

# Is the San Diego-Tijuana International Border in the Wrong Place?

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The international boundary between Mexico and the United States was first set by the Treaty of Guadalupe Hidalgo in 1848. Almost since its signing, voices in Mexico have claimed that it gave the United States more territory than was intended in its Article V, which established the limits between both countries. It has been alleged, for example, that the line separating the states of California, in the United States, and Baja California, in Mexico, is placed further south than it should be.<sup>1</sup> This article attempts to provide a legal answer to this old but still intriguing question.

## BOUNDARIES AND INTERNATIONAL LAW

The establishment and demarcation of international boundaries are among the most important and delicate questions in international law. Boundaries play a crucial role in bilateral relations between states because they define the specific areas—territorial, fluvial, oceanic, submarine and aerial—under the sovereignty of a given nation. Whereas in the past boundary questions mainly centered on land and rivers, scientific and technolog-

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ical developments in recent decades have expanded and diversified the notion of boundaries. Today, all countries realize the technical complexity associated with international limits and with their political and, especially, their economic implications.

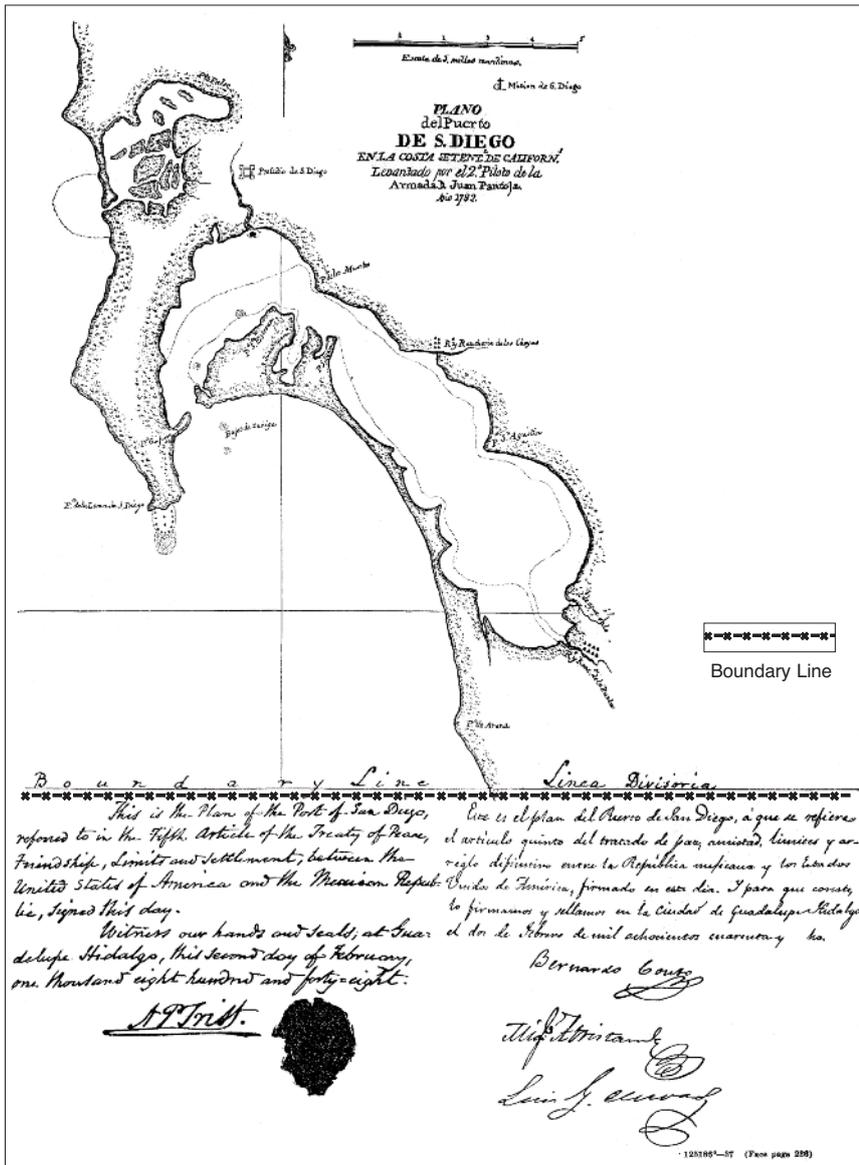
Boundaries are established by international agreements between nations (treaties) and delimit not only that traditional portion of the land mass upon which each individual nation is located but also other contiguous physical spaces, such as rivers, or more recently included spaces such as oceans, submarine regions, the seabed and ocean floor and even the air space above the territory of a given state.

In the case of Mexico, the history of its territorial boundaries with the United States and the chronology of the admirable and almost heroic events that led to the final establishment of these limits in the Treaty of Guadalupe Hidalgo and the Gadsden Purchase of 1853 is a story still waiting to be properly told. Notwithstanding the 151 years that have already elapsed since the signing of the first of these two treaties, Mexico's legal, diplomatic, historic and technical literature on this fascinating subject remains scanty.<sup>2</sup>

## MEXICO'S BOUNDARIES WITH THE UNITED STATES

Mexico and the United States share one of the oldest, longest and most complex boundaries in this hemisphere. According to the International Boundary and Water Commission (IBWC), the official length of this border totals 1,951.36 miles, divided as follows: 1,253.69 miles of the Río Grande; 697.67 miles from El Paso, Texas, to the Pacific Ocean, and 23.72 miles of the short stretch of the Colorado River.<sup>3</sup> From the viewpoint of international law, this binational limit consists of two different types of boundaries: 1) natural boundaries, formed by rivers and mountains, such as the Río Grande, the Colo-

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The Pantoja Map. *Treaties and Other International Acts of the U.S. of America*, Hunter Miller, ed., Washington, Government Printing Office, 1937, p. 428.

rado and the Tijuana; and, 2) artificial boundaries, consisting of straight lines connecting the Río Grande with the Pacific Ocean that follow certain parallels and meridians in degrees of latitude and longitude. These artificial lines were also marked astronomically. Examples of these boundaries are the segments running west from Ciudad Juárez, Chihuahua and El Paso, Texas, to the Pacific Ocean.<sup>4</sup> Although the original intention of the boundaries' negotiators was to consider

them (including the natural boundaries) as “fixed and definite,” i.e., eternal, the sudden changes and gradual movements of the international rivers in question, subject to natural phenomena such as floods and droughts, proved them wrong. Eventually, this resulted in the signing of a bilateral convention in 1884 to establish the rules applicable to the movements of these rivers and the establishment of a binational body to implement them, the International Boundary Commission (IBC).

Created in 1889,<sup>5</sup> the IBC's functions were expanded in 1944 to include jurisdiction over the waters of the international rivers.<sup>6</sup> Currently, the International Boundary and Water Commission (IBWC), made up of a U.S. and a Mexican section each headed by a respective commissioner, is empowered to decide matters affecting boundary questions as well as the utilization and allocation of the waters of international rivers.

ABSOLUTE POWERS  
OF THE JOINT BOUNDARY COMMISSION

Article V of the Treaty of Guadalupe Hidalgo<sup>7</sup> established the boundary between both countries. The article reads:

The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Río Grande, otherwise called Río Bravo del Norte...; from thence, up the middle of that river... to the point where it strikes the southern boundary of New Mexico (which runs north of the town called El Paso) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the River Gila;... thence down the middle of the said branch and of the said river, until it empties into the Río Colorado; thence, across the Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.<sup>8</sup>

While working out the treaty, the U.S. and Mexican negotiators faced a serious problem: they did not know where “the dividing line” between Upper and Lower California was. This was mainly due to

the remoteness and inclemencies of the area, where relatively few explorers had ventured prior to 1848, and to the lack of accurate maps.<sup>9</sup>

The determination of this boundary was a particularly crucial issue for the United States. Upon this decision depended whether the port and the bay of San Diego would be included as part of the territories to be “ceded” by Mexico to the United States, pursuant to the Treaty of Guadalupe Hidalgo. In addition, the U.S. had already made plans to take advantage of its military victory over Mexico to acquire certain territories which would be used to build a much needed transcontinental railroad across the southwest United States.<sup>10</sup> To solve this problem, the negotiators of the Treaty of Guadalupe Hidalgo used three strategies: first, they included a specific provision agreeing to the limit between the two Californias; second, they annexed a copy of an old Spanish map sketched in 1782 by the Second Sailing Master of the Spanish Armada, Juan Pantoja y Arriaga, known as the Pantoja Map, which they used to depict the newly agreed California limit; and, third, they gave the government officials who were later appointed to establish and demarcate the international binational boundary (i.e., one commissioner and one surveyor from each country, who formed the original Joint Boundary Commission) almost absolute powers to resolve any questions pertaining to said boundary. Furthermore, it was formally stipulated that the agreements reached by the commissioners and surveyors were to have the same weight as the treaty itself.

The language of the Treaty of Guadalupe Hidalgo addressing these three matters reads:

In order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line, drawn from the middle of the Río Gila, where it united from the Colorado, to a point of the Pacific Ocean, distant one marine league due south of the southernmost point of the Port of San Diego, according to the plan of said port, made in the year 1782 by Don Juan Pantoja, second sailing master of the Spanish fleet, and published at Madrid in the year 1802, in the Atlas to the voyage of the schooners *Sutil* and *Mexicana*: of which plan a copy is hereunto added, signed and sealed by the respective plenipotentiaries.

In order to designate the boundary line with due precision, upon authoritative maps...the two governments shall each appoint a Commissioner and a Surveyor, who... shall meet at the Port of San Diego... They shall keep journals and make out plans of their operations; and the result agreed upon by them, shall be deemed a part of this Treaty, and shall have the same force as if it were inserted therein.<sup>11</sup>

In essence, this empowering language is one of the peculiar aspects of the 1848 treaty. Knowing that the physical and topographical data regarding those vast tracts of land where the new boundary was to be established was clearly missing or grossly inaccurate, the treaty negotiators empowered the joint commission to reach an agreement on the precise location of the boundary or on any other aspect pertaining to it. By having these ample powers, the U.S. and Mexican teams had the ability to, say, “adjust” the boundary described in the treaty to the physical contours imposed by the topog-

raphy of the land. If the physical features depicted in one of the official maps was incorrect or inaccurate, the joint commission had the power to translate the map and treaty language into a concrete reality, into an agreed physical boundary marked on the land.

Another unique aspect of this empowering language was the formal understanding that any boundary line expressly agreed upon by the two sections of the joint commission formally became the official international boundary, *de jure* and *de facto*; and this legally binding language, as a consequence, was deemed part of the treaty itself. Thus, every important decision regarding the location of the boundary was couched in terms of an agreement, i.e., a legally binding contract. By adopting this *modus operandi* the boundary agreed by the joint commission became final and definitive, subject to no later changes.

#### OFFICIAL DEMARCATON OF THE INTERNATIONAL BOUNDARY

The Joint Boundary Commission convened for the first time in San Diego, California, on July 6, 1849.<sup>12</sup> The Mexican government appointed General Pedro García Conde and José Salazar Ilarregui and the U.S., John B. Weller and Andrew B. Gray, as commissioners and surveyors, respectively. Three days later, the commission agreed to conduct surveys and define on the ground: 1) the southernmost point of the Port of San Diego, and 2) the two ends of the straight line between the Pacific and the junction of the Gila and Colorado Rivers.

The “initial point” on the Pacific Ocean, situated one marine league due south of the southernmost point of the Port of San

Diego, according to the Pantoja Map, was officially ascertained on October 10, 1849. A written statement in English and Spanish was placed in a hermetically sealed bottle and deposited in the ground and signed by the U.S. and Mexican commissioners and surveyors in the presence of two witnesses.<sup>13</sup> It was agreed that this point was in North latitude 32°31'59".58, and the longitude thereof 7h. 48 min. 21.10 West of Greenwich. On January 30, 1850, the joint commission agreed to place a monument at the initial point on the Pacific Ocean.

#### IS THIS BORDER WRONGLY PLACED?

The central argument advanced by Mexican authors<sup>14</sup> to claim that this portion of the boundary is placed south of where it should be is based on the interpretation of the words “port” and “bay.” As seen earlier, the treaty stipulates that the initial point should be placed “one marine league due south of the southernmost point of the port of San Diego.” However, the official reports of the joint commission clearly indicate that the marine league was measured not from the “port” of San Diego, at that time located some 9.5 miles north, but from the southernmost coastline of San Diego Bay.

According to this argument, the boundary should have been measured from the then “port” of San Diego, which in 1848-1850 was located in the area known today as Ballast Point. This point was labeled “Punta Guijarros” on the Pantoja Map and is currently located in the inland area of Point Loma, slightly northeast of the Cabrillo National Monument and across from the North Island Naval

Air Station in Coronado. Ballast Point and the top of Coronado make up the mouth of the channel used by vessels to enter into San Diego Bay from the Pacific Ocean today.

The difference between the initial point measured from the “port” and measured from the southernmost coastline of the “bay” is some 9.5 miles. Now, when one considers that the straight line that separates California, U.S., from Baja California, Mexico, is 146.9 miles long to its Eastern Terminus<sup>15</sup> (at the confluence of the Gila and Colorado Rivers), the territorial loss affecting Mexico seems considerable.

However, legal and technical realities seem to refute this allegation. First, we should remember that the 1848 treaty conferred almost absolute powers upon the members of the joint commission to reach an agreement among themselves on the location of the boundary. Accordingly, as documented in the joint commission’s official minutes dated October 10, 1849, the Mexican and U.S. members of the commission agreed on the location of the initial point of the boundary on the Pacific Ocean.<sup>16</sup>

Second, there is an even stronger argument to dispose of this claim. The precise location of the current international boundary between both countries was marked in red ink on the Pantoja Map when it was added to the Treaty of Guadalupe Hidalgo. Furthermore, in order to avoid any future discrepancy regarding the location of this portion of the boundary—especially from the U.S. perspective—, the Pantoja Map was signed by each of the three Mexican plenipotentiaries: Bernardo Couto, Miguel Atristáin and Luis G. Cuevas, and by Nicholas P. Trist,

the U.S. commissioner, and an official seal was affixed to it. Thus, the U.S. and Mexican plenipotentiaries not only indicated that this was the map referred to in the treaty’s Article V, but, more importantly, expressly recognized that the line in the San Diego-Tijuana region had been personally drawn in red ink as the agreed “dividing line” (*línea divisoria*) between both countries. Accordingly, the technical work of the joint commission merely consisted of tracing upon the ground the boundary line depicted in red in the Pantoja map. (See map.)

In closing, it should be acknowledged that during the slow and technically challenging process of establishing and demarcating the binational boundary by the joint commission—an admirable joint effort that took from 1849 until 1857—, many technical mistakes were made. Most of them were due to technical defects affecting the operation and accuracy of the commission’s scientific instruments. When these mistakes or the resulting technical inaccuracies went beyond the reasonable standard agreed by the commission, they were immediately brought to the attention of the other party and, when deemed necessary, corrected. However, when the discrepancies of the technical readings between the Mexican and the U.S. sections were considered tolerable, given the hostile environmental and technical working conditions when the boundary was being established, these discrepancies were solved by agreement between the two sections.

In the relatively few cases where one of the contracting parties considered that a gross misreading or a gross mistake had taken place, the affected party submitted the case to the International Boundary

Commission or even the International Boundary and Water Commission (IBWC) for its technical analysis and final decision. In this regard, for example, Mexico brought up a number of important cases, including Rancho de Sásabe, Mina Oro Blanco, La Tinaja, Tres Bellotas, La Noria, El Durazno (in Sonora), Ascensión (Chihuahua), etc.<sup>17</sup> However, no formal claim has ever been submitted by Mexico regarding the initial point on the Pacific Ocean or the Eastern terminus at the confluence of the Gila and Colorado Rivers, or any other point along the straight line that separates California from Baja California.

The fundamental principle that has guided, and continues to guide, the work of the IBWC is that the boundary established by Article V of the Treaty of Guadalupe Hidalgo of 1848 and Article I of the Gadsden Purchase of 1853 is to be respected by both countries, and that no change shall ever be made to the international boundary, “except by the express and free consent of both nations, lawfully given by the General Governments of each, in conformity with its own Constitution.”<sup>18</sup> There is no question that this lucid and sound principle of international law, established 150 years ago, will continue to be in force for many years to come. ■■■

## NOTES

<sup>1</sup> Another claim advances the thesis that the California Channel Islands (eight small islands off California) still belong to Mexico. See Jorge A. Vargas, *El archipiélago del Norte. ¿Territorio de México o de los Estados Unidos?* (Mexico City: Fondo de Cultura Económica, 1993) and “California’s Offshore Islands: Is the “Northern Archipiélago” a Subject for International Law or Political Rhetoric?,” in *Loyola of Los Angeles International & Comparative Law Journal* 12, no. 13 (May 1990), pp. 687-724.

<sup>2</sup> Traditional sources include César Sepúlveda, *La frontera norte de México. Historia y conflictos, 1762-1975* (Mexico City: Porrúa, 1976); Alberto María Carreño, *México y los Estados Unidos de América* (Mexico City: Jus, 1962); and Luis G. Zorrilla, *Historia de las relaciones entre México y los Estados Unidos de América, 1800-1958* (Mexico City: Porrúa, 1977). Analytical works discussing Mexico’s territorial or maritime boundaries with other countries, like Guatemala, Belize, etc. appear to be simply non-existent.

<sup>3</sup> Leon C. Metz, *Border* (El Paso, Texas: Mangan Books, 1990) no pagination.

<sup>4</sup> Ocean and submarine boundaries, such as the territorial sea, the continental shelf and, more recently, the Exclusive Economic Zone (EEZ), may be traced based on the straight-baseline system, following agreed points of latitude and longitude. See, for example, the Treaty on the Delimitation of Maritime Boundaries between Mexico and the United States, signed in Mexico City on May 4, 1978.

<sup>5</sup> Convention to Avoid the Difficulties Occasioned by Reason of the Changes which Take Place in the Beds of the Río Grande and the Colorado River, signed in Washington, March 1, 1889; it came into force on December 24, 1890. 26 Stat. 1512; TS 232; 9 Bevans 877.

<sup>6</sup> Treaty Relating to the Utilization of Waters of the Colorado and Tijuana Rivers and of the Río Grande, and Supplementary Protocol Signed on November 14, 1944. Signed in Washington, February 3, 1944; it came into force November 8, 1945. See 59 Stat. 1219; TS 994; 9 Bevans 1166; 3 UNTS 313.

<sup>7</sup> Treaty of Guadalupe Hidalgo. Treaty of Peace, Friendship, Limits, and Settlement, signed in Guadalupe Hidalgo on February 2, 1848. Ratified by the United States, March 16, 1848. Ratified by Mexico on May 30, 1848. Ratifications exchanged in Querétaro, Mexico, May 30, 1848. Proclaimed July 4, 1848. Treaty Series No. 207. *Treaties and Other International Acts of the United States of America*, Hunter Miller, ed., vol. 5, Document 129, U.S. (Washington, D.C.: Government Printing Office 1937), pp. 204-428.

<sup>8</sup> *Ibid.*, pp. 213-214. Also see *Tratados y convenciones sobre límites y aguas entre México y los Estados Unidos* (Ciudad Juárez: Secretaría de Relaciones Exteriores (SRE)/ Comisión Internacional de Límites y Aguas [CILA], 1957), p. 9.

<sup>9</sup> The lack of accurate and technical information regarding the lands where the boundary was to be

established affected many other stretches along the difficult binational boundary. Mexican and U.S. authors have written extensively on the mistakes and technical inaccuracies that plagued the Pantoja and, especially, the Distumell maps. These two maps were officially added to the Guadalupe Hidalgo Treaty. See *Treaties and Other International Acts...*, pp. 340, 362-371.

<sup>10</sup> See, for example, A. Gray, Survey of Route for the Southern Pacific R.R. on the 82nd Parallel, Southern Pacific Railroad (Railroad Record), 1856.

<sup>11</sup> Article V of the treaty, *Treaties and Other International Acts...*, p. 215.

<sup>12</sup> Report of the Secretary of the Interior, Senate Executive Document No. 199, 32nd Congress, 1st Session (Serial 626), p. 56.

<sup>13</sup> In part, this statement read: “Be it remembered that, on the 10th day of October, A. D. 1849, the undersigned, Commissioners and Surveyors, duly appointed and commissioned by their respective governments, being satisfied with the results of the survey made, did agree that the demarkation (sic) of the boundary between the United States and the Mexican Republic shall commence at this point.” *Ibid.*, p. 59.

<sup>14</sup> See, for example, the pamphlet by Guillermo Ortiz Zamora, *The True Border between the Californias, North or South? Port or Bay?* (Tijuana: 1987).

<sup>15</sup> According to its Minute of January 28, 1850, the Boundary Commission agreed that the geographical position of the point “marking the middle of the Gila River, where it unites the Colorado” was at 32° 43’ 32” and 7 hours, 38 minutes. Thus, the straight line separating the two Californias, between the monument at the initial point on the Pacific Ocean and the confluence of the Gila and Colorado Rivers, was 148.689 miles long. However, the U.S. and Geodetic Survey in 1936 “re-computed” this distance, according to the North American Datum of 1927, to be 146.994 miles. See *Treaties and Other International Acts...*, p. 415.

<sup>16</sup> See note 13 and the corresponding text.

<sup>17</sup> Most of these cases are discussed in Luis G. Zorrilla, *Monumentación de la frontera norte en el siglo XIX* (Mexico City: Secretaría de Relaciones Exteriores, 1981).

<sup>18</sup> Article V, Guadalupe Hidalgo Treaty, *Treaties and Other International Acts...*, pp. 215-216.