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THE MEXICAN CLAIMS COMMISSIONS AND MIXED ARBITRAL TRIBUNALS IN THE 1920S

Lessons on Legitimacy and Legacy in International Adjudication

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The Mexican Claims Commissions (MCCs) and Mixed Arbitral Tribunals (MATs) in the 1920s:

Lessons on Legitimacy and Legacy in International Adjudication

by José Gustavo Prieto Muñoz[1]

Abstract

The Mexican Claims Commissions (MCCs) and the Mixed Arbitral Tribunals ('MATs) were established following different historical events in two geographically distinct regions, remarkably, these two bodies, which both aimed to adjudicate the international claims of private citizens, coexisted during the 1920s. Despite their differences, they faced a common challenge to international law in the early twentieth century: establishing the rules and principles that should be applied in setting the international liability of States for damage suffered within their territories by aliens. Against this background, the text examines the differences between the MCCs in the Americas and MATs in Europe. In addition, it explores the different legacies—procedural and substantive—of these bodies for international law. On the one hand, from the standpoint of procedural legacy, the MATs were one of the first successful instances of mass private claims adjudication in international law. By contrast, the MCCs had a different experience but in general, adjudicated a lesser number of disputes. On the other hand, from the standpoint of substantive legacy, the MCCs' decisions provided a body of precedents for the standards of treatment of aliens and the international responsibility of states that has lasted until today. In this regard, one of the key characteristics was the construction of a legal community around the MCCs with multiple appointments of jurists to more than one Commission. In turn, this feature contributed to the cross-fertilization of procedural rules across the different MCCs.

Keywords

International Adjudication – mixed claims commissions – Latin America – international law – legitimacy.

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1 Introduction

In 1920, Álvaro Obregón, a former general and President of Mexico, was desperate to consolidate his grip on power after the Mexican Revolution, a tumultuous period that had begun with the fall of Porfirio Díaz's regime in 1911. On the external front, the United States and European nations refused to recognize any Mexican government that was unwilling to repair the damage caused to foreign nationals during the years of internal struggle. On the internal front, any reparation to foreigners threatened to make Obregón look weak or even appear a traitor to the several factions behind his newly formed government.

Obregón's administration thus took on the task of negotiating a formula that would allow Mexico to solve its disputes with foreigners, acquire recognition for his government, and at the same time avoid any perception within Mexico that the new government had bowed to the will of the Americans and Europeans. The result was a series of agreements that were reached, first with the United States – known as the 'Bucareli agreements' – and then with European states. These agreements resulted in one of the most innovative adjudicatory experiments of the 20th century: The Mexican Claims Commissions ('MCCs'), eight adjudicative bodies based on similar international agreements and procedural rules that were jointly established between Mexico and seven different countries in the aftermath of the Mexican Revolution:.

- **United States-Mexico, General Claims Commission (GCC**), established by the United States-Mexico GCC Convention (General Claims Convention between the United States of America and the United Mexican States, September 8, 1923). Claims: 3617 filed; 54 claims dismissed; 94 awarded; 3,469 pending claims. In 1941, the pending claims were terminated with an en bloc agreement between the two countries

- **United States-Mexico, Special Claims Commission (SCC),** established by the United States-Mexico SCC Convention (Special Claims Convention between the United States of America and the United Mexican States, September 10, 1923). Claims: 3176 filed; 18 disallowed; 3,158 pending claims. In 1934, the pending claims were finally terminated with an en bloc agreement between the two countries

- **France-Mexico Special Claims Commission (SCC),** established by the France-Mexico SCC Convention (Convention Between France and Mexico, September 25, 1924). Claims: 251 filed; 108 withdrawn; 50 dismissed; 93 awarded; no pending claims.

- **Germany-Mexico Special Claims Commission (SCC),** established by the Germany-Mexico SCC Convention (Arrangement between Germany and Mexico, March 16, 1925). Claims: 140 filed; 68 withdrawn; 38 dismissed; 34 awarded; no pending claims

- **Spain-Mexico Special Claims Commission (SCC),** established by the Spain-Mexico SCC Convention (Convención que crea una Comision especial de Reclamaciones entre los Estados Unidos Mexicanos y

España, November 25, 1925). Claims: 1268 filed (known cases). The Commission completed its work with no claims pending.

- **Great Britain-Mexico Special Claims Commission (SCC)**, established by the Great Britain-Mexico SCC Convention (Convention between his Majesty and the President of the United Mexican States, November 19, 1926). Claims: 128 filed; 18 withdrawn; 60 dismissed; 50 awarded;no claims pending.

- **Italy-Mexico Special Claims Commission (SCC)**, established by the Italy-Mexico SCC Convention (Convención de Reclamaciones celebrada entre los Estados Unidos Mexicanos y el Gobierno de Italia, January 13, 1927). Claims: 157 filed; 51 withdrawn; 63 dismissed; 43 awarded; no claims pending.

- **Belgium-Mexico Administrative Arbitration Tribunal**, established by the Belgium-Mexico AAT Agreement (Convenio celebrado entre los Gobiernos de los Estados Unidos Mexicanos y el Reino de Bélgica, May 20, 1927). Claims 16 filed: 14 dismissed; 2 awarded; no claims pending.

While the MCCs and Mixed Arbitral Tribunals ('MATs were established following different historical events in two geographically distinct regions, remarkably, these two bodies, which both aimed to adjudicate the international claims of private citizens, coexisted during the 1920s. Despite their differences, they faced a common challenge to international law in the early twentieth century: establishing the rules and principles that should be applied in setting the international liability of States for damage suffered within their territories by aliens. Against this background, in this chapter I will examine the differences between the MCCs and MATs in the Americas.

The roadmap for this is the following: Section 2 provides a historical background for the MCCs as one of the last types of Latin American Claims Commissions. Section 3 explains how the legitimacy of the MCCs was constructed through the use of ex-gratia clauses and how this differed from the legitimacy of the authority wielded by the MATs. Section 4 analyses the legal position of individuals in the two types of bodies. Finally, Section 5 provides an assessment of the legacy of the MCCs and MATs in the history of international adjudication.

2 Historical Background and Context of the MCCs

Between 1794, after the Jay Treaty – usually referred to as the first treaty that created a claims commission – and 1938, there were at least 409 known claims commissions established around the world.[2] Of these, 193 were Latin-American – i.e., involved at least one country from the Latin American region.

[2] There was no central register for these earlier cases, making an historical analysis difficult. Most of the information available comes from private collections, notably: Lewis Hertslet, A Complete Collection of the Treaties and Conventions and Reciprocal Regulations at Present Subsisting Between Great Britain and Foreign Powers and of the Laws, Decrees, Orders in Council (Nicoll & Berrow 1827); Henri

The first Latin-American commissions in the 19th century were related to wars of independence and the subsequent armed conflicts that arose between new nations fighting over territories and European nations trying to assert their influence in the region. One of the first mentions of a Latin-American commission agreement can be found in the treaty between Brazil and Great Britain of 1829, which dealt with the capture of British ships in Brazilian waters.[3] Later, in 1840, the claims commission between Argentina and France decided claims lodged after France imposed a blockade on the ports of the Province of Buenos Aires. At least 26 later commissions were exclusively related to boundary disputes between countries in the region or to damage suffered by European or US nationals that occurred during hostilities.[4]

A second cluster of Latin-American commissions appeared in the 20th century with the creation of adjudicative bodies related to crises in the internal rule of law and subsequent conflicts with foreigners. Thus, in this period, political and institutional instability becomes a guide to tracking the moments when Latin America was relevant to International Law[5]. Such commissions included the 10 different commissions established in 1903 between Venezuela and other nations after the military blockade of Venezuelan ports. These commissions ultimately decided 885 individual claims.

The 1923–34 MCCs were part of this second cluster of Latin-American commissions set up after the decade-long collapse of the Mexican State. The Mexican Revolution comprised a series of bloody armed struggles that took place from 1910 to 1920 and transformed Mexico culturally, legally, and politically. The internal conflict started in 1910 with a call to arms to overthrow the dictator Porfirio Díaz, who had been in power in Mexico since 1884.

During the following years, different factions fought for control and three presidents took office: first, the government of Francisco Madero (1911–13); then the brief term of Victoriano Huerta (1913–14); and finally, José Venustiano Carranza (1916–20).[6] Carranza, in turn, was overthrown by General Alvaro Obregón, who led a military insurrection known as the Agua Prieta rebellion in 1920. The rise of Obregón is usually considered an historical marker for the end of the Mexican Revolution because it was the last armed uprising that succeeded in overturning

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La Fontaine, Pasicrisie internationale 1794–1900: Histoire documentaire des arbitrages internationaux (Nijhoff 1997); Alexander M Stuyt, Survey of International Arbitrations 1794–1938 (Springer-Science+Business Media 1939).

[3] Agreement between Great Britain and Brazil, relative to the settlement of British claims, signed at Rio de Janeiro, 5 May 1829. Império do Brasil Memorandum entered into between Lord Ponsonby and the Brazilian Government, relative to the Capture of British ships in 1826 and 1827. See: La Fontaine, Pasicrisie Internationale 1794–1900 (n 1) 91; Stuyt (n 1) 30.

[4] I expand on Latin American Claims Commissions in José Gustavo Prieto Munoz, 'Mixed Claims Commissions in Latin America during the 19th and 20th Centuries: The Development of International Law in between Caudillos and Revolutions' in Raphael Schäfer and Anne Peters (eds), Politics and the Histories of International Law: The Quest for Knowledge and Justice (Brill | Nijhoff 2021) 250.

[5] I developed this argument in: ibid.

[6] Abraham H Feller, The Mexican Claims Commissions, 1923–1934: A Study in the Law and Procedure of International Tribunals (Macmillan 1935) 15.

a government. In addition, the government of Obregón was the first since the beginning of the Revolution to obtain international recognition after the Bucareli agreement that established the first two MCCs[7].

When Obregón took power in December 1920, his government was politically weak and remained far from enjoying the power and control over Mexico that Porfirio Díaz had exercised before the Revolution. There was no political sense of unity on the internal front, and Obregón had little influence on regional military leaders[8] He was also isolated from the international community outside of Latin-America. Several European countries and the United States refused to recognize Obregón's government unless Mexico covered the damage caused to foreigners during the revolutionary period.

3 The Legitimacy of the MCCs and the Ex-gratia Clauses[9]

Unlike the European Mixed Arbitral Tribunals created pursuant to the 1919 Treaty of Versailles and other post-WWI peace treaties, which included the idea of reparation but also held Germany and its allies specially accountable[10] for some of the violations of international law committed during WWI, the MCCs did not put an additional burden of shame or blame on the Mexican State or Government.

The legitimacy of the MCCs was constructed by negotiating and drafting ex-gratia clauses included in the respective conventions. These ex-gratia clauses established that Mexico agreed to pay compensation for damage to aliens incurred during the Revolution, but not because they had breached any obligation under international law. Instead, the clauses, according to Mexico, recognized a 'moral' obligation to repair damages arising from the Revolution. The political value of the clauses was that they allowed Obregón's government to present the agreement inside Mexico as a magnanimous act of a country that showed respect for international law by a government that had obtained international recognition and support, rather than as a compromise imposed by foreign powers.

However, the implementation of these ex-gratia clauses implied a series of jurisdictional challenges that complicated the work of the MCCs, such as determining what laws were applicable and establishing the standards for state responsibility. Those challenges led to friction among the different MCC Commissioners, who often held

[7] Eric Damian Reyes, 'La política exterior de México hacia Estados Unidos: elementos generales a considerar en la relación bilateral a partir de un análisis histórico' (2017) 128 Revista de Relaciones Internacionales de la UNAM 131.
[8] ibid. 139.
[9] This section is based on findings from: Jose Gustavo Prieto Muñoz, 'Mexican Claims Commissions 1923–1934' in Hélène Ruiz Fabri (ed), Max Planck Encyclopedia of International Procedural Law (OUP forthcoming 2023).
[10] Jakob Zollmann, 'Reparations, Claims for Damages, and the Delivery of Justice. Germany and the Mixed Arbitral Tribunals (1919–1933)' in David Deroussin (ed), La Grande Guerre et son droit (Lextenso Editions LGDJ 2018).

opposing views on the scope of the meaning of the ex-gratia clauses. In this section, I will briefly describe the drafting process of these type of clauses.

International recognition, particularly from the United States, was a priority for Obregón's government from the time he took office in 1920. However, he was met with a forceful response from the United States administration under President Wilson, who offered acknowledgment only on two conditions: first, that Mexico safeguard the diverse property rights of United States citizens and corporations, including the derogation of Article 27 of the 1917 Mexican Queretaro Constitution, which regulated and limited the property rights of foreigners; second, that Mexico resolve all pending claims by United States individuals and corporations made before and during the revolution.[11]. Both conditions were rejected by Mexico. The Obregón Administration also unsuccessfully tried to obtain recognition from several European nations, which were reluctant to reach any compromise without knowing how Mexico would settle its differences with the United States.

In 1921, Warren G Harding was elected as the 29th President of the United States, and his Secretary of State, Charles Hughes, reiterated the two conditions for recognizing Obregón's government. In addition, Secretary Hughes presented Mexico with the draft of a Treaty of Friendship, Commerce, and Navigation which included a provision involving the derogation of Article 27 of the Mexican Constitution. Mexico did not accept the treaty. During the following years of Obregón's presidency, Mexican officials led by Alberto Pani undertook several diplomatic efforts with the Harding administration and United States oil and railway companies, as well as directly with bondholders, in an attempt to achieve recognition of Mexico's post-revolutionary government[12]

By 1923, in the final years of Obregón's presidential period, economic actors put growing pressure on the United States Government to normalize relations with Mexico. In addition, the longer the United States delayed recognizing the Mexican Government, the more ineffective its diplomatic tools for influencing Mexico became. After three years, Obregón's government was still in office, making the lack of recognition appear a less important condition for retaining power in Mexico. Even though both the United States and Mexico had sufficient incentives to reach an agreement, lack of consensus on how to shape such an agreement prevented a mutually satisfactory solution.

A diplomatic breakthrough occurred thanks to James A Ryan, a retired United States general who was living in Mexico, and who was a friend of both Harding and Obregón.[13] In an exchange of letters during April 1923, Ryan proposed a clear-cut process to both presidents: the creation of an informal commission – formed by two delegates from each country directly appointed by each president – to negotiate a treaty to end the dispute.

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[11] Reyes (n 7) 141.
[12] Lorenzo Meyer, La marca del nacionalismo (1st edn, El Colegio de Mexico 2010) 42.
[13] John W Dulles, Yesterday in Mexico: a Chronicle of the Revolution (University of Texas Press 1961) 162–63.

On May 14, 1923, at 85 Bucareli Street in Mexico City, the four delegates began to shape the agreement that would create the United States-Mexico General and Special Claims Commission. The work of the commission was commonly known at that time as the 'Bucareli Agreements', taking the name of the street where the negotiations took place.[14] On August 15, 1923, the Bucareli delegates held their last meeting, concluding with a general understanding including three agreements:

-(a) General Claims Commission (GCC): The text of a treaty creating a General Claims Commission to consider all individual claims made after 4 July 1876, excluding claims originating during the Revolution. The General Claims Commissions established at the US-Mexico GCC Convention aimed to resolve all types of private claims filed by citizens of either country against the other since the signing, on July 4, 1868, of the previous United States-Mexico Claims Convention. This excluded claims for damage 'growing out of the revolutionary disturbances in Mexico.'[15]

-(b) Special Claims Commission (SCC): The text of the treaty to be ratified by the two States creating a Special Claims Commission. The SCC was created to resolve claims made by private citizens against Mexico for damage suffered because of violence during the Mexican revolution from 1910–1920. It was also designed to make decisions based on the 'principles of equity' rather than by applying the principles of international law.[16]

-(c) Unofficial agreements: Political compromises regarding the specific property rights of United States individuals and companies acquired before the enactment of Article 27 of the 1917 Mexican Constitution. Those 'unofficial agreements' were not meant to be ratified by the two countries but instead consisted of promises made by the Obregón government.[17]

The most significant concession made by Mexico was to acknowledge responsibility for the damages caused to foreigners during revolutionary times. For this reason, a vital element of the wording of the Special Claims Commission (SCC) treaty was to make such concessions appear to be magnanimous acts stemming from

[14] Pablo Serrano Alvarez, Los Tratados de Bucareli y la Rebelión delahuertista (Instituto Nacional de Estudios Historicos de las Revoluciones de México 2012).
[15] General Claims Convention between the United States of America and the United Mexican States for the settlement of claims by the citizens of each country against the other, (Agreement signed 8 September 1923) 4 RIAA 7.
[16] Special Claims Convention between the United States of America and the United Mexican States, desiring to settle and adjust amicably claims arising from losses or damages suffered by American citizens through revolutionary acts within the period from November 20, 1910, to May 31, 1920 (signed September 10, 1923) 4 RIAA 772.
[17] Serrano Alvarez, Los Tratados de Bucareli y la Rebelión delahuertista (n 14) 6.

moral duty, rather than to acknowledge responsibility under international law. This element was instrumentalized by an ex-gratia clause. After reaching this understanding, the United States finally recognized Álvaro Obregón as the legitimate president of Mexico on August 31, 1923.

After signing the Special and General Conventions with the United States, it became easier for Mexico to make agreements with European States, using the Special Convention text as a reference, and to expand its recognition by the international community. It is believed that Mexican officials approached at least twelve other States after 1920 but, in the end, Mexico concluded only six special conventions with European nations: France (1924), Germany (1925), Spain (1925), United Kingdom (1926), Italy (1927), Belgium (1927)[18].

The value of the ex-gratia clause was that it was inserted not in the preamble merely as a reason to enter into the agreements, but was included as a central clause of the MCC jurisdictions. In this way, it was possible to effectively separate any political burden of shame on the part of the Mexican State for damage committed from an objective analysis of the existence of damage to foreigners. This characteristic of the very design of the MCCs differentiates them from other types of adjudicative bodies such as the MATs in Europe. The latter followed a logic that went beyond the compensation of foreigners for damage by implying that Germany and its allies were to be held accountable for violations of international law committed during the First World War.

The text of the original ex-gratia clause in Article 2 of the United States-Mexico Special Claims Commission Convention is the following:

> The Mexican Government desires that the claims shall be so decided because Mexico wishes that her responsibility shall not be fixed according to the generally accepted rules and principles of international law, but ex gratia feels morally bound to make full indemnification.

Almost identical ex-gratia clauses to the one cited above were used in later conventions established with European nations.[19] For instance Article 2 of the Great Britain-Mexico SCC Convention was drafted in the following way:

[18] The only European commission that differed substantially in its rules of procedure was the Belgium–Mexico Administrative Arbitration Tribunal for Belgium Claims. While its jurisdiction ranged over the same revolutionary disturbances, the countries of Mexico and Belgium decided that the number of claims did not require all the institutional apparatus of a fully-fledged claims commission.
[19] See: Art 2 Great Britain–Mexico SCC Convention; Art 2 Spain–Mexico SCC Convention; Art 2 Italy–Mexico SCC. A similar clause limited jurisdiction in the France and Germany Conventions, which established that the principles of equity and justice rather than international law were applicable. See: Art 2 Germany–Mexico SCC Convention and Art 2 France–Mexico SCC Convention.

> Each member of the Commission, before entering upon his duties, shall make and subscribe to a solemn declaration in which he shall undertake to examine with care, and to judge with impartiality, in accordance with the principles of justice and equity, all claims presented, since it is the desire of Mexico ex gratia fully to compensate the injured parties, and not that her responsibility should be established in conformity with the general principles of International Law; and it is sufficient therefore that it be established that the alleged damage actually took place, and was due to any of the causes enumerated in Article 3 of this Convention, for Mexico to feel moved ex gratia to afford such compensation.

The ex-gratia clause had a twofold effect. First, it defined the applicable law that ought to be applied. If the clause was the recognition that Mexico was not responsible under international law, then the latter could not be used to decide cases. Instead, according to the various conventions, the special commissions needed to apply the 'principle of equity' or 'justice'. Second, it limited the subject matter jurisdiction of the Commissions only to revolutionary disturbances or acts. However, there was not enough clarity in the conventions regarding the meaning of these two elements.

None of the MCC Conventions clarified the meaning of 'equity' in the ex-gratia clauses, leaving it to the Commissions to determine its meaning. Two interpretations could be considered. The first interpreted the clause in a narrow sense, taking 'equity' to apply exclusively to the rules governing attribution of responsibility contained in the Special Claims conventions. The second interpreted 'equity' in a broader sense, as a principle that granted the Commissioners considerable powers to make decisions outside international law. The Commissions generally adopted a narrow interpretation of the meaning of 'equity' as simply implying a sort of lex specialis, with the need to strictly apply the conventions' conditions for attribution of responsibility without resorting to other sources within international law.[20]

The Germany-Mexico SCC, in the Testamentaria del Señor Hugo Bell Case, appears to be the only one that made a statement indicating a broader understanding of equity. In this case, it decided a claim in favour of the heirs of a German national killed by insurrectionists and recommended, despite the absence of negligence on the side of Mexico, payment as a matter of grace based on 'equity'.[21] The Commissioners argued that tribunals have the power to offer as 'equity' something that is not obligatory, without being constrained by any legal provision[22]

However, a closer look at the Hugo Bell Case, shows that in the end the Germany-Mexico SCC did not take a decision outside international law, since it applied the conditions set down in the Germany-Mexico SCC Convention –

[20] For instance, see the relaxation on equity in: Russell (USA) v United Mexican States, US–Mexico SCC (Award 24 April 1931) 4 RIAA 805.
[21] Feller (n 6) 227.
[22] Testamentaria del Señor Hugo Bell v Mexico, Germany–Mexico SCC, Decision no 67, quoted in Feller (n 6) 226.

that damage had occurred and that this damage was caused by revolutionary violence. In addition, in other cases, the same Germany-Mexico SCC relied heavily on international law in its findings.

A preliminary conclusion that can be gleaned from this section is that the design of an international adjudication body matters for its legitimacy. Despite its different origins, the ex-gratia clause formula described in this text allowed Obregón's government to sustain the international adjudication process despite internal criticism. In this sense, this arrangement allowed for greater involvement of Mexican and Latin American jurists in the adjudication process itself, as evidenced by the heated discussions within the different MCCs. The MATs lacked this element of legitimacy. While they were designed to fulfil a reparatory function, they also took on a punitive role censoring violations of international law committed by Germany during WWI.

4 Legal Position of Individual Claimants in the MCCs and MATs

The most innovative feature attributed to the MATs was the direct standing they accorded to private individuals before the Courts.[23] In comparison, the MCCs did not grant individuals direct access to the courts but instead created a hybrid system where claims had a private origin but were controlled by the State. In this regard, the MCCs went beyond the understanding of adjudication as an extension of diplomatic protection characterizing previous claims commissions in the 19th century, recognizing the private nature of such claims. However, they still fell short of granting direct standing to private individuals as the MATs did. The following section explores the position of the individual in the MCCs and compares it to that in the MATs.

At the beginning of the 20th century, with closer contact between citizens and corporations, governments of different states had already realized the need to draft more precise rules for assessing international liability when damage had been inflicted on aliens. However, one conceptual obstacle was that of defining the legal nature of such rules within international law, a system where only states were granted rights and obligations. Since at least Vattel's time, international law had been conceived as the construction of positive law for states within the framework of the political configuration of exclusive territorial public authorities, meaning that one nation possessed only one exclusive public authority (state) over a defined territory, which in turn could be engaged in agreements with equals.[24]

[23] Marta Requejo Isidro and Burkhard Hess, 'International Adjudication of Private Rights: The Mixed Arbitral Tribunals in the Peace Treaties of 1919–1922' in Michel Erpelding, Burkhard Hess and Hélène Ruiz Fabri (eds), Peace Through Law: The Versailles Peace Treaty and Dispute Settlement After World War I (Nomos 2019) 243; Charles Carabiber, Les juridictions internationales de droit privé: De l'arbitrage international à l'expérience des tribunaux arbitraux mixtes et à l'institution de juridictions internationales permanentes de droit privé (Neuchâtel: La Baconnière 1947) 241–44.

[24] Emer Vattel, The Law of Nations or Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns (Clarke 1811), lxvi.

The number and nature of claims made by private individuals after WWI and the Mexican Revolution increased the need to establish mechanisms that would elevate the position of private parties so they could directly pursue redress for grievances with states. However, that adjudicative exercise was incompatible with the Vattelian understanding of international law used at the time; how could a private individual be within an arm's length of a state without contesting the core idea of the exclusive territorial authority of a sovereign?

In the case of the MATs, the adjudicative bodies gave the individual direct standing in the legal process but there was no single criterion used to justify this. This absence of definition raised questions regarding the international nature of the MATs: they appeared to be 'international' in terms of their origin but not in terms of their function.[25] In the concrete case of the claims that arose from Article 297 of the Versailles Peace Treaty, they could thus be compared to the claims adjudicated by the MCCs, where an individual was not considered as holding the right on his own, but rather as receiving protection via the state.[26]

Nevertheless, the MCCs provided hybrid or mixed status to the individual without direct standing by granting them 'initiative' and other functions within the process undertaken by the state. In its decision on the Mexican Union Railway case, the Great Britain-Mexico Special Claims Commission provided the following distinction between power and private 'initiative' to justify the mixed or hybrid nature of such cases:

> These claims bear a mixed character. They are public claims in so far as they are presented by one Government to another Government. But they are private in so far as they aim at the granting of a financial award to an individual or to a company. The award is claimed on behalf of a person or a corporation and, in accordance therewith, the Rules of Procedure prescribe that the Memorial shall be signed by the claimant or his attorney or otherwise clearly show that the alien who suffered the damage agrees to his Government's acting in his behalf. For this reason the action of the Government cannot be regarded as an action taken independently of the wishes or the interest of the claimant. It is an action the initiative of which rests with the claimant.[27]

The other MCCs seem to agree with this distinction because their procedural rules provided that any claim requiring a written memorial be signed not only by the State Agent but also by the injured individual.[28] It was not

[25] Rudolf Blühdorn, quoted by Requejo and Hess (n 23) 264.
[26] ibid.
[27] Great Britain v United Mexican States (Mexican Union Railway Case) (Decision No 21, February, 1930) 5 RIAA 115–29.
[28] Feller (n 6) 88.

expected that a State could present a claim in its own name, which made private initiative indispensable. In the Melczer Mining Company case, the United States-Mexico GCC reasoned that the consent and initiative of the private individual was assumed, since: 'it would be very unusual for a government to press a claim in the absence of any desire on the part of the claimant.'[29]

The ex-gratia clauses used in the Mexican Special Commissions strengthened the position of individuals in the process. Since the Special Commissions adjudicated claims stemming from the declared moral duty the Mexican State had assumed towards private individuals, it was expected that the latter would consent to the process.

The Case of Emilia Marta Viuda de Giovanni Mantellero, decided by the Italy-Mexico SCC, was illustrative of the position the ex-gratia clauses granted individuals in the special commissions. It is the only known case where there was express opposition by the individual concerned to filing a claim. In this case, the Italian Government demanded the payment of compensation for the murder of the Italian citizen Giovanni Mantellero by Mexican revolutionary forces during a 1919 assault on the train he was traveling on[30] His widow, Emilia Marta, not only refused to sign the memorial of the claim, but also explicitly opposed any claim made in her name. The Italian Agent continued with the process anyway, alleging that a State could independently present a claim for any wrong committed against its nationals.

The three Commissioners of the Italy-Mexico SCC rejected the claim based on the ex-gratia nature of their jurisdiction, since the Commission deemed it a 'sine-qua-non condition' that the interested party initiate the appropriate action. In this case, the Commissioners reasoned that the Agent of Italy had no other function than that of 'sponsoring the expectation or the right of his particular constituents.' Thus, while procedurally autonomous direct standing was not granted to individuals, the special MCCs saw themselves as adjudicative bodies of private rights at the international level.

In this regard, the government agents were important in the process of MCCs since they enjoyed three fundamental powers before the tribunal, granted by different rules of procedure: to bring claims, present evidence, and settle claims. Despite these broad powers conferred on the agent during the process, an individual still needed to motivate any claim presented. This led to the hybrid or mixed configuration of the process. The MATs in Europe also included a State agent, who while enjoying less powers than agents in the MCCs, was still an important figure in the process since he had the 'right to oversee' the conduct of private parties in the process, including the option

[29] Melczer Mining Company (USA) v United Mexican States, GCC (Award April 30, 1929) 4 RIAA 481–86.
[30] The author's own translation of Emilia Marta Viuda de Giovanni Mantellero, Italy v Mexico (Italy–Mexico Special Claims Comission, Decision No 3) copy of the judgement available in Spanish in Luis Miguel Diaz, México y las comisiones internacionales de reclamaciones, vol 1 (Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas 1983) 1291–96.

to intervene directly in proceedings.[31] While his powers were significantly reduced compared to those of agents in the MCCs, this was compensated by the direct standing granted to individuals in the MATs.

5 Assessment of the Legacy of the MCCs and the MATs

The success of an international adjudication body can be analyzed in terms of two criteria. One measures its efficiency in adjudicating disputes, that is, how many cases brought before the court or commission were analyzed and resolved. The second is the impact that its decisions have had on the development of international law. The following section discusses the legacies of the MCCs and MATs for international law in terms of these two criteria.

5.1 Procedural Legacy

The first criterion is to evaluate how well MATs and MCCs fulfilled the purpose for which they were created: resolving claims. In this regard, the MATs were very efficient, constituting one of the first successful instances of mass claims adjudication in international law. For instance, it has been reported that the French-German MAT processed 23,996 cases, the Polish-German MAT 28,670 cases, and the UK-German MAT 10 000 cases in a period of about 10 years.[32]

By contrast, MCCs' success in the adjudication of claims varied widely. The more successful MCCs managed to adjudicate either the majority or all of the claims submitted. Successful MCCs included the Germany-Mexico SCC (140 processed claims), Great Britain-Mexico SCC (128 processed claims), Italy-Mexico SCC (157 processed claims), and the Belgium-Mexico AAT (16 claims). Meanwhile, the United States-Mexico GCC (148 processed claims out of 3176) and United States-Mexico SCC (processed about 20 of the submitted 3176 claims) faced several difficulties, adjudicating a considerably smaller number of claims than their European counterparts.

An explanation for the quantitative difference between the number of claims adjudicated by MATs and MCCs could be the extended nature of the damages inflicted on aliens of other nations in the respective conflicts. However, there are a couple of other features that were adopted in the procedural rules of most MATs that favoured a huge number of cases being dealt with quickly.

One of those features, of course, was the direct standing of private individuals in the process analyzed in Section 4. In the case of the MATs, private individuals had a privileged position in the process, since they did not depend on the State Agent to espouse their claims. Other important features were the use of a single

[31] Requejo and Hess (n 23) 252.
[32] Otto Göppert quoted by Requejo and Hess (n 23) 247.

'comprehensive hearing' during the process, as the parties involved were often domiciled in different countries;[33] setting strict time limits and the power to sanction its non-compliance.[34]

5.2 Substantive Legacy

The second criterion for assessing the legacy of international tribunals is the impact their decisions have had on the development of international law. In this regard, many MATs were abruptly terminated following the 1930 Young Plan and even though their case law was discussed in the following decade,[35] the substance of their decisions has gone largely unnoticed in international law in recent years. Nowadays, only a few references to decisions made by the MATs sporadically appear in specific areas, such as in investment arbitration citations.[36]

In contrast, the MCCs' decisions provided a body of precedents for the standards of treatment of aliens and the international responsibility of states that have been quoted in several international instruments over the last century.

The work and the well-argued decisions of the United States-Mexico GCC – which paradoxically resolved the least claims – impacted international law the most. For instance, the MCC's decisions provided 'argumentative choices'[37] for the drafting process of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), the base of current international adjudication. MCCs' 'argumentative choices' have also been used by 21st century lawyers arguing cases in front of international investment arbitration tribunals. For example, mentions of the Neer case decided by the United States-Mexico GCC can be found in at least 50 investor-state arbitration cases over the last two decades.

This surprising difference in the historical impact of MCCs and MATs on international law jurisprudence – their substantive legacy – can be, at least partially, explained by three important differences.

First, the MCCs were undisputedly considered international law bodies both in terms of origin – since they were created by treaties ratified by national parliaments – and in terms of function. While there might be some discrepancies regarding the applicable law in the case of those Special Commissions which applied equity in their decisions, the MCC understood the application of equity in the narrow sense. In other words, there was never a discrepancy concerning the international nature of the special jurisdiction MCCs. By contrast, the literature on the MATs has been divided on their national or international nature. While the MATs have an international origin, it has

33 ibid. 256.
34 ibid.
35 ibid. 274.
36 For instance see, Chevron Corporation (USA) and Texaco Petroleum Corporation (USA) v Republic of Ecuador II, PCA Case No 2009–23, Second Partial Award on Track II, 30 August 2018, para. 7.92.
37 See Jean d'Aspremont, 'The General Claims Commission (Mexico/US) and the Invention of International Responsibility' in Ignacio de la Rasilla and Jorge E Viñuales (eds), Experiments in International Adjudication: Historical Accounts (CUP 2019) 150.

been argued that their function was one of 'internal civil courts' whose decisions impacted only the private individuals and states involved'.[38]

The uncertainty over whether MATs should be considered as playing a national or international function is due the different ideas used to justify the standing of private individuals in the process. Nonetheless, the lack of clarity on whether its decisions were truly international, could have prevented international lawyers from using them as resources for 'international law' cases.

Second, the MCCs were able to build a legal community around the Commissions with multiple appointments of jurists to more than one Commission. In the period from 1923 to 1934, at least 32 people were appointed as commissioners to the MCCs. However, some of those commissioners had multiple appointments[39] at different times which allow them to influence the outcome of the MCCs and the coherence of their decisions. The most illustrative example was the Chilean jurist Miguel Cruchaga Tocornal who acted as president of the Germany-Mexico, Italy-Mexico and Spanish-Mexico Commissions. These three MCCs were able to operate without any significant friction, showing how one person could influence the stability and work of different MCCs.

One factor that could explain the multiple appointments in the MCCs was likely the reduced number of available jurists or diplomats with sufficient expertise to adjudicate international disputes who, at the same time, enjoyed the trust of Mexico and the other governments involved.

The MCC conventions established that each body ought to be composed of three commissioners: two selected by the States involved; the third appointed by agreement between the governments.[40] However, an important requirement was that any commissioner selected had showed commitment to the study and development of international law prior to the formation of the MCCs. Thus, even when MCC commissioners were compelled to defend the interests of their own countries in specific cases, they expressed their beliefs through elaborated arguments using all available sources of international law.

Mexico, for example, opted to appoint commissioners with a high profile in international law as adjudicators of the multiple claims that needed to be addressed. So, even when those Mexican Commissioners felt compelled to craft reasonings that favoured Mexico, they opted for arguments constructed within the sources of International Law. The most prominent Commissioners appointed by Mexico were Genaro Fernandez Mac-Gregor[41]

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38 Geor Geier, quoted in Requejo and Hess (n 23) 264.

[39] The Commissioners that had multiple appointment: Fernando Gonzalez Roa (Mexico), three times; Miguel Cruchaga Tocornal (Chile) three times; Rodrigo Octavio (Brazil), three times; Genaro Fernandez de McGregor (Mexico), twice; Fred Kenelm Nielsen (United States), twice; Horacio F Alfaro (Panama), two times; Kristian Sindballe (Denmark), twice.

[40] In case of disagreement, the President of the Permanent Administrative Council of the Permanent Court of Arbitration at the Hague was responsible for appointing the third commissioner.

[41] Who acted as Commissioner appointed by Mexico in the Great Britain–Mexico SCC and the United States–Mexico GCC.

and Fernando Gonzalez Roa[42]. Both had been among the 1919 founders of the Academia Mexicana de Derecho Internacional Público, one of the first organized international law communities in Latin America. In addition, Fernandez Mac-Gregor was the director of the Revista Mexicana de Derecho Internacional,[43] the first known Latin American journal of international law.

In the same vein, the other commissioners selected by the United States and European States had similar backgrounds and a firm commitment to the development of international law. For instance, literature from the 1930s acknowledges the important role and quality of contributions made to MCC decisions by Leiden Professor of International Law C. van Vollenhoven, who acted as President of the United States-Mexico GCC until 1927.[44]

In stark contrast, the MATs did not have a single legal community that could consolidate a body of jurisprudence or practices. There were multiple styles of drafting decisions, customs, and rituals among the MATs adjudicators,[45] which hindered the development of a 'jurisprudence constante.'

Finally, a third feature that allowed MCCs to articulate a series of precedents was that all MCCs shared one model of procedural rules that were considered autonomous from the procedural rules of the domestic legal systems of the States involved. The various MCC conventions stipulated that each commission should determine its own rules of proceedings. In this regard, the most influential rules were those drafted by the United States-Mexico GCC in 1924 and later amended in 1926. These provided the model for the elaboration of procedural rules for other MCCs.

The important influence of United States-Mexico GCC procedural rules in the Americas can be explained, in part, because they were the first to be drafted. However, a second reason, was the 'detailed description'[46] of pleadings, including the way that memorials and their answers ought to be written by the state's agents. The MCCs that were formed after 1924 took these rules of the United States-Mexico GCC as a model for their own rules; in practice, this meant that the MCCs shared similar procedures and ways of litigating among the parties involved.

By contrast, the MATs in Europe had at least three different 'model' regulations for procedure: the French-German, Anglo-German, and Belgian-German MATs. Furthermore, even within each of these procedural 'models'

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[42] Who acted as Commissioner in the France–Mexico SCC; Spain–Mexico SCC; and United States–Mexico SCC. In addition, Gonzalez Roa was also one of the Mexican representatives at the Bucareli conference that drafted the first MCCs.
[43] 'Acta de Instalación de la Academia Mexicana de Derecho Internacional' (1919) 1 Revista Mexicana de Derecho Internacional.
44 For instance, there are several references in the literature of the time to the influence of the Commissioner Van Vollenhoven in the quality of the decisions made by the United States–Mexico GCC. See: Jacobus Gijsbertus de Beus, The jurisprudence of the General Claims Commission United States and Mexico under the Convention of September 8, 1923 (Nijhoff 1938) 2.
45 Requejo and Hess describe, for instance, the vestimentary differences among the arbitrators of the different MATs in Requejo and Hess (n 23) 255.
46 Kenneth Smith Carlston, The process of international arbitration (CUP 1946) 22.

there were important divergences.[47] This plurality of procedural rules could have been a factor in the lack of uniformity and may have hindered development of a single distinct form of' jurisprudence.

An additional feature that characterized the MCCs was that they upheld the principle of autonomy in order to protect their procedural rules from any interference on the part of the national legal system of the state involved. In 1926, in the Parker case, the United States-Mexico GCC clearly laid out the principle of procedural autonomy, establishing that regardless of their relevance, the 'technical rules of evidence' of United States or Mexico had no place in the process of the United States-Mexico Commission.[48] One of the reasons given was that the Commission did not enjoy the same powers as a local court, such as the capacity to summon witnesses.[49] This application of the principle of autonomy, later followed by other MCCs,[50] meant that a culture of litigation independent of national legal systems was developed.

6 Conclusion

A close look at the MCCs and MATs experience has allowed us to establish some lessons for adjudication in international law. First, the legitimacy agreements in the design of an international adjudication body have an impact on its functioning. The ex-gratia clauses established in the MCCs convention allowed Obregón's government to present the agreement inside Mexico as a magnanimous act and to attract jurists in the region from the beginning of the process.

Second, the MCCs and the MATs advanced the position of private individuals in international law adjudication. The MCCs did not grant individuals direct access but instead created a hybrid standing where claims were recognized as private in nature but were controlled by the state. However, the MATs went one step further and they granted standing to the individual for the first time in international law.

Finally, the MCCs and MATs had different legacies for international law. On the one hand, from the standpoint of procedural legacy, the MATs were one of the first successful instances of mass claims adjudication in international law. By contrast, the MCCs had a different experience, but in general, adjudicated a lesser number of disputes. On the other hand, the MCCs' decisions provided a body of precedents for the standards of treatment of aliens and the international responsibility of states that has lasted until today. In this regard, one of the key characteristics was the construction of a legal community

[47] Requejo and Hess (n 23) 252.
[48] Willam A Parker(USA) v United Mexican States, GCC (Award 31 March 1926) 4 RIAA para. 5.
[49] ibid.
[50] See the Ernesti H Goeldner and Juan Andressen cases of the Germany-Mexico SCC, quoted in Abraham H Feller 'The German–Mexican Claims Commission' (1933) 27 American Journal of International Law 62.

around the MCCs with multiple appointments of jurists to more than one Commission. In turn, this feature contributed to the cross-fertilization of procedural rules across the different MCCs.

The MCCs and the MATs were extraordinary experiments of ad-hoc adjudication in the 1920s, with different legacies. However, there is no doubt that both set the base for the system of international adjudication for the years to come. The history of the MCCs and MATs shows that when an adjudication body has the minimum independence to carry out their tasks, even the most unpleasant conflicts can be later transformed into legal arguments.