

Maritime Boundaries In the Gulf of Mexico

A Legal and Diplomatic Saga Involving Mineral Riches and Undefined “Gaps”

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“No country in Latin America seems to offer a more fascinating, complex and varied history of its territorial boundaries than Mexico.”

This statement written by César Sepúlveda,¹ my international law professor at the National Autonomous University of Mexico, seems to take on special significance today. Although Mexico’s concerns with the demarcation of its national borders have traditionally centered on its land boundaries, in recent years attention has been directed at its vast and rich marine spaces.

Occupying the first place in Latin America because of its 7,205 miles of coastline along the Pacific Ocean, the Gulf of California, the Gulf of Mexico and the Caribbean, and endowed with a total of 3,067 islands, cays, rocks and reefs, Mexico may be finally focusing on the oceans.

According to a technical study produced in 1981 by the U.S. Geological Survey (USGS), Mexico’s most fabulous marine wealth lies in the deepest submarine region of the Gulf of Mexico. That area, designated in the study as the “mar-

itime boundary region,” takes up 58,940 square miles, and its mineral resources have been estimated at between 2.2 and 21.9 billion barrels of oil and from 5.4 trillion to 44.4 trillion cubic feet of gas.² Ostensibly, then, this is the fourth largest oil and gas deposit in the world.

This Mexico-U.S. binational issue becomes more intriguing when you discover that a number of fascinating questions are directly associated with it: for example, the waters in that part of the gulf plunge to the tremendous depth of 10,000 feet. This clearly poses an extraordinary challenge for the drilling and extraction of oil and gas. The bilateral Maritime Delimitation Treaty (May 4, 1978) that should have established the maritime boundary in the Gulf of Mexico where those gigantic mineral resources lie did not establish any boundary in the submarine area in question. Amazingly, where the oil and gas riches are located, the treaty simply left two undefined, mysterious gaps! Furthermore, although signed in 1978 and approved by the Mexican Senate in early 1979, 20 years went by before the U.S. Senate ratified it October 23, 1997. It finally entered into effect in November 1997 during the official visit of President Zedillo to Wash-

ington, D.C., when the instruments of ratification were exchanged.

A LONG AND COMPLICATED MARINE STORY

From the standpoint of the law of the sea, Mexico first attracted global attention in 1976 when it became one of the world’s very first nations to establish a 200-nautical-mile Exclusive Economic Zone (EEZ).³ The establishment of the zone predated the conclusion of UNCLOS III and the signing of the 1982 United Nations Convention of the Law of the Sea (U.N. LOS Convention).⁴ Twenty years later, Mexico and the incalculable mineral resources located in the deepest part of the Gulf of Mexico attracted international attention again.

This time, U.S. sources reported in early 1996 that four major U.S. oil corporations (Shell, Amoco, Texaco and Mobil Oil) had drilled a prospective commercial well at a depth of 7,625 in the Gulf of Mexico in the submarine region of the “Alaminos Canyon,” located 200 miles southeast of Corpus Christi, Texas.⁵ Almost immediately, the issue became a question of the highest diplomatic priori-

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ty between Mexico and the United States for two reasons: first, the deep submarine area where the drilling —known as the “Baha Project”—was taking place is among the world’s few “supergiant” oil and gas deposits. Second, the submarine region of the “Alaminos Canyon,” although situated on the U.S. side of the Gulf of Mexico, is actually located only a few miles away from the Mexican side of the Gulf.

As soon as these reports reached Mexico, the Mexican Senate and Tlatelolco⁶ raised voices of concern, especially when it became clear Mexico did not have a definite and final maritime boundary with the United States in this most important region of the Gulf.

MEXICO’S DELIMITATION OF ITS EXCLUSIVE ECONOMIC ZONE

Mexico’s establishment and demarcation of the outer boundaries of its EEZ⁷ required it to negotiate maritime boundaries (see Map 1). Cuba, the United States and other neighboring countries were affected by the delineation of this ocean area. Thus, within a few months, Mexico reached an agreement with Cuba to delimit its EEZ in 1976.⁸

Armed with this diplomatic experience, Mexico then proceeded to negotiate the corresponding boundary with the United States, which at that time had established a 200-nautical-mile Fishery Conservation and Management Zone.⁹ Applying the “principle of equidistance” and utilizing the newly coined definition of “island” included in the 1982 U.N. LOS Convention, Mexico and the United States agreed to a “provisional,” rather than a definite, maritime boundary in

the Pacific Ocean and the Gulf of Mexico in late 1976.¹⁰ More than the “legal question” of its provisional character, the 1976 agreement had a more serious, “technical problem”: it established an incomplete maritime boundary in the Gulf of Mexico.

THE INCOMPLETE BOUNDARY IN THE GULF OF MEXICO

The major objective of the Mexico-U.S. agreement was to establish a mutually agreed-upon, precise and complete maritime boundary between the 12 and the 200 nautical mile-limits in the Pacific Ocean and in the Gulf of Mexico. Regarding the first 12 nautical miles, it should be recalled that on November 23, 1970, the two countries had already signed a treaty “for the creation of maritime boundaries between the claimed 12-n.m. Mexican territorial sea and the territorial sea and contiguous zone of the United States.”¹¹

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The establishment of the boundary in the Pacific Ocean basically involved the demarcation of a lateral, maritime line, in the area of Tijuana and San Diego, where the land boundary commences pursuant to Article V of the 1848 Guadalupe Hidalgo Treaty. Although the presence of islands on each side of the land boundary—Santa Cruz, San Nicolás and San Clemente on the U.S. side, and Guadalupe on the Mexican side— complicated the definition of the binational maritime line, the resulting boundary was technically perfect, precise and complete. Unfortunately, this was not the case in the Gulf of Mexico.

In principle, the boundary in the gulf should have been established as a continuous line across the entire basin: this line would have started from the Rio Grande, where the land boundary exists today, in the Tamaulipas-Texas area (at the western side of the basin), then go across the gulf and end in the area between Yucatán and Florida on the eastern side. In theory, this line may be envisioned as the simplest maritime boundary. However, the geographical configuration of the basin, as well as certain aspects of the law of the sea and technological considerations, did not allow for this elegant simplicity.

TWO “GAPS” IN THE GULF OF MEXICO BOUNDARY

If you draw two 200 n.m. zones on the waters of the Gulf of Mexico, one Mexican and the other belonging to the U.S., you discover that because of the basin’s shape, there is a resulting area placed beyond the outer boundary of both. Since this area technically resembles a triangle,

it has been called “the submarine triangle” or the “Western Gap.”

The “gap” —referred to in Mexico as the “Doughnut Hole”— is the interruption of the binational line demarcating the maritime boundary in the area. Rather than establishing a continuous binational boundary, the 1978 treaty only established two short boundary segments,¹² with two “gaps” between them. This incomplete binational line may be aptly described as a strangely discontinued maritime boundary.

This gap applies not only to the waters in the Gulf of Mexico (which are part of the high seas) but also to the basin’s seabed and ocean floor (including the subsoil). The area of this triangle covers approximately 25,000 square miles. According to the U.S., this “Western Gap” consists of “a 4.5 million acre unexplored area which was left undivided in the [1978] Treaty.”¹³

While the Mexico-U.S. bilateral negotiations were taking place, UNCLOS III had categorized this submarine area, located beyond the 200 n.m. of national jurisdiction, as the “common heritage of humankind,” an area whose resources were to be utilized to benefit the entire world’s population, in particular that of developing countries, administered by an International Seabed Authority. No country was supposed to own or be able to appropriate these resources unilaterally because they belong to humankind. The 1982 Convention on the Law of the Sea included this submarine area in Part XI, naming it “The International Area.” Mexico supported this legal position. For Mexico, therefore, the submarine area beyond the 200 n.m. outer boundary in the Gulf of Mexico was a part of the International Area, subject to the control of the International Seabed

Authority, created by the 1982 LOS Convention.

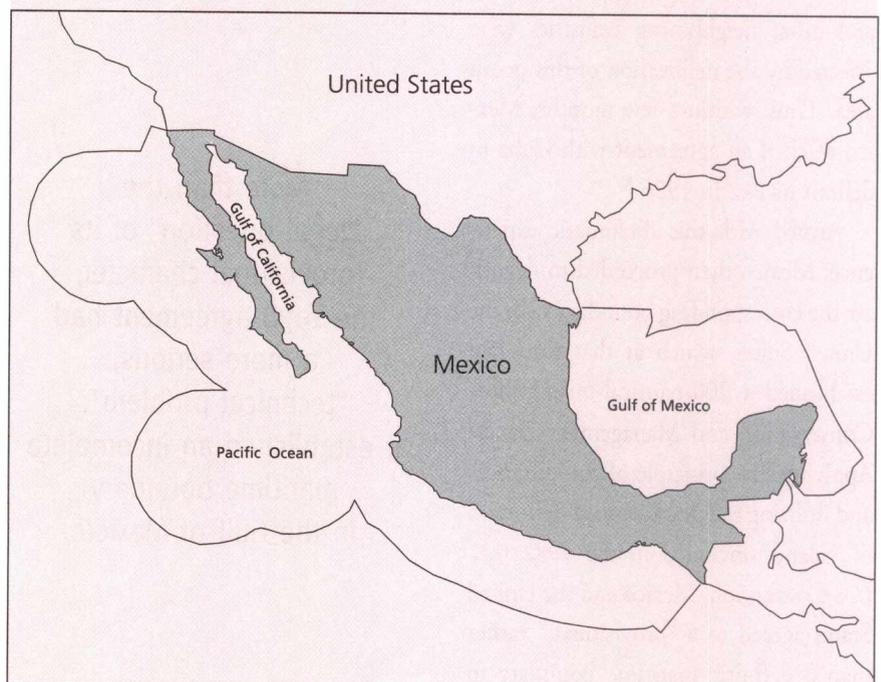
The United States took a diametrically opposed position. According to the U.S., the International Area should be subject to the principles governing the high seas: there should be freedom of navigation, of fishing, of laying submarine cables and of scientific research. Therefore, according to the U.S., any resources located in the International Area (i.e., the “submarine triangle” or the “gaps”) would be legally owned by the individual or corporation with the technology to appropriate them, whether those resources were fish, oil, gas or polymetallic nodules. Thus, extracting oil and natural gas from any submarine area located beyond the outer boundary of the 200 n.m. would be legally equivalent, say, to catching fish on the high seas.

Today, this two-segment boundary consists of two unequal binational lines,

separated by two empty spaces, or “gaps”: the first, located at the approximate latitude of the Rio Grande (Brownsville, Texas, and Matamoros, Tamaulipas), north of Laguna de Términos in Campeche and south of Morgan City, Louisiana, is 129 nautical miles long. The second gap is of undetermined length and lies on the median line between Yucatán and Florida. According to more recent technical surveys, the “Western Gap,” closer to Texas, is the area with the best prospects for the commercial exploitation of oil (See Map 2).

If you apply the U.S. position to the Gulf of Mexico, it becomes clear that the four major U.S. oil corporations involved in the drilling of the “Baha Project” would encounter no legal obstacles to drilling in the submarine triangle beyond the 200-n.m. limit and, more importantly, commercially exploiting any mineral resources located there simply because the

Map 1
Mexico’s Exclusive Economic Zone established in 1976



mineral riches of the “Western Gap” lie beyond that limit. Furthermore, from a legal standpoint, it simply does not matter whether there is no maritime boundary in that submarine region. Accordingly, the only limitation to the unilateral actions of these U.S. corporations was, and continues to be, the constraints imposed by deep-sea drilling technology.

As a consequence of these legal and technical considerations, the provisional boundary established by Mexico and the United States in the Gulf of Mexico by means of the Exchange of Notes of November 24, 1976, was bound to be incomplete.

Interestingly, no one in Mexico was curious enough to inquire about the reasons for the establishment of this incomplete and unorthodox maritime limit, prior to the launching of the “Baha Project” by the four U.S. oil companies.

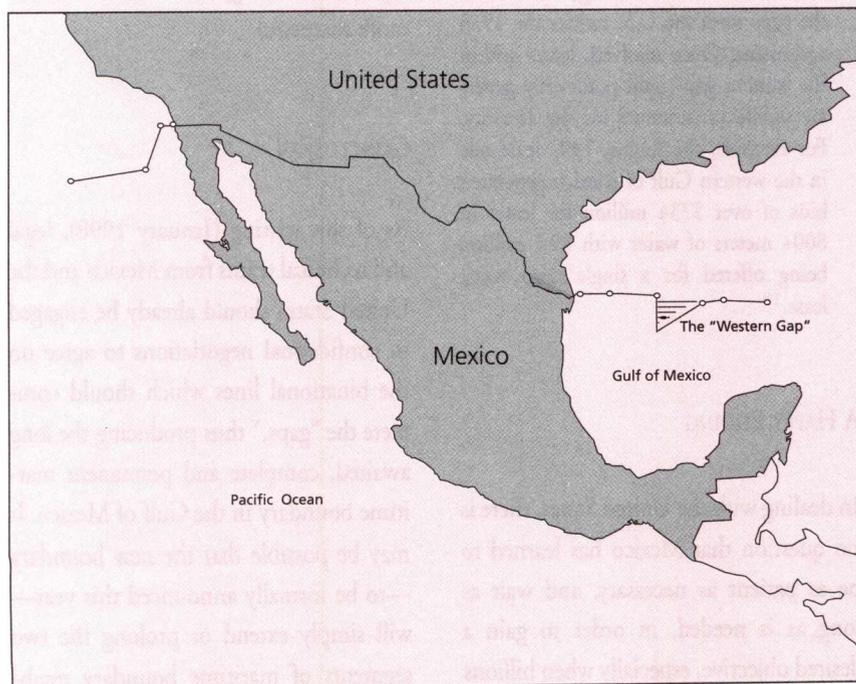
FROM AN EXCHANGE OF NOTES IN 1976 TO A FORMAL TREATY IN 1978

Soon after the Exchange of Notes of 1976, Mexico may have become increasingly concerned about the fact that this agreement had established only a “provisional and incomplete boundary” in a submarine area rich in mineral resources in the deepest region of the Gulf of Mexico. Although no oil company at the time had the technology to drill for oil and gas at such depths, marine technology was encroaching into deeper areas every year; it was anticipated, however, that Gulf of Mexico resources were going to be up for grabs around the year 2000. From another angle, Mexico may have also questioned the degree of “legal protection” that the Exchange of Notes was giving it, vis-à-vis an eventual intrusion of U.S. oil companies to unilaterally tap those mineral riches.

In this context, Mexico went ahead with the official decision of substituting the 1976 Exchange of Notes for a more solemn and formal “treaty.” Accordingly, during the visit of U.S. Secretary of State Cyrus Vance to Mexico City, he signed the Maritime Delimitation Treaty between both countries on May 4, 1978, in Tlatelolco. As expected, the Mexican Senate approved the treaty after a brief, cursory debate. Substantively, the treaty merely reproduced the maritime boundary drawn in the 1976 agreements. Unfortunately, it also included the “gaps.”

To Mexico’s surprise, the U.S. Senate did not give its consent to the Maritime Delimitation Treaty, even though the Gulf of Mexico boundary was originally drafted and proposed to Tlatelolco by the United States. Under tremendous pressure from the oil industry, in 1980 the U.S. Senate indefinitely postponed consideration of the treaty when questions arose regarding the presence of rich hydrocarbon and natural gas deposits in the deepest region of the Gulf of Mexico.¹⁴ The Senate commissioned the U.S. Geological Survey to conduct a study to scientifically ascertain whether that submarine area contained any mineral resources. As indicated earlier, the USGS confirmed the existence of vast mineral deposits.

Map 2
Boundary established by the 1978 Maritime Delimitation Treaty that went into effect in November 1997



LATEST LEGAL, POLITICAL AND TECHNOLOGICAL DEVELOPMENTS

On October 23, 1997, after a disquieting impasse of 19 years, the U.S. Senate finally approved the Mexican Maritime Delimitation Treaty of 1978.¹⁵

During the discussion of the treaty by the Foreign Relations Committee, Sen.

Frank Murkowski, Chairman of the Committee on Energy and Natural Resources, stated that pursuant to the Deep Water Royalty Relief Act, which governs the exploitation in the U.S. Outer Continental Shelf,

...four lease sales in the deep water of the Gulf [of Mexico] have brought \$2.3 billion to the U.S. Treasury. The last two lease sales alone have fetched more than \$1.2 billion in cash bonus bids. As a result, oil and gas production in the Gulf is expected to double, new jobs will be created, and substantial economic benefits will be realized....Settling a permanent international maritime boundary in the Gulf of Mexico will enable the U.S. and Mexico to delimit an area in the Western Gulf commonly referred to as the "Doughnut hole." This area...believed to contain significant oil and gas resources, lies outside of each country's waters. We are hopeful that the resolution of the permanent boundary will facilitate agreement over division of that area of such a great promise.¹⁶

At the same hearing, Mary Beth West, Deputy Assistant Secretary of Oceans and Space, U.S. Department of State, who strongly supported the treaty, said:

Mr. Chairman: You may ask why we hope the Treaty will be acted upon now, after almost 20 years. In the early 1980's our offshore and gas industry focused on areas relatively near the shore. This situation has changed significantly in recent years. *Not only are the oil and gas companies interested in leasing blocks adjacent to the 1978 boundary, but interest extends to the area beyond 200 miles in the western Gulf of Mexico—in the "gap."* Thus, now is a time when, for commercial reasons, *industry needs the certainty provided by a boundary agreement*, and we understand that the U.S. oil and gas industry supports ratification.¹⁷

Finally, the American Petroleum Institute, in a written statement endorsed

by five major petroleum industry bodies,¹⁸ declared that "the oil and gas industry fully supports ratification of the Treaty" based on the following reasons: 1) The 1978 treaty is consistent with principles of international law; 2) It uses "islands" off the U.S. coasts to the benefit of the United States; 3) It also benefits the U.S. economic and energy interests, emphasizing that "Today, industry has the technology to explore for oil and gas in water depths up to 10,000 feet and to produce hydrocarbons in over 5,000 feet of water." Regarding the diplomatic negotiations to complete the maritime boundary between both countries, thus eliminating the "gaps," the institute wrote:

Senate ratification of the Treaty will clear the path for further negotiations...on the western gap, a 4.5 million acre unexplored area more than 200 miles from either country's border which was left undivided in the initial Treaty. The Mexican government has indicated informally to the U.S. Department of State that it will not entertain negotiations over the gaps until the U.S. ratifies the 1978 agreement. Once resolved, leases within the western gap could potentially generate significant revenues for the Treasury. For example, the August 1997 lease sale in the western Gulf of Mexico generated bids of over \$734 million for leases in 800+ meters of water with \$9.1 million being offered for a single deep water lease.¹⁹

A HAPPY ENDING

In dealing with the United States, there is no question that Mexico has learned to be as patient as necessary, and wait as long as is needed, in order to gain a desired objective, especially when billions

of dollars are at stake. Since 1980, when the U.S. Senate refused to ratify the 1978 Delimitation Treaty, Mexico decided that the best policy in this case was simply to wait and see.

Tlatelolco knew that when the advances in drilling technology were inching closer to commercially exploiting the oil and gas in the deep waters of the Gulf of Mexico, the powerful U.S. oil industry—which in fact was responsible for stopping the ratification of the treaty in 1980—was now going to be the unstoppable lobby pressuring the U.S. Senate to ratify the treaty and, in particular, to fill out its "gaps," that is to say, to have a complete and mutually agreed-upon maritime boundary in the area. It is obvious that the U.S. oil industry, with existing marine technology, is not going to invest billions of dollars to drill for oil in a submarine area in the Gulf of Mexico—the Western Gap—which remains loaded with legal uncertainties clouding the boundary issue. Mexico's diplomatic strategy could not have been more successful.

CONCLUSION

As of this writing (January 1998), legal and technical teams from Mexico and the United States should already be engaged in confidential negotiations to agree on the binational lines which should complete the "gaps," thus producing the long awaited, complete and permanent maritime boundary in the Gulf of Mexico. It may be possible that the new boundary—to be formally announced this year—will simply extend or prolong the two segments of maritime boundary estab-

lished by the 1978 treaty, thus filling in the current "gaps."

The legal and technical solution to this impasse could have not been accomplished if Mexico had continued to support the position that the submarine triangle (now known as the "gaps" or the "doughnut holes") was part of the International Area. Evidently, practical reasons prevailed and Mexico abandoned that view and quietly moved to embrace the position advanced by the United States.

"No hay mal que por bien no venga," is a well-known Mexican adage. It means that when something bad happens, something good is likely to come out of it. It is true that Mexico patiently waited for almost 20 years to see the U.S. Senate complete the constitutional ratification process of a treaty technically perfect and signed in good faith by both countries in 1978, a legal and diplomatic impasse that Mexico considered unfair, unnecessary and unfriendly.

However, as a result of this old 1978 treaty recently coming into force and the imminent completion of the maritime boundaries in the Gulf, Mexico will soon enjoy the rewards of its patience: first, 1998 will be the year not only marking the 150th anniversary of the Guadalupe Hidalgo Treaty of 1848 but the completion of all boundaries between both countries. And second, the bountiful Gulf of Mexico will become an ocean basin divided between Mexico and the United States.²⁰ **MM**

NOTES

¹César Sepúlveda, *La Frontera Norte de México* (Mexico City: Editorial Porrúa, 1976), p. 9.

²Richard B. Powers, ed., *Geological Framework, Petroleum Potential...and Deep-Water Drilling Technology of the Maritime Boundary Region in the Gulf of Mexico*, U.S. Department of the Interior, Geological Survey, Open File Report 81-265 (Washington, D.C.: n/p, 1981).

³Mexico established this vast maritime area, the world's 17th largest, by adding a new eighth paragraph to Article 27 of its 1917 Constitution. See *Diario Oficial*, February 6, 1976.

⁴U.N. CONF. 62/122, 21 I.L.M. (1982). Agreed at Montego Bay, Jamaica, December 10, 1982, it went into effect November 16, 1994. Mexico is a signer, but as of this writing, the United States has not ratified the convention.

⁵See Jorge A. Vargas, "Oil and Natural Gas. A Legal Dispute Brewing in the Gulf of Mexico," *Voices of Mexico* 36 (July-September 1996), p. 76 (Part 1) and no. 37 (October-December 1996), p. 65 (Part 2).

⁶Mexico's Foreign Affairs Ministry (SRE) is located on Tlatelolco Plaza and therefore is referred to as "Tlatelolco." [Editor's Note.]

⁷Mexico's establishment of the EEZ's outer boundaries was done by means of a presidential decree published in the *Diario Oficial* June 7, 1976, that went into effect July 31, 1976. See Jorge A. Vargas. *La Zona*

Económica Exclusiva de México (Mexico City: Ed. V Siglos, 1980), p. 65.

⁸See Exchange of Notes to Delimit the EEZ Between Mexico and Cuba (July 26, 1976).

⁹See Fishery Conservation and Management Act, Pub. L. No. 94-265, 16 U.S.C. §1801 (1976) (reprinted in 15 I.L.M. 634).

¹⁰See Exchange of Notes Effecting Agreement on the Provisional Maritime Boundary, November 24, 1976, U.S.-Mexico, 29 U.S.T. 197, T.I.A.S. 8805.

¹¹Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and the Colorado River as the International Boundary Between the United States and Mexico, signed in Mexico City November 23, 1970. Published in the *Diario Oficial*, July 12, 1972. 29 UST 196; TIAS 8625.

¹²These two boundary segments were established by means of a series of "straight baselines" which united imaginary points whose precise situation was given based on its coordinates of latitude and longitude, in conformity with and according to the 1927 Datum of North America. See Article I of the *1978 Maritime Delimitation Treaty*, I.L.M., Documents (1978) at 1073-1075.

¹³"New Press (sic) on in U.S. to Ratify Gulf Treaty with Mexico," *Platt's Oilgram News*, vol. 75, no. 187 (September 26, 1997), p. 3.

¹⁴*Three Treaties Establishing Maritime Boundaries between the United States and Mexico, Venezuela and Cuba*, Hearings on S. Exec. Rep. No. 96-49 before the Committee of Foreign Relations, 96th Cong., 2d Sess., pp. 28-33.

¹⁵See 143 Congressional Record—Senate 11165, 105th Congress, 1st Session, October 23, 1997.

¹⁶Statement of Frank H. Murkowski on the U.S.-Mexico Maritime Boundary Treaty before the Committee on Foreign Relations. Federal Document Clearing House Congressional Testimony (September 25, 1997).

¹⁷Testimony of Mary Beth West, Deputy Assistant Secretary of Oceans and Space, U.S. Department of State. *Idem* (Emphasis by the author).

¹⁸The Domestic Petroleum Council, the Independent Petroleum Association of America, the International Association of Drilling Contractors, the Mid-Continent Oil and Gas Association and the National Ocean Industries Association. These six trade associations, including the American Petroleum Institute, represent virtually the entire oil and gas exploration and production and service industry in the Gulf of Mexico.

¹⁹Testimony of the American Petroleum Institute. *Idem*.

²⁰Jorge A. Vargas, "The Gulf of Mexico: A Binational Lake Shared by the United States and Mexico," *The Transnational Lawyer* vol. 9, no. 2 (fall 1996), pp. 459-482.