

OIL AND NATURAL GAS

A Legal Dispute Brewing in the Gulf of Mexico

(Part Two)

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A gigantic oil and natural gas deposit in the deepest portion of the Gulf of Mexico, the object of the ambitious "Baha Project" involving four major international oil companies, has led to a disagreement between Mexico and the U.S. over who has legal right to it. The deposit is situated in a submarine area whose boundaries have never been settled by a bilateral agreement; and, in addition, both countries have always sustained divergent positions with respect to the area's legal status. In Part Two of this essay, Professor Vargas presents us with evidence that may prove that Mexico does have the legal right to explore and exploit the oil and gas resources. The question remaining is whether Mexico is ready to claim it.

It is important to underline now that in late 1976, when Mexico and the United States established a 200 nautical mile zone along their respective coastlines, this demarcation left a relatively small triangular area in the central part of the Gulf of Mexico beyond the outer boundary of these limits. In other words, given the dimensions and physical configuration of this oceanic basin, an area where the respective 200 n.m. of each country do not overlap was left in the central part of the gulf, considering that the opposite coasts of the U.S. and Mexico are more than 400 n.m. apart in the center. Thus, the demarcation of the outer boundaries of the respective 200 n.m. zones left a "window" or a "hole" resembling

a triangle, with a 129 n.m. segment in the north of the gulf as its base (closely following the 29 Parallel north latitude and the intersection of the two 200 n.m. arcs drawn from the baselines off Yucatan and Texas as its vertex, pointing to the south). The area of this triangle covers some 25,000 square miles, approximately.¹

According to conventional international law, the waters in that triangle should be considered part of the high seas, "open to all States, whether coastal or land-locked," since they are located beyond the outer boundary of the

¹ See Hedberg Statement, *Three Treaties Establishing Maritime Boundaries between the United States and Mexico, Venezuela and Cuba: Hearing on S. Exec. Rep. No. 96-49 before the Committee on Foreign Relations, 96th Cong., Sess. at 28-33.*

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200 n.m.² The convention provides that the submarine area underneath the triangle, i.e., its seabed and the corresponding subsoil, should be considered part of the International Seabed Area, governed by Part XI of the Law of the Sea (LOS) Convention.³

It is precisely in relation to this “submarine triangle,” where the U.S. Geological Survey confirmed the existence of vast mineral resources, that Mexico and the United States have divergent legal interpretations. For Mexico, this area, and its resources are part of the International Seabed Area and, as a consequence, of the “Common Heritage of Humankind.”⁴ This means, *inter alia*, that “no State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof;” that “[All] rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act;” and, that “[No] State or natural or juridical person shall claim, acquire or exercise rights in respect to the minerals recovered from the Area except in accordance with this Part [XI]. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.”⁵ All the activities taking place in the Area, including exploration and exploitation of its resources, as well as marine scientific research,⁶ are to be carried out “for the benefit of mankind as a whole,”⁷ and to be strictly regulated by the International Seabed Authority.⁸

In simple terms, this language of the 1982 LOS Convention, as interpreted by Mexico, would mean that neither the United States, nor any of its corporations or nationals, are to be allowed to explore or exploit any of the mineral resources located within the triangle or to conduct any marine scientific research there.

It seems that the architect of Mexico’s position was Dr. Alberto Székely Sánchez, who served as the legal advisor of the Ministry of Foreign Relations (SRE) during the administration of President Miguel de la Madrid.⁹ However, as of today, the government of Mexico has not officially expressed its position on this matter.

The United States, in contrast to the Mexican position, has expressly reiterated in numerous international fora that it does not accept the tenor of Part XI of the LOS Convention, especially the powers granted to the International Seabed Authority and the Enterprise. It also rejects the notion that the area and its resources, form part of the Common Heritage of Humankind.¹⁰ Basically, the U.S. contends that the seabed and ocean floor, beyond the limits of national jurisdiction, are an underwater area subject to the same legal principles that apply to the high seas. Just as anyone can fish in the high seas, for example, the U.S. considers that its corporations and nationals have the right to explore and exploit the resources in that submarine area, as well as the right to conduct marine scientific research activities therein, since they are located clearly beyond any national jurisdiction. Therefore, for the United States the International Seabed Authority has neither regulatory powers, nor any control over states, their corporations or their nationals in carrying out any activities in the area. Extracting oil from the deep seabed is legally equivalent to catching fish from the high seas.

This may be the legal position that Shell Oil Corporation *et al* are prepared to adopt if the oil deposit located in the “submarine triangle” of the Gulf of Mexico offers good commercial prospects. The “Baha Project,” then, may only be the first step in getting technologically and legally prepared for that not-too-remote eventuality.

² See Arts. 86 and 87 of the 1982 United Nations Convention on the Law of the Sea (LOS Convention).

³ Art. 1, paragraph 1 of the 1982 LOS Convention defines “the Area” as “the seabed and ocean floor and subsoil thereof, *beyond the limits of national jurisdiction.*” (Emphasis added.)

⁴ See Art. 136 of the 1982 LOS Convention.

⁵ Art. 137, paragraphs 1, 2 and 3 of the LOS Convention.

⁶ Art. 143, LOS Convention.

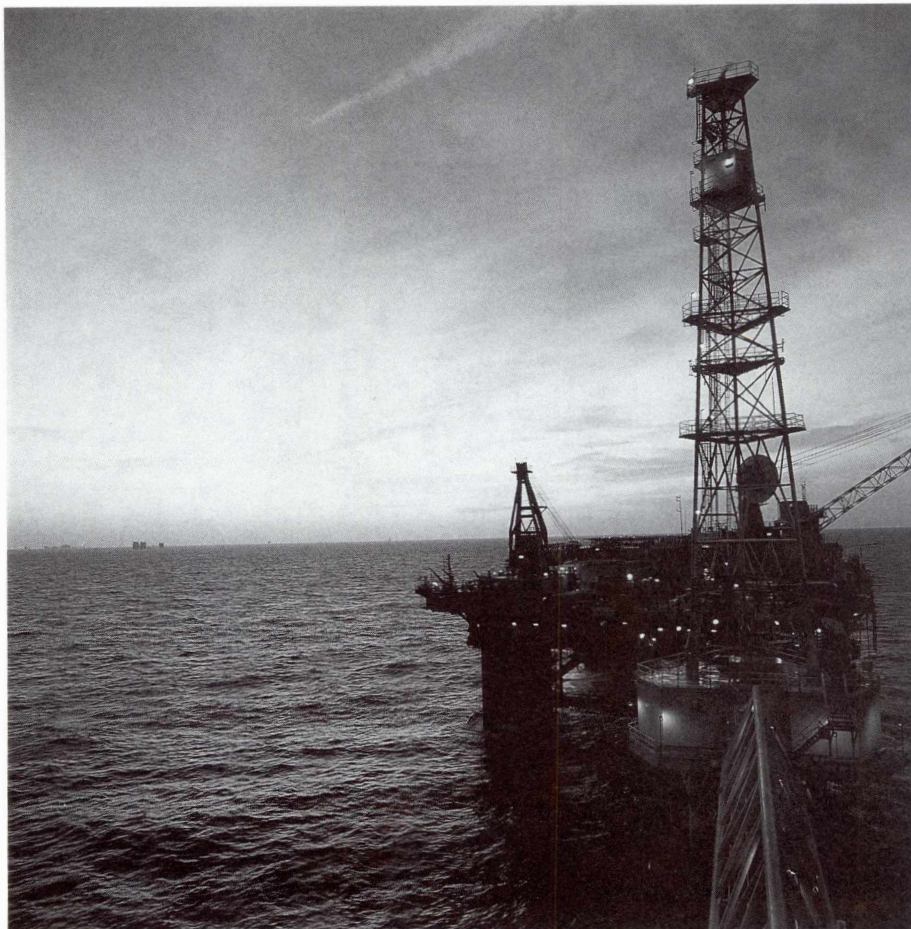
⁷ Art. 140, paragraph 1, LOS Convention.

⁸ See Arts. 150-155 and 156-169, LOS Convention.

⁹ This legal thesis was advanced by Dr. Székely in “A Commentary with Mexican View on the Problem of Maritime Boundaries in U.S. Mexican Relations,” *Natural Resources Journal* 155, 1982.

¹⁰ For the major objections advanced by the Reagan administration against Part XI, See *inter alia*, Statement by the President, “U.S. Policy and the Law of the Sea,” January 28, 1982, *Department of State Bulletin*, March 1982, p. 54; Statement by Ambassador James L. Malone before the U.S. House Merchant Marine and Fisheries Committee, February 23, 1982, May 1982, pp. 61-63, and also before the U.S. House Foreign Affairs Committee, August 12, 1982, October 1982, pp. 48-50.

For the United States extracting oil from the deep seabed is legally equivalent to catching fish from the high seas.



Photos courtesy of PEMEX International Press Office

All Mexicans will benefit if the submarine triangle is legally defined as a natural prolongation of its territory.

Two final but key questions remain, however: how did Mexico determine that the “submarine triangle” in the deepest portion of the Gulf of Mexico should be considered part of the International Seabed Area? And, is this really Mexico’s official position?

Pursuant to the 1982 LOS Convention, if the “submarine triangle” is a part of the International Seabed Area neither Mexico nor the United States can exploit it commercially. However the same convention may validly offer a more legally intriguing and economically practical alternative. Special attention should be given to Art. 76, paragraph 1, which states:

The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin,

or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend that distance.

What would happen if recent scientific studies proved that the deepest portion of the Gulf of Mexico is, indeed, “a natural prolongation of [Mexico’s] land territory to the outer edge of the continental margin?”

Regarding the outer boundary of the continental shelf, the convention provides two different regimes:

a. When the geomorphological continental shelf is less than 200 n.m., then the coastal state may legally extend the outer continental shelf boundary up to 200 n.m.; and,

b. When the continental shelf of the coastal state... beyond its territorial sea [extends] throughout the natural prolongation of its land territory to the outer edge



Environmental protection should be a priority when thinking about exploiting mineral resource deposits in deep-sea areas.

Mexico now has solid evidence to argue that the “submarine triangle” is definitely not a part of the International Seabed Area.

of the continental margin, then the outer boundary of the continental shelf may be legally prolonged to coincide with the outer edge of the continental margin.¹¹

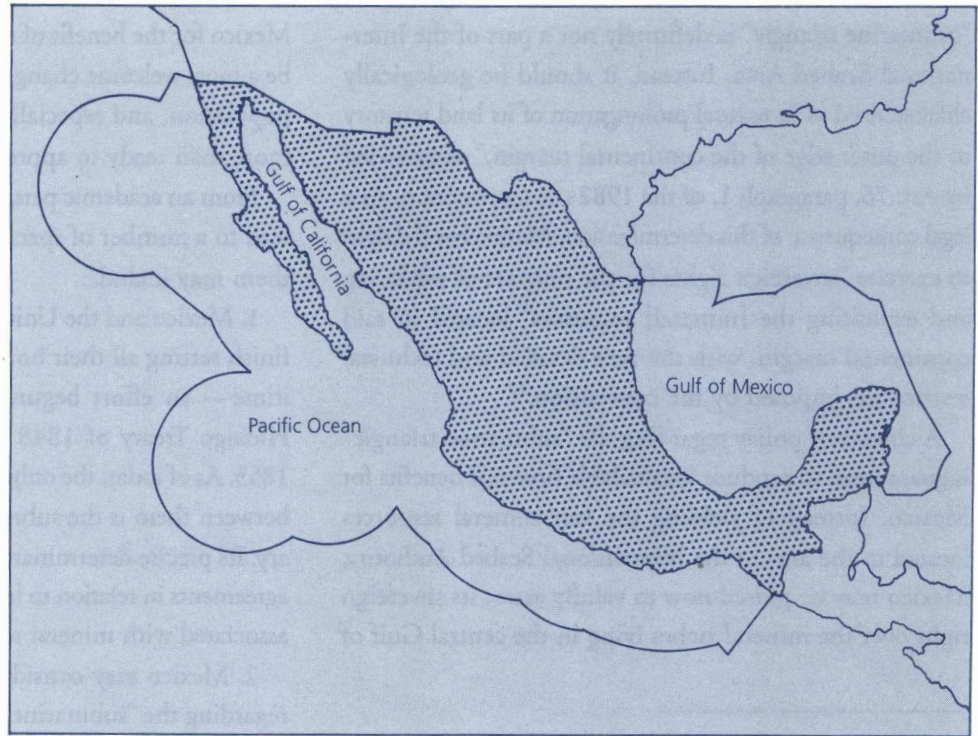
Apparently, Mexico adopted its decision based on the factual situation contemplated in paragraph (a). Most probably, this decision was made without having solid technical and scientific evidence to back it up. Technical studies up until that time had consistently suggested that Mexico’s continental shelves in the gulf did not approach, let alone exceed the 200 n.m. limit. This must have induced Mexico to favor the decision that its natural continental shelf did not even reach the 200 n.m. outer boundary.

¹¹ The 1982 LOS Convention defines the “continental margin as comprising the submerged prolongation of the land mass of the coastal state and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.” See Art. 76, paragraph 3.

Under this mistaken assumption, Mexico declared—through its legal advisor—that the triangular submarine area beyond the 200 n.m. limit in the deepest part of the Gulf of Mexico was not to be considered a continental shelf but, rather, an area forming a portion of the International Seabed Area, a triangular submarine area beyond the country’s national jurisdiction. Mexico probably adopted what may have been a rush decision without realizing that it was technically unsound and scientifically unproven. However, when the decision was made there was no scientific or geological data proving that the “prolongation of [Mexico’s] land territory [extended] to the outer edge of the continental margin,” which is the case in light of the latest and most advanced geological studies.

Recent seismic and geological studies conducted by the Department of Geology of the University of Texas at Austin characterize the structure of the Gulf of Mexico

basin as a “geological continuum” contained in a semi-enclosed area.¹² The uniqueness of the gulf’s geological structure may be supported by the confluence of several distinct features. First, there are a number of “naturally formed carbonate platforms, such as those off Campeche and Florida.”¹³ Second, continental margins come from opposite sides of the basins and tend to meet and merge in the middle of the gulf.¹⁴ This is a most important scientific discovery. In essence, it means that the “submarine triangle” is located precisely



Mexico's current coastal limits.

¹² See Richard T. Buffer, “Seismic Stratigraphy of the Deep Gulf of Mexico Basin and Adjacent Margins,” in *The Geology of North America, Vol. J: The Gulf of Mexico Basin* 353, Amos Salvador, ed., 1991.

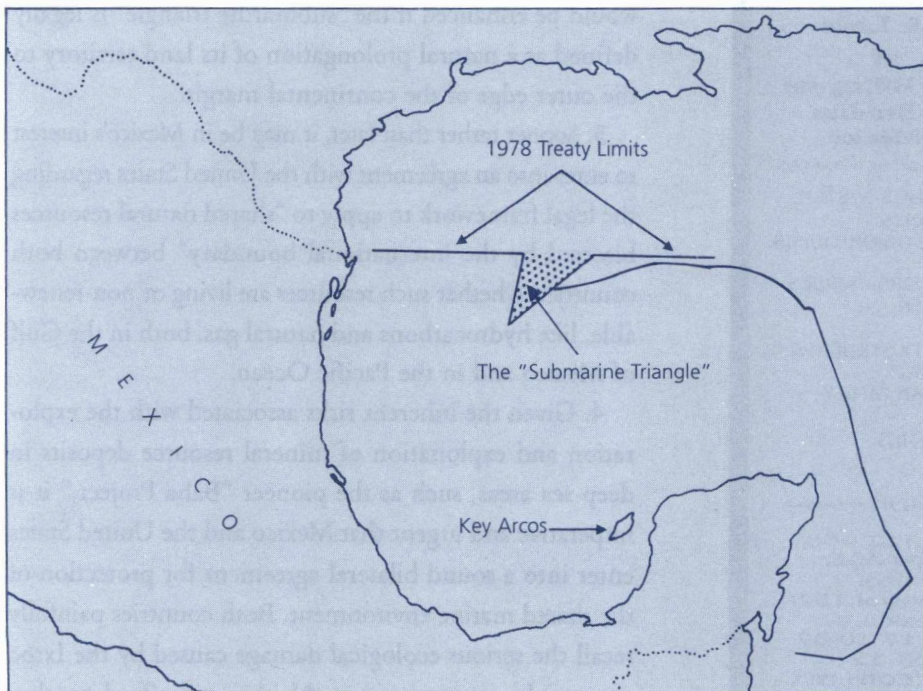
¹³ *Idem*, p. 355.

¹⁴ *Idem*, p. 377.

where the continental margins from the U.S. and Mexico merge in the middle of the basin. For Mexico, this indicates that its continental shelf extends beyond the 200 n.m. limit, and accordingly, it would have “sovereign rights for the purpose of exploring and exploiting any

natural resources located in said submarine area, in accordance with the 1982 LOS Convention.¹⁵ Third, the somewhat semicircular shape of this basin also contributes to its uniqueness. For millions of years, sediments have gradually covered the gulf’s submarine topography, from continental shelves and slopes to the abyssal points and have concentrated in the deepest part of the gulf due to gravity.¹⁶

Based on these studies, published in 1991, Mexico now has solid evidence to argue that the



Given the configuration of the Gulf of Mexico, an area where the respective 200 n.m. limits of Mexico and the U.S. do not overlap left a “window” resembling a triangle beyond the outer boundaries of either country.

¹⁵ Art. 77, paragraph 1.

¹⁶ *Idem*, p. 376.

“submarine triangle” is definitely not a part of the International Seabed Area. Instead, it should be geologically characterized as “a natural prolongation of its land territory to the outer edge of the continental margin,” as provided by Art. 76, paragraph 1, of the 1982 LOS Convention. As a legal consequence of this determination, Mexico has the right to exercise “sovereign rights for the purpose of exploring and exploiting the [mineral] resources” located in said continental margin, with the very detailed and technical restrictions imposed by the convention.¹⁷

A change of policy regarding the “submarine triangle” is guaranteed to produce incalculable financial benefits for Mexico. Instead of yielding the vast mineral resources located in the area to the International Seabed Authority, Mexico may be poised now to validly assert its sovereign right over the mineral riches lying in the central Gulf of

Mexico for the benefit of the Mexican people. This would be a most welcome change of policy that Mexico’s current population, and especially its future generations, will be more than ready to appreciate.

From an academic perspective, the “Baha Project” could lead to a number of specific recommendations. Some of them may include:

1. Mexico and the United States may finally proceed to finish setting all their boundaries—both land and maritime—an effort begun as a result of the Guadalupe Hidalgo Treaty of 1848 and the Gadsden Purchase of 1853. As of today, the only boundary still to be agreed upon between them is the submarine continental shelf boundary. Its precise determination is likely to facilitate reaching agreements in relation to legal and other property questions associated with mineral resources in submarine areas.

2. Mexico may consider declaring its official position regarding the “submarine triangle.” In light of the results that the “Baha Project” expects in the near future, Mexico may reexamine the legal and technical complexities associated with the existence of mineral resources in the central part of the Gulf of Mexico and the benefits that present and future generations of Mexicans could reap from exploiting them. Definitely, Mexico’s official position would be enhanced if the “submarine triangle” is legally defined as a natural prolongation of its land territory to the outer edge of the continental margin.

3. Sooner rather than later, it may be in Mexico’s interest to enter into an agreement with the United States regarding the legal framework to apply to “shared natural resources bisected by the international boundary” between both countries, whether such resources are living or non-renewable, like hydrocarbons and natural gas, both in the Gulf of Mexico and in the Pacific Ocean.

4. Given the inherent risks associated with the exploration and exploitation of mineral resource deposits in deep-sea areas, such as the pioneer “Baha Project,” it is imperative and urgent that Mexico and the United States enter into a sound bilateral agreement for protection of the shared marine environment. Both countries painfully recall the serious ecological damage caused by the Ixtoc catastrophe some years ago. Neither can afford another similar environmental disaster. ❧

¹⁷ See Art. 76, paragraphs 4-8, 1982 LOS Convention. During the work of the Third U.N. Conference on the Law of the Sea, reaching agreement on the outer boundary of the continental shelf was one of the most controversial and elusive points on the agenda of its Second Commission.



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