically most important to El Paso.
- 3) The new concrete-lined river channel and new bridges will provide a higher degree of flood protection.
- 4) Relocation and improvement of port of entry facilities and railroads in the area will effect an improvement.
- 5) The solution of this problem provides opportunity to the City for extensive improvements not otherwise possible.
- 6) It will make for better local relations between the two border cities.

In addition, the President of the United States has recommended to the Congress the enactment of two complementary projects to assist the people of El Paso in adjusting to the change.

- 1) Chamizal National Monument to be located on a part of the lands that pass from Mexico to the United States in the settlement. This monument will be a park area with a symbolic monument and a visitors' center designed to depict the history of the boundary between the United States and Mexico.
- 2) Chamizal Memorial Highway to extend along the bank of the new river channel and southward therefrom along the river, a total distance of about 12 miles.

FROM THE STANDPOINT OF THE FEDERAL GOVERNMENT:

- 1) The settlement is in the best tradition of the United States in carrying out our commitments with foreign countries.
- 2) It strengthens our posture before the world in supporting and advocating the peaceful settlement of disputes among nations by negotiation, by arbitration, or international court. This is our position before the United Nations, it is our position before the Organization of American States.
- 3) It strengthens our position of respect before the world.

I think this is best illustrated by the following quotation by the Secretary of the Organization of American States, Jose A. Mora, upon the signing of the Chamizal Treaty; I quote,

"Such a paramount example of international good behavior honors the parties to the settlement and demonstrates to Americans of all latitudes how much can be accomplished when there is goodwill, inspired by the letter and the spirit of the Charter of the Organization of American States."

- 4) It puts the United States back in a position to arbitrate differences with Mexico, which has not been possible since 1911.
- 5) The settlement of the Chamizal removes one of the foremost propaganda weapons of the Communists.

THE DEMOCRATIC IDEAL IN OUR POLICY TOWARD LATIN AMERICA

Important as the Chamizal settlement is in itself, it is perhaps most important as one reflector of the democratic ideal in our policy toward Latin America.

And in this respect, I should like to bring to you a few notes from a recent address by the Honorable Thomas C. Mann, now Under Secretary of State for Economic Affairs:

We are, to be sure, now caught up in a shrinking interdependent world in which we have great responsibilities and which progressively become more complex. We can no longer afford to live apart from the rest of the world as if it did not vitally affect our national and individual well being.

In this situation, it is a fundamental in our United States foreign policy that we are firmly and irrevocably committed, as in our own constitution to our own individuals, to the principle that every individual and that every nation no matter in what part of the world has the inalienable right to individual freedom and to individual dignity.

One of the problems of our Latin American foreign policy is the problem of what can we do to bring out a more effective exercise of representative democracy in the western hemisphere - to bring out the individual freedom, the individual dignity of man. What can we do - what are we doing:

- 1) An example of vigorous representative democracy in our own United States that assures the dignity and respect of our own citizens, will provide strong support for our policy.

- 2) A policy of consistent persuasion in our discussions with our Latin American friends is another way to help promote democratic progress in the hemisphere.
- 3) Our basic policy is not one of intervention. We have learned by hard historical experience that unilateral United States interventions in the hemisphere have never succeeded in themselves in restoring constitutional government for any appreciable period of time.
- 4) Nor do we put ourselves in a doctrinaire straight jacket of nonintervention. Each case must be looked at in the light of its own facts and where the facts warrant, where the circumstances are such as to "outrage the conscience of America" we reserve our freedom to register indignation by refusing to recognize or to continue our economic cooperation, and if necessary to prevent a take over by the Communist, to move in as we did in the Dominican situation until the problem could be taken over by the OAS.

Finally, my fellow engineers, let me emphasize that the central element of our foreign policy toward Latin America is to insist upon for ourselves and for others, dignity and respect, between nations and between individuals. This was the real basis upon which the Chamizal dispute was settled. This recognizes our God given dignity and respect for ourselves and for our neighbors.

It is important that each of us feel and participate in this effort to create a peaceful world.