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Mixed Boundary Commissions

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A. Introduction

1 'Mixed boundary commissions' is a common, informal term for international bodies that have been established with the specific task of contributing to delimiting or demarcating boundaries between States. They are mixed both in the sense of being comprised of an international bench with representatives from two or several neighbouring States, and by usually having members with backgrounds in different disciplines. However, mixed boundary commissions cannot be defined as a standard-type institution of international cooperation, as there are no general international legal regulations governing their structure or work. Furthermore, their mandates, functions, composition, and procedures vary.

2 Historically, mixed boundary commissions have operated under various names, such as 'boundary committee', 'boundary commission', 'mixed commission', and 'boundary demarcation commission' (→ *Mixed Commissions*). Irrespective of this, they share several common features. The primary task of such commissions is to facilitate border demarcation and delimitation between two or more States, with the explicit consent of and often active representation from the States themselves (→ *Demarcation Line*).

3 Frequently established after conflicts and wars, mixed boundary commissions continue to be an effective and important tool for resolving a classic regulatory problem in international law: shaping and determining the territorial sphere of jurisdiction of States or other entities that have international status (→ *Territorial Disputes*).

B. National Boundary Commissions

4 International mixed boundary commissions should be distinguished from *domestic, or national*, boundary commissions. Nowadays, States often have administrative bodies or agencies responsible for border issues. Such bodies may be commissioned to mark and maintain internal State boundaries or constituencies, or be tasked with ensuring that border agreements with other States are respected. National boundary commissions are part of a State's ordinary bureaucratic hierarchy and are administratively and professionally subordinate to a ministry, most often the ministry of foreign affairs. They are exclusively unilateral constructions but may also be important institutions for higher political decision-making, including the ability of States to engage with neighbouring States in connection with boundary issues. Thus, national boundary commissions have become popular structures. For instance, in South America, both Brazil (*Divisão de Fronteiras*) and Argentina (*Dirección de Límites y Fronteras*) have internal departments dedicated to international boundary issues within their respective ministries of foreign affairs.

C. Establishment

5 In inter-state relations, mixed boundary commissions are generally established on the basis of a Treaty or convention created by two States that share an international boundary (see, eg, Art 4 (2) Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia of 12 December 2000 ('Algiers Peace Agreement'), establishing the → *Eritrea-Ethiopia Boundary Commission (EEBC)*, mandated to delimit and demarcate the colonial treaty border between the two countries). Such formal ratified treaties show that neighbouring States are strongly committed to the work of a mixed boundary commission. However, less formal bilateral arrangements, such as an inter-state memorandum of understanding ('MoU'), may also be used to establish

boundary commissions. The treaty, MoU or other instrument will define the boundary commission's functions, competences, structure, procedures, etc.

6 A mixed boundary commission may be established as a subsidiary body of an international organization. In that case, it is the decision or resolution of the competent body that serves as the constitutive instrument of the commission. The → *Cameroon-Nigeria Mixed Commission*, for example, was established in 2002 by the United Nations ('UN') Secretary-General at the request of Presidents Paul Biya and Olusegun Obasanjo of Cameroon and Nigeria, respectively. The mandate of this Commission was to facilitate implementation of the judgment of the → *International Court of Justice (ICJ)* on the Cameroon-Nigeria boundary dispute, including the demarcation of the land and maritime boundary between the two countries (→ *Land and Maritime Boundary between Cameroon and Nigeria Case (Cameroon v Nigeria)*, 2002). The Iraq-Kuwait Boundary Demarcation Commission was established pursuant to a UN Security Council ('UNSC') Resolution ('Res'), which called upon the Secretary-General to assist in making arrangements with Iraq and Kuwait to demarcate the international boundary between the two countries (UNSC Res 687 (1991)).

7 There are also boundary commissions established by multilateral treaties. Under Article 76 and Annex II United Nations Convention on the Law of the Sea (1982) ('UNCLOS'), the Commission on the Limits of the Continental Shelf was set up to make recommendations to coastal States on the delineation of → *continental shelf* limits beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (→ *Continental Shelf, Commission on the Limits of the*). A coastal State shall provisionally delineate the outer limits on the basis of the provisions in UNCLOS and submit information on these limits to the Commission. The Commission then makes recommendations to the coastal States on matters related to the establishment of the outer limits. Outer continental shelf limits subsequently established by a coastal State on the basis of the Commission's recommendations are to be legally final and binding.

8 Mixed boundary commissions may be temporary or permanent. Temporary boundary commissions are usually established to facilitate a specific boundary demarcation or delimitation. Temporary commissions may also be tasked to address only a specific section of a boundary. Upon completion of the project, temporary boundary commissions will be dissolved. Such commissions appear to be common structures in post-conflict situations. The aforementioned Iraq-Kuwait Boundary Demarcation Commission was dissolved once it had completed its demarcation and submitted its final report.

9 Boundary commissions may also be established as permanent bodies. The Commission on the Limits of the Continental Shelf will operate for as long as States continue to make submissions on their outer continental shelf limits beyond 200 nautical miles from the territorial sea baselines. Permanent bilateral boundary commissions also include the International Boundary Commission ('IBC'), which is responsible for surveying and mapping the Canada-United States border. Similarly, the International Boundaries and Water Commission ('IBWC') between Mexico and the United States was made permanent in 1889. Inefficiencies of continually re-establishing new temporary boundary commissions in order to address on-going demarcation and maintenance issues prompt the establishment of such permanent institutions.

D. Legal Characteristics

10 Mixed boundary commissions established by treaties or other instruments, or as subordinate bodies of an international organization, are not distinct → *subjects of international law*. Boundary commissions do not possess international rights and obligations, nor do they have the capacity to maintain their rights by bringing international claims or be held responsible for breaches of obligation by being subjected to such claims. They remain joint organs of the subjects of international law that created them; the final decision as to their creation and continued existence is left to the subjects of international law that have direct interests in them. However, individual members of mixed boundary commissions may have duties before the body that created them, such as to act independently in the performance of their duties. For instance, under Rules 10 and 11 Rules of Procedure of the Commission on the Limits of the Continental Shelf (2008), Commission members shall refrain from any action which might reflect negatively on their position as members of the Commission and are also obliged to perform their duties honourably, faithfully, impartially, and conscientiously.

11 Mixed boundary commissions are less integrated in terms of international cooperation and organization than fully-fledged international organizations. However, the creation of mixed boundary commissions by means of a treaty or decision of an international organization distinguishes such institutions from → *non-governmental organizations* and other international bodies.

E. Functions and Competences

12 The functions and competences of mixed boundary commissions vary. They are not standard-type institutions of international cooperation, and there are no general international legal regulations applicable to their structure or work. Thus, it is impossible to circumscribe the exact scope of their jurisdiction from a general perspective.

13 Mixed boundary commissions may be tasked with making binding decisions on border determinations. Alternatively, the jurisdiction of boundary commissions may be limited to an advisory function to the States in question. They may also have purely technical or administrative tasks. States which share a boundary—be it wholly or partially in dispute, or already fully agreed—may also choose to establish a joint boundary commission that works continuously on broader border issues such as inspection, reporting, demarcation enhancement, maintenance, etc.

14 The non-uniform nature of mixed boundary commissions was emphasized in the *Award in the Arbitration regarding the delimitation of the Abyei Area between the Government of Sudan and the Sudan People's Liberation Movement/Army* (2009) ('*Abyei Award*') (→ *Abyei Arbitration*), in which the Tribunal commented on the characterization of the Abyei Boundaries Commission ('ABC'):

As the ABC is quite singular in character, there is no neatly established standard against which to assess the ABC Experts' conduct. Instead, the ABC's nature must be ascertained from its constitutive instruments, its composition, the conduct of the Parties, and the function to be performed by the ABC in the larger peace process. These factors will form the basis for ascertaining the normative framework and proper conduct of the ABC Experts in fulfilment of their mandate.

In international law, the spectrum of entities designed to engage in dispute settlement varies widely in terms of institutional permanence, composition, and the procedural regimes according to which these entities operate. Some, such as the ICJ, are composed of legal professionals and have a highly articulated procedural regime. At the other end of the spectrum, entities (often established on an ad hoc basis) include non-lawyers and follow very informal procedures, which may not be fully articulated in writing. What is procedurally permissible in some of the decision entities is prohibited in others (*Abyei Award*, paras 452-53).

The mere fact that the ABC was termed a 'boundary commission' does not by itself clarify the scope and nature of the ABC's mandate. Historically, many bodies, with many different titles, have been endowed with the specific task of delineating and/or demarcating boundaries. The role and mandate of such bodies differ as a function of the parties' agreement on what each particular 'boundary commission', 'boundary committee', 'mixed commission', etc. was designed to do (*Abyei Award*, para 456).

Thus, 'mixed boundary commissions' encompass bodies with a wide spectrum of functions and competences. With varying degrees of formality, they range from pure fact-finding bodies to institutions that perform adjudicatory or arbitral functions. Each boundary commission is therefore best considered as a singular entity whose nature is to be derived from its own, specific features.

15 Mixed boundary commissions may be patterned after those used in arbitration procedures. The EEBC was established by virtue of Article 4 (2) Algiers Peace Agreement:

The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law. The Commission shall not have the power to make decisions *ex aequo et bono*.

16 Despite its name, the EEBC resembles an arbitral tribunal. It was seated in The Hague, with the → *Permanent Court of Arbitration (PCA)* serving as registry and the UN Cartographic Section providing technical support. More importantly, several aspects related to the EEBC's terms of reference, jurisdictional scope, and decision-making process reiterate established rules of international adjudication and arbitration.

17 Article 4 (3)-(17) Algiers Peace Agreement sets out several institutional rules by which the EEBC should function, including regulations for the appointment of Commissioners by each of the parties. The EEBC is further empowered to consider oral and written submissions and to examine the evidence with respect to those parts of the boundary over which there was a controversy. A noteworthy feature also concerns the legal nature of the Commission's deliberations. Under Article 4 (11), the EEBC is empowered to adopt its own rules of procedure:

The Commission shall adopt its own rules of procedure based upon the 1992 Permanent Court of Arbitration Option Rules for Arbitrating Disputes Between Two States. Filing deadlines for the parties' written submissions shall be simultaneous rather than consecutive. All decisions of the Commission shall be made by a majority of the commissioners.

18 Another established and important rule of international adjudication is enshrined in Article 4 (15) Algiers Peace Agreement, ie that the delimitation and demarcation of the boundary by the EEBC shall be final and binding:

The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other party.

19 The EEBC set out its description of the boundary as so determined in a unanimous decision dated 13 April 2002 (*Decision regarding Delimitation of the Border between Eritrea and Ethiopia*). The second part of its mandate—to demarcate the boundary—could in principle have begun once the EEBC had handed down its delimitation decision. There has nevertheless been limited progress towards boundary demarcation since 2002, mainly because the EEBC has not received sufficient cooperation from the disputing States for it to proceed to full demarcation on the ground. In the 2006 Statement by the Eritrea-Ethiopia Boundary Commission with Annex (List of Boundary Points and Coordinates), the EEBC specified that it persistently ‘encountered difficulties that were posed by the Parties when it was about to commence demarcation in the Central and Western Sectors’ of the boundary (para 9). Obstacles from the Parties took various forms, including prohibiting fieldwork within the territory under their control, failing to provide assurances for the security of demarcation personnel, failing to respond to the EEBC’s request for assurances of freedom of movement, and failing to provide security for EEBC staff travelling to the region to reopen the Commission’s field offices (paras 10–11). Confronted with this lack of cooperation from the States and recognizing that it could not remain in existence indefinitely, in 2007 the EEBC fulfilled its mandate by demarcating the boundary electronically by way of modern techniques of image processing and terrain modelling in conjunction with the use of aerial photography (paras 20–21). Thus, the EEBC managed to identify the location of the boundary turning points by grid and geographical coordinates with a certain degree of accuracy not much different from pillar emplacement undertaken on the ground. The EEBC remained in operation until 2008.

20 The Radcliffe Boundary Commissions, named after their joint Chairman, Sir Cyril Radcliffe, provide a historic and renowned example of mixed boundary commissions which also undertook what comes close to adjudicatory or arbitral functions. The Commissions demarcated the boundaries between the Indian and Pakistani portions of the Punjab Province and Bengal Presidency of British India in 1947. The Radcliffe Commissions had received the responsibility for dividing 175,000 square miles (450,000 square kilometres) of territory, with approximately 90 million residents, drawing boundaries in the Bengal and the Punjab that would keep intact as much as possible the most-cohesive Hindu and Muslim populations within Indian and Pakistani territory, respectively. Specifically, the terms of reference of the Commissions were to:

demarcate the boundaries of the two parts of the Bengal [and the Punjab] on the basis of ascertaining the contiguous majority areas of Muslims and non-Muslims. In doing so, it will also take into account other factors (Reports of the Bengal Boundary Commission and the Punjab Boundary Commission, 1947).

21 The task of delimiting a boundary in the Bengal and the Punjab was difficult, especially as the claims of the respective parties ranged over a wide field of territory and with little chance of agreement between the Indian and Pakistani members of the Commissions, Sir Cyril ultimately made the final determination on the borders. The Reports of the Bengal Boundary Commission and the Punjab Boundary Commission—the Radcliffe Awards—split Punjab and Bengal almost in half.

22 Mixed boundary commissions may also be established to discharge mere advisory functions. Having no power to render binding decisions, such boundary commissions will have a narrower mandate than the above. Typically, a boundary commission with an advisory mandate will be tasked with making concrete boundary proposals, that in turn are submitted to the States in question, for acceptance or rejection. The purpose of establishing a boundary commission with such an advisory mandate may be to narrow the gap between differing points of view between States regarding the delimitation of the boundary and to find an equitable and acceptable compromise. In contrast to when a boundary commission exercises adjudicatory or arbitral functions, the advice given will not bind the States but require acceptance by them. The decisions of such boundary commissions thus have the nature of recommendations. However, the concept of such a boundary commission involves more than mere inquiry and fact-finding, where the aim simply would be impartial clarification of a disputed set of facts.

23 Under the Agreement between Norway and Iceland on Fishery and Continental Shelf Questions (1980), Norway and Iceland agreed to establish a conciliation commission, tasked with making recommendations for a boundary delimiting the continental shelf areas of the two countries between Iceland and the island of → *Jan Mayen*. According to Article 9 of the Agreement:

The question of the dividing line for the shelf in the area between Iceland and Jan Mayen shall be the subject of continued negotiations. For this purpose the Parties agree to appoint at the earliest opportunity a Conciliation Commission ... The Commission shall have as its mandate the submission of recommendations with regard to the dividing line for the shelf area between Iceland and Jan Mayen ... These recommendations are not binding on the Parties: but during their further negotiations the Parties will pay reasonable regard to them.

The Commission concluded its work in June 1981 and submitted its final report to the parties (Linderfalk, 2016). The Icelandic and Norwegian Governments accepted the Commission's proposal (Conciliation Commission on the Continental Shelf Area between Iceland and Jan Mayen: Report and Recommendations to the Governments of Iceland and Norway, 1981) in its entirety and concluded a second agreement that embodied the proposal (Agreement on the Continental Shelf Areas between Iceland and Jan Mayen, 1981; → *Arctic Disputes*).

24 The Commission on the Limits of the Continental Shelf is a unique variant of a boundary commission with advisory competence. Coastal States Parties to UNCLOS aimed at delineating their continental shelf limits beyond 200 nautical miles from the territorial sea baselines shall, under Article 76 UNCLOS, submit the peculiarities of such limits to the Commission. The Commission is a 21-member body composed of experts in geology, geophysics, and hydrography, elected by the States Parties to UNCLOS from among their nationals (Annex II, Art 2 UNCLOS). It adopts recommendations for the coastal State on matters related to the establishment of the outer continental shelf limits beyond 200 nautical miles. Continental shelf limits subsequently established by a coastal State 'on the basis' of the Commission's recommendations are—according to Article 76 (8) UNCLOS—final and binding. Thus, under UNCLOS, delineating the continental shelf *vis-a-vis* the international seabed area is not a purely unilateral task left to coastal States alone. Such delineation shall be done only after having involved a boundary commission of experts which has the important function of recommending where the coastal State shall establish its outer continental shelf limits (McDorman, 2002, 301-303).

25 The competence of mixed boundary commissions may be limited to performing the actual demarcation of an agreed boundary, that is, the process of fixing boundary markers on the ground. The mandate of the boundary commission is then purely of a technical nature. There are numerous historical examples of such mixed boundary commissions. The Joint United States and Mexican Boundary Commission was established by the Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, 1848 (→ *American-Mexican Boundary Disputes and Cooperation*). Under Article V of the Treaty, the Joint Commission was required to survey carefully and mark the agreed boundary, which had only been imprecisely described in the treaty between the two States:

In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground land-marks which shall show the limits of both republics, as described in the present article, the two Governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte ... The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the General Government of each, in conformity with its own constitution.

26 The work of mixed boundary commissions with such a narrow mandate is nevertheless crucial, also from a legal point of view. Notably, the question of evidence is important in disputes relating to the determination and delimitation of boundaries—including the probative value of maps, which depends on several circumstances, such as precision in relation to controversial points, scale, and geographic exactness. A map attached to a treaty shares the binding force of that document and will constitute a means of interpretation in case of disagreement or contradictions between the parties.

27 Concerning the value of cartographic materials and maps as evidence, important international cases include the *Island of Palmas Case, Netherlands/United States, 1928* (→ *Palmas Island Arbitration*), *Legal Status of Eastern Greenland, Denmark v Norway, 1933* (→ *Eastern Greenland Case*), and the *Case concerning the Temple of Preah Vihear, Cambodia v Thailand, 1962* (→ *Temple of Preah Vihear Case*), which Thailand lost because it had made official use of a map showing the Temple in Cambodian territory:

As regards the use of a map showing Preah Vihear as lying in Cambodia, Thailand maintains that this was for purely cartographical reasons, that there were no other maps, or none that were so convenient, or none of the right scale for the occasion. The Court does not find this explanation convincing. Thailand could have used the map but could also have entered some kind of reservation with France as to its correctness. This she did not do (*Case Concerning the Temple of Preah Vihear, Cambodia v Thailand, 29*).

Also, the → *Minquiers and Ecrehos Case* is illustrative regarding the value of maps as evidence. The ICJ held against France partially because in 1820 it had laid before the British Government a map showing those islets and rocks as British:

In the course of the diplomatic exchanges between the two Governments in the beginning of the nineteenth century concerning fisheries off the coast of Cotentin, the French Ambassador in London addressed to the Foreign Office a Note, dated June 12th, 1820, attaching two charts sent from the French Ministry of Marine to the French Ministry of Foreign Affairs purporting to delimit the areas within which the fishermen of each country were entitled to exclusive rights of fishery. In these

charts a blue line marking territorial waters was drawn along the coast of the French mainland and round the Channel Islands, which were indicated as French, and a red line marking territorial waters was drawn round Jersey, Alderney, Sark and the Minquiers, which were indicated as British. No line of territorial waters was drawn round the Ecrehos group, one part of which was included in the red line for Jersey and consequently marked as belonging to Great Britain ... The Court, being now called upon to appraise the relative strength of the opposing claims to sovereignty over the Ecrehos in the light of the facts considered above, finds that the Ecrehos group in the beginning of the thirteenth century was considered and treated as an integral part of the fief of the Channel Islands which were held by the English King, and that the group continued to be under the dominion of that King, who in the beginning of the fourteenth century exercised jurisdiction in respect thereof. The Court further finds that British authorities during the greater part of the nineteenth century and in the twentieth century have exercised State functions in respect of the group. The French Government, on the other hand, has not produced evidence showing that it has any valid title to the group. In such circumstances it must be concluded that the sovereignty over the Ecrehos belongs to the United Kingdom (*Minquiers and Ecrehos, France/United Kingdom, 1953, 66-67*).

Thus, boundaries on an official map may have the legal effect of proving the intention not to claim territories lying beyond. However, as emphasized by the ICJ in the → *Frontier Dispute Case (Burkina Faso/Republic of Mali)*:

The actual weight to be attributed to maps as evidence depends on a range of considerations. Some of these relate to the technical reliability of the maps. This has considerably increased, owing particularly to the progress achieved by aerial and satellite photography since the 1950s ... But even where the guarantees described above are present, maps can still have no greater legal value than that of corroborative evidence endorsing a conclusion at which a court has arrived by other means unconnected with the maps. In consequence, except when the maps are in the category of a physical expression of the will of the State, they cannot in themselves alone be treated as evidence of a frontier, since in that event they would form an irrebuttable presumption, tantamount in fact to legal title. The only value they possess is as evidence of an auxiliary or confirmatory kind, and this also means that they cannot be given the character of a rebuttable or *juris tantum* presumption such as to effect a reversal of the onus of proof (*Frontier Dispute, Burkina Faso/Mali, 1986, paras 55-56*).

Or, as in the words of the ICJ in the decision regarding the delimitation of the border between Eritrea and Ethiopia:

[It] is not the maps 'in themselves alone' ... which produce legally significant effects, but rather the maps in association with other circumstances. A map per se may have little legal weight: but if the map is cartographically satisfactory in relevant respects, it may, as the material basis for, eg, acquiescent behaviour, be of great legal significance (*Decision regarding Delimitation of the Border between Eritrea and Ethiopia, 113-14*).

28 Mixed boundary commissions with a purely technical mandate are often established to remark and recover older boundaries. The Iraq-Kuwait Boundary Demarcation Commission is one example. The international boundary between Iraq and Kuwait was set out in Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the Restoration of Friendly Relations, Recognition and Related Matters (1963) ('Agreed Minutes'). However,

Iraq denied the validity of this 1963 agreement, which, it argued, had never entered into force due to lack of ratification. With UNSC Res 687 (1991), the UNSC nevertheless confirmed the applicability of the Agreed Minutes. Furthermore, on 2 May 1991, the UN Secretary-General issued a report announcing the establishment of the Iraq-Kuwait Boundary Demarcation Commission (Report of the Secretary-General regarding Paragraph 3 of Security Council Resolution 687 (1991), para 3). The Commission's terms of reference were to perform:

the final demarcation of the international boundary between Iraq and Kuwait in accordance with the Agreed Minutes of 4 October 1963 ... The physical representation of the boundary will be carried out through the erection of an appropriate number and type of boundary pillars or monuments. The Commission will provide for arrangements for maintenance on a continuing basis and locational accuracy (including repositioning, if necessary) of the surficial boundary representation (Report of the Secretary-General regarding Paragraph 3 of Security Council Resolution 687 (1991), paras 3-4).

Thus, the Iraq-Kuwait Demarcation Commission—as its name might indicate—was not performing delimitation functions by reallocating territory between Iraq and Kuwait, but rather carrying out the technical tasks necessary in order to demarcate for the first time the precise coordinates of the boundary set out in the Agreed Minutes. The Commission issued its final report to the Secretary-General on 20 May 1993, which was unanimously adopted in UNSC Res 833 (1993). In accordance with paragraphs 2 and 4 UNSC Res 687 (1991), both Iraq and Kuwait are obliged to respect the inviolability of the boundary.

29 The mandate of a mixed boundary commission established to re-mark already agreed boundaries may be strengthened if the commission is authorized to adopt adjustments for the boundary in the present-day border landscape (Donaldson, 2014, 80-81). The 1927-1933 Anglo-Belgian boundary commission undertook some of the most rigorous boundary demarcation in colonial Africa. Its mandate and instructions are found in the Brussels Agreement (1927), which is 'one of the most pragmatic and detailed rectifications of boundary demarcation in colonial Africa' (Donaldson, 2008, 490). The Brussels Agreement outlined specific surveying techniques for the Commission to follow and provided guidelines for the pillaring and marking of the boundary on the ground. In addition, according to Article 2 (1)-(3), the Agreement gave the boundary commission competence to to adjust the boundary on the ground in areas where the precise line of watershed was indistinct:

1. The Commissioners shall have authority, generally, to make such minor rectifications, and adjustments, to the ideal watershed as are necessary to avoid the troubles that might arise from a literal interpretation of the treaty.
2. The present position of the boundary pillars shall be accepted where they lie not further than 200 metres from the ideal watershed. In exceptional circumstances, and in areas of no particular known economic value, errors of position up to 500 metres may be allowed. In adjusting such departures from the ideal watershed to the general run of the boundary, no sharp re-entrants will be formed.
3. Where there are alternative ideal watersheds, including undrained basins, the Commissioners shall agree upon, and demarcate, a compromise line.

30 There are also boundary commissions with a wider mandate than mere boundary demarcation and delimitation. The United States and the United Kingdom (on behalf of Canada) signed the Treaty between the United States of America and the United Kingdom Concerning the Boundary between the United States and the Dominion of Canada from the Atlantic Ocean to the Pacific Ocean (1908), to create a two-person boundary commission. Under Article 1 of the Treaty, each country assigned its own expert geographer or surveyor to serve as Commissioner 'for the purpose of more accurately defining and marking the international boundary line between the United States and the Dominion of Canada'. Article IX of the Treaty ('General Provisions') contains more detailed regulations on the service of the Commissioners. Article IV Treaty between the United States of America and His Britannic Majesty in Respect of the Dominion of Canada to Define More Accurately at Certain Points and to Complete the International Boundary between the United States and Canada and to Maintain the Demarcation of that Boundary (1925) made the Commission a permanent bilateral institution, with tasks beyond demarcation:

The Contracting Parties, in order to provide for the maintenance of an effective boundary line ... hereby agree that the Commissioners appointed under the provisions of the Treaty of April 11, 1908, are hereby jointly empowered and directed: to inspect the various sections of the boundary line between the Dominion of Canada and the United States and between the Dominion of Canada and Alaska at such times as they shall deem necessary; to repair all damaged monuments and buoys; to relocate and rebuild monument's which have been destroyed; to keep the boundary vistas open; to move boundary monuments to new sites and establish such additional monuments and buoys as they shall deem desirable; to maintain at all times an effective boundary line between the Dominion of Canada and the United States and between the Dominion of Canada and Alaska, as defined by the present treaty and treaties heretofore concluded, or hereafter to be concluded; and to determine the location of any point of the boundary line which may become necessary in the settlement of any question that may arise between the two Governments ... The said Commissioners shall submit to their respective Governments from time to time, at least once in every calendar year, a joint report containing a statement of the inspections made, the monuments and buoys repaired, relocated, rebuilt, moved, and established ... After the completion of the survey and demarcation of the boundary line ... the Commissioners appointed shall continue to carry out the provisions of this Article, and, upon the death, resignation, or other disability of either of them, the Party on whose side the vacancy occurs shall appoint an Expert Geographer or Surveyor as Commissioner, who shall have the same powers and duties in respect to carrying out the provisions of this Article, as are conferred by this Article upon the Commissioner appointed under the provisions of the said Treaty of 1908.

Thus, the United States–Canadian IBC not only determines the location of any point on the boundary line as needed but it also has the more general managerial mandate to maintain the nearly 9000 kilometre boundary between Canada and the United States. Similarly, the IBWC, established pursuant to Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic, is responsible for operating and maintaining flood-control levees, international storage reservoirs, diversion dams, wastewater treatment plants, and boundary monuments at various locations on the United States–Mexico border.

31 The Cameroon–Nigeria Mixed Commission also has a wider mandate than that of providing an exact description of the boundary line as traced on the spot. The border conflict between Cameroon and Nigeria was ignited by competing claims of sovereignty over the Bakassi Peninsula. Cameroon brought the case to the ICJ to resolve its claims (*Land and Maritime Boundary between Cameroon and Nigeria, Cameroon v Nigeria*). The mixed Cameroon–Nigeria commission was established in November 2002 by the UN Secretary-General at the request of Presidents of Cameroon and Nigeria, with the main purpose of facilitating the implementation of the 2002 judgment of the ICJ, including by demarcating the land boundary and delimitation of the maritime boundary between the two countries (Secretary-General’s Press Encounter with the Presidents of Cameroon following a Joint Meeting on the 10 October 2002 Ruling of the International Court of Justice, 2002). However, the mandate of the Commission also included the overseeing of the withdrawal of troops and transfer of authority in the Lake Chad area, along the land boundary and in the Bakassi Peninsula; addressing the situation of populations affected by the demarcation activities; and developing recommendations on confidence-building measures aimed at promoting peaceful cross-border cooperation of affected border populations. The UNSC noted the achievement of the Commission’s mediation as an outstanding outcome of preventive diplomacy (Security Council Press Statement on Bakassi Peninsula Developments, 2013).

F. Structure, Composition, and Procedures

32 There are no standard formulae as to how mixed boundary commissions shall be structured, composed, or conduct their business. They are set up on the basis of the constitutive treaty or the resolution or decision of the organ that created them. Boundary commissions tend to be relatively small, ranging from three to seven, nine, or twelve members. Generally, they include political members—often through a joint ministerial council—and technical experts with backgrounds in geography, surveying, engineering, geology, and other relevant fields.

33 Regarding commissions established to undertake adjudicatory or arbitral functions, the EEBC was composed of international lawyers and jurists; its mandate, functions, and procedures meticulously followed those of a formal arbitral proceeding (*Decision regarding Delimitation of the Border between Eritrea and Ethiopia*). Commissions with a purely technical or advisory mandate may consist of experts only, as with the Commission on the Limits of the Continental Shelf. They may also include experts as members of joint technical sub-commissions or as members of technical field sub-teams. For instance, under Article 12 (2) Treaty on the State Border between the Republic of Croatia and Bosnia and Herzegovina (1999), the Interstate Diplomatic Committee for the Identification, Marking and Maintenance of the State Border between the Republic of Croatia and Bosnia and Herzegovina formed two expert groups which consisted partly of its members and partly of other experts for specific issues: the Mixed Expert Group for Identification of the Border, and the Mixed Expert Group for Border Crossing Points (Klemencic, 1999, 97).

34 The respective governments nominate and elect members of mixed boundary commissions. Under Article 1 Bonilla-Gamez Treaty between Nicaragua and Honduras (1894):

the Governments of Honduras and Nicaragua shall appoint representatives who, duly authorized, shall organize a Mixed Boundary Commission, whose duty it shall be to settle in a friendly manner all pending doubts and differences, and to

demarcate on the spot the dividing line which is to constitute the boundary between the two Republics.

35 The Radcliffe Commissions each consisted of five persons: a chairman, two members nominated by India, and two members nominated by Pakistan. In accordance with Article 9 Agreement Between Norway and Iceland on Fishery and Continental Shelf Questions, the Jan Mayen Conciliation Commission was composed of three members, of which Norway and Iceland each appointed one national member, with the chairman of the Commission appointed by the Parties jointly. Similarly, according to Article 12 Articles of Agreement for a Treaty Between Great Britain and Ireland (1921) ('Anglo-Irish Treaty'), the Commission consisted:

of three persons, one to be appointed by the Government of the Irish Free State, one to be appointed by the Government of Northern Ireland, and one who shall be Chairman to be appointed by the British Government shall determine in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions the boundaries between Northern Ireland and the rest of Ireland, and for the purposes of the Government of Ireland Act 1920, and of this instrument, the boundary of Northern Ireland shall be such as may be determined by such Commission.

36 The day-to-day work of mixed boundary commissions is often regulated by separate rules of procedures, which are compiled and accepted at the beginning of negotiations. Article 11 Treaty on the State Border between the Republic of Croatia and Bosnia and Herzegovina provides:

To implement the provisions of this Treaty, ... Croatia and ... and Bosnia Herzegovina ... have founded the Interstate Diplomatic Committee for the Identification, Marking and Maintenance of the State Border between the Republic of Croatia and Bosnia and Herzegovina ... The Interstate Diplomatic Committee consists of a delegation of the Republic of Croatia and a delegation of Bosnia and Herzegovina. Each delegation has a chairman and five members ... The functioning and composition of the Interstate Diplomatic Committee are regulated by the Regulations for the Conduct of Work of the Interstate Diplomatic Committee, composed in accordance with the provisions of this Treaty.

Annex II UNCLOS regulates the functioning of the Commission on the Limits of the Continental Shelf in general terms. However, the Commission has refined and expanded these provisions through its own Rules of Procedure, which consist of a main body of 59 rules on the Commission's sessions and meetings, how often the Commission shall hold meetings, the venue and agenda. The Rules of Procedure of the Commission on the Limits of the Continental Shelf also prescribe more detailed regulations as to the members of the Commission—their term of office, expenses, and their duty to act independently. Section IV of the Rules of Procedure contains separate rules for the officers of the Commission. There are rules for working languages (Section VI) and private and public meetings (Section VII). Several provisions in the Rules of Procedure concern the Commission's conduct of business and voting (Sections VIII and IX), sub-commissions, and other subsidiary bodies (Section X). The Rules of Procedure have separate sections for the Commission's advice to coastal States (Section XII), its cooperation with international organizations (Section XIII), or for cases in which the Commission seeks the advice of specialists (Section XIV). Section XV sets out the procedures for adoption of other regulations, guidelines, and annexes to the Rules

of Procedure. Finally, Section XVI specifies the procedure for amending the Rules of Procedure. The Rules of Procedure also contain several annexes.

37 The deliberations of mixed boundary commissions may be conducted in private or in public. Decisions may be adopted by simple or qualified majority, or unanimously. Where unanimity is required, a mixed boundary commission will be inclined to adopt a diplomatic rather than a judicial approach. If there is disagreement among commissioners, a chairman must be appointed, or, if the majority prevails over that of dissenting commissioners, the boundary commission will function, in terms of procedures, more as an ordinary arbitral tribunal.

G. Dispute Settlement Procedures

38 The constitutive instruments of mixed boundary commissions often contain provisions for dispute settlement, under which a dispute relating to the work of the commission can be forwarded to a third-party for non-binding and/or binding resolution.

39 Under the Timor Sea Treaty between the Government of East Timor and the Government of Australia (2002), each State may invoke a dispute settlement procedure in the event that the Ministerial Council is unable to resolve a dispute of the joint boundary commission (→ *Conciliation between Timor-Leste and Australia*). Article 23 (b) and Annex B Timor Sea Treaty provide for the creation of an *ad hoc* arbitral tribunal. The award is final and binding.

40 Third-party involvement for settlement of disputes may also include non-binding mechanisms. The Ecuador-Peru Mixed Boundary Demarcation Commission may, under Article VII Rio Protocol on Peace, Friendship, and Boundaries between Peru and Ecuador (1942) seek assistance from other States if doubts or disputes arise in the execution of the treaty:

Any doubt or disagreement which may arise in the execution of this protocol shall be settled by the parties concerned, with the assistance of the representatives of the United States, Argentina, Brazil, and Chile, in the shortest possible time.

41 Disputes may be left for resolution by the mixed boundary commission itself. If that is not successful, the conflict may be referred to the political level. Article IX Treaty Between the United States of America and the United Kingdom Concerning the Boundary Between the United States and the Dominion of Canada from the Atlantic Ocean to the Pacific Ocean reads:

If a dispute or difference should arise about the location or demarcation of any portion of the boundary covered by the provisions of this Treaty and an agreement with respect thereto is not reached by the Commissioners charged herein with locating and marking such portion of the line, they shall make a report in writing jointly to both Governments, or severally each to his own Government, setting out fully the questions in dispute and the differences between them, but such Commissioners shall, nevertheless, proceed to carry on and complete as far as possible the work herein assigned to them with respect to the remaining portions of the line.

Similar provisions are found in the Treaty on the State Border between the Republic of Croatia and Bosnia and Herzegovina:

All disputes regarding the interpretation and implementation of this Treaty shall be resolved by the Interstate Diplomatic Committee. If the Interstate Diplomatic Committee is not able to resolve a dispute from Paragraph 1 of this Article through settlement, the said disputes shall be referred to the adequate authorities of the Parties (Art 21).

42 Mixed boundary commissions are frequently referred to in international litigation. In *Maritime Delimitation in the Indian Ocean, Somalia v Kenya*, the ICJ took note of the work of the joint British-Italian commission that surveyed and demarcated the land boundary between Somalia and Kenya in 1925-1927 (2021, at para 32). The ICJ nevertheless considered it unnecessary to decide whether the commission had been tasked with delimiting the contested territorial sea boundary between the two States. In relation to the use of maps as evidence, the demarcation commissions established by Article 1 Convention on Border Demarcation Concluded between the Republic of Costa Rica and the Republic of Nicaragua (1896) ('Pacheco-Matus Convention') were referred to by the ICJ in *Certain Activities Carried Out by Nicaragua in the Border Area, Costa Rica v Nicaragua* (2015, para 61) and *Construction of a Road in Costa Rica along the San Juan River, Nicaragua v Costa Rica* (2015, para 61), as well as in *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean, Costa Rica v Nicaragua* (2018, para 53) and *Land Boundary in the Northern Part of Isla Portillos, Costa Rica v Nicaragua* (2018, para 53). The (partially unsuccessful) work of the 'Joint Technical Commission on Demarcation of the Frontier', were referred to in *Frontier Dispute, Burkina Faso/Niger* (2013, para 23). In cases involving UNCLOS, the recommendations of the Commission on the Limits of the Continental Shelf are frequently referred to by courts and tribunals called upon to delimit or prove the existence of continental shelf areas beyond 200 nautical miles from the territorial sea baselines, such as by the ICJ in *Territorial and Maritime Dispute, Nicaragua v Colombia* (2012, paras 125-30). The significance of the work and decisions by mixed boundary commissions in dispute resolution obviously depends on the commission's competence and the legal status of their decisions. Decisions of a commission that have been called to perform a purely technical or advisory role to survey or demarcate boundaries is limited. However, there are, as noted above, boundary commissions that are competent to make binding decisions, some are even modeled on arbitral tribunals. As we have seen, there are also examples of boundary commissions that have been given a direct role in implementing decisions by international dispute settlement bodies, notably the Cameroon-Nigeria Mixed Commission, whose mandate included facilitating the implementation of the ICJ decision on the Cameroon-Nigeria boundary dispute.

H. Concluding Remarks

43 Inter-state boundaries are political. When boundaries between two States are to be delimited and demarcated, expertise beyond policy and international law is nevertheless always needed. There is some consistency in how mixed boundary commissions are established, their composition, as well as their functions and competences. On the other hand, they encompass a wide range of functions and may perhaps best be considered as *sui generis* bodies. Mixed boundary commissions share the difficult, but necessary, task of surveying and mapping boundary sections, as well as translating final policy decisions into lines on a map. Their function is thus vital, whether they are to re-mark older boundaries or merely make recommendations to States, whether they perform day-to-day maintenance of an international boundary, or are in the nature of an international arbitral tribunal. Importantly, mixed boundary commissions create an institutional space for the circulation of different forms of knowledge, as well as for the connection between different actors and scales implied in the process of establishing inter-State boundaries; they are 'crucial catalysts' in resolving the location of the boundary (Rankin, 2008, 423). The continued trend of establishing mixed boundary commissions can be seen as an expression of a more

general reluctance in international relations to resort to courts and tribunals for the settlement of disputes.

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