

**ACCESS TO OUR BACKYARD RESERVES: A  
FINAL RESOLUTION OF THE WESTERN  
GULF OF MEXICO'S MARITIME  
BOUNDARIES**

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## I. INTRODUCTION

When we turn to foreign lands to supply our energy needs, then I can't help but feeling that somewhere along the way we have surrendered something of our freedom.<sup>1</sup>

As the earth and humanity enter into a new millennium, many important questions arise concerning the continued support of the world's ever-growing population. New technology has been developed to help support and maintain our human race, although certain legal and internationally significant issues may impede its use. More specifically, one of the most pointed issues affecting the earth in this new millennium is the

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<sup>1</sup> U.S. Secretary of the Interior Manuel Lujan, Jr., Speech at Midland, Texas (Nov. 10, 1989) in *THE MACMILLAN DICTIONARY OF POLITICAL QUOTATIONS* 156-57 (Lewis D. Eigen & Jonathan P. Siegel eds., 1993).

exploration, production, and conservation of the earth's natural resources and energy—a process necessary to sustain and provide for our population. Petroleum production, which helps produce much of the world's energy, is essential.<sup>2</sup> Without access to crucial mineral exploration and production, the world's economy and population are sure to face a major impediment.

Not surprisingly, the Gulf of Mexico, which encompasses approximately 3.9 million square kilometers,<sup>3</sup> has been described as “one of the foremost petroleum provinces in the world.”<sup>4</sup> Additionally, drilling in the Gulf of Mexico accounts for approximately 90% of U.S. offshore oil and gas production.<sup>5</sup> Therefore, it is easy to understand the economic importance of access to the Gulf of Mexico's mineral-rich reserves. Fortunately, the oil and gas industries of both the United States and Mexico are now able to gain access to the petroleum-rich reserves in the Western Gulf of Mexico, thanks to the recent ratification of the Treaty with Mexico on the Delimitation of the Continental Shelf (“TMDCS”).<sup>6</sup>

The TMDCS, an offshoot of the Treaty on Maritime Boundaries<sup>7</sup> (“TMB”), was ratified by both the United States and

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<sup>2</sup> See American Petroleum Institute, *Oil, Natural Gas, and Our Environment*, available at <http://www.api.org/ehs/gulf/gulf-1.htm> (stating that as of 1994, oil composed 39% and natural gas composed 24% of America's total energy sources) (last visited Jan. 30, 2001).

<sup>3</sup> David B. Sheinbein, *Delimitation of Western Gap Land in the Gulf of Mexico: A Need for Diplomatic Resolution*, 6 TUL. J. INT'L & COMP. L. 583, 584 (1998).

<sup>4</sup> Richard Nehrig, *Oil and Gas Resources*, in THE GEOLOGY OF NORTH AMERICA, VOL. J: THE GULF OF MEXICO BASIN 445, 446 (Amos Salvador ed., 1991). Currently, the United States has records of over 27,000 existing reservoirs of hydrocarbons and petroleum in the Gulf of Mexico. Telephone Interview with Ralph Ainger, Chief of Leasing Division, Minerals Management Service (Jan. 12, 2000). Mr. Ralph Ainger headed the delegation charged with working along side the U.S. Department of State in efforts to seek ratification of the TMDCS. *Id.*

<sup>5</sup> See American Petroleum Institute, *Energy and the Gulf of Mexico: The Petroleum Industry in the Gulf of Mexico*, available at <http://www.api.org/ehs/gulf/oldpage.htm> (last visited Mar. 21, 2001).

<sup>6</sup> See Treaty Between the Government of the United States of America and the Government of the United Mexican States on the Delimitation of the Continental Shelf in the Western Gulf of Mexico Beyond 200 Nautical Miles, June 9, 2000, U.S.-Mex., S. TREATY DOC. NO. 106-39 (2000) [hereinafter TMDCS].

<sup>7</sup> Treaty on Maritime Boundaries Between the United States of America and the United Mexican States, May 4, 1978, U.S.-Mex., 17 I.L.M. 1073 [hereinafter TMB].

Mexico in an attempt to set each country's maritime jurisdictional boundaries in the Western Gulf of Mexico.<sup>8</sup> The TMB, the initial treaty dealing with the delimitation of the Gulf of Mexico's maritime boundaries, extended the maritime boundaries of each country as much as 200 nautical miles into the Gulf of Mexico.<sup>9</sup> The boundary lines extending off of each country's shorelines did not meet leaving approximately 4.5 million acres of unaddressed submarine area in the Gulf not subject to the jurisdictional rights of either the United States or Mexico.<sup>10</sup> Specifically, the TMB created both an Eastern and Western Gap,<sup>11</sup> two separate areas of unclaimed territory. Herein lied the issue that most directly affected the petroleum production of both the United States and Mexico—the division of the unaddressed submarine land in the Western Gap (the Eastern Gap being tied up in dispute with Cuba).<sup>12</sup>

The relevant area under consideration, located in the Gulf's Western Shelf and frequently referred to as the 'Doughnut Hole' or 'Western Gap,' contains what geologists believe could be the world's fourth largest oilfield.<sup>13</sup> Fortunately, fruitful negotiations between the United States and Mexico led to the recent signing of the TMDCS, thus giving both nations access to the Western Gap.<sup>14</sup>

The two countries, however, had to first overcome obstacles

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8 TMDCS, *supra* note 6, at 1.

9 See TMB, *supra* note 7, at 1074.

10 Written Statement of the American Petroleum Institute, the 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 submitted to the Senate Committee on Foreign Relations Hearing on the Ratification of the U.S.-Mexico Maritime Boundary Treaty (Sept. 25, 1997) [hereinafter API Statement], available at 1997 WL 603206.

11 See *U.S. and Mexico Sign Treaty Creating Boundary on Continental Shelf in Gulf*, FOSTER NAT. GAS REP., June 15, 2000, at 17, available at 2000 WL 8690245.

12 See *Gulf of Mexico Western Gap Division Agreed, Exploration Pending*, OIL & GAS J., July 10, 2000, at 30, available at 2000 WL 14257607 [hereinafter *Western Gap Division Agreed*] (noting that an Eastern Gap that exists in the Gulf of Mexico involving the United States, Mexico, and Cuba; however, because of political tensions with Cuba, both the United States and Mexico agree that they will not soon resolve the boundary disputes in the Eastern Gap).

13 Sheinbein, *supra* note 3, at 587.

14 See *Western Gap Division Agreed*, *supra* note 12.

associated with the TMB in order to successfully ratify the TMDCS. Particularly, there were problems rooted in the premise that unclaimed submarine land, such as the Western Gap area, was subject to the international instrument known as the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”).<sup>15</sup> Under the UNCLOS, this area may have been considered as falling under the authority and exclusive jurisdiction of the International Sea-Bed Authority, instead of under the jurisdiction of individual countries.<sup>16</sup> The problematic nature of the delimitation negotiations stemmed from the fact that United States and Mexico interpreted the reach of the UNCLOS instrument differently with respect to the legal ability of an individual country to explore and mine in the Western Gap or ‘Doughnut Hole.’<sup>17</sup>

The purpose of this Comment is to outline the development of the TMDCS and to explain its legal and international relevance. Part II will introduce the history and ratification procedures of the background instrument of the TMDCS—the TMB. Second, it will explain the significance of the previously unclaimed Western Shelf, highlighting its value to many worldwide industries such as those of oil and gas exploration and production.

Part III of this Comment will discuss the relevance of the UNCLOS, and explain how the application of the UNCLOS affected the delimitation negotiations of the maritime boundaries in the Gulf of Mexico. It will also distinguish between the United States’ and Mexico’s differing interpretations on the application of the UNCLOS. Finally, Part

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15 See United Nations Convention on the Law of the Sea, with Annexes, and the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, with Annex, July 29, 1994, S. Treaty Doc. No. 103–39 (1994), available at 1992 WL 725374 (Treaty) [hereinafter UNCLOS].

16 See United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, arts. 136, 156–58, UN Doc. A/CONF.62/122, (1982) reprinted in UNITED NATIONS, OFFICIAL TEXT OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA WITH ANNEXES AND INDEX, UN Sales No. E.83.V.5 (1983), 21 I.L.M. 1261 (1982) [hereinafter Law of the Sea]; see also Jorge A. Vargas, *The Gulf of Mexico: A Binational Lake Shared by the U.S. and Mexico: A Proposal*, 9 TRANSNAT’L LAW 459, 465 (1996) [hereinafter Vargas I].

17 See Sheinbein, *supra* note 3, at 594.

III will explain the manner in which the UNCLOS issue was resolved.

Part IV will explain why the boundary lines were delimited as they were, and the method by which they will be implemented. Emphasis will be put on the use of the equidistance principle of demarcation. Additionally, Part IV will concentrate on other U.S. maritime boundary treaties as precedent and the methods used in implementing them.

Part V of this Comment will discuss the post-TMB delimitation negotiations of the Western Gap, leading up to the recent signing and ratification of the TMDCS. This discussion will examine Mexico's primary concerns over the matter and its attempt to maintain its national sovereignty. Particular attention will also be directed towards an anti-dumping petition against Mexico by Save Domestic Oil, a private U.S.-based oil and gas organization, as well as Mexico's decision to retain its gas tariff against the United States in retaliation to the anti-dumping petition. Part V will further discuss ten suggestions that were proposed for the delimitation of the Western Gap and their applicability in future maritime negotiations. Lastly, it will show how the United States and Mexico finally came to an agreement that led to the current TMDCS.

Part VI will outline the provisions and articles contained in the finalized TMDCS. This discussion will emphasize the manner in which the TMDCS directly addresses Mexico's main concern—that of potential transboundary hydrocarbon reserves. Particular attention will be paid to the procedures each party to the TMDCS will follow in the event that transboundary reserves in the Gulf of Mexico are discovered.

Part VII of this Comment will discuss how the United States and the Minerals Management Service plan to use their newly-acquired submarine land to the world's benefit. Special emphasis will be put on the upcoming leases that the Minerals Management Service plans to implement.

This Comment will conclude by illustrating the importance of the recent delimitation of these maritime boundaries, and explaining how the delimitation will help the world's economy, as technological advances have now made it possible to gain access to potentially large mineral reserves in the Western Gulf

of Mexico.

## II. HISTORY OF THE TREATY ON MARITIME BOUNDARIES

### A. Proposal

With the signing of the Treaty of Guadalupe-Hidalgo, following the U.S.-Mexican War in 1848, boundary negotiations initially commenced between the United States and Mexico.<sup>18</sup> The Treaty of Guadalupe-Hidalgo demarcated the land boundaries between the two countries, giving the United States possession of the land from Texas to California.<sup>19</sup> Historically, negotiations of land boundary issues between the United States and Mexico have been sensitive and strained, foreshadowing the negotiations of the maritime boundary areas between these two countries.<sup>20</sup>

It was not until the 1970s, over 120 years after the Treaty of Guadalupe-Hidalgo was passed, that both the United States and Mexico began legislative attempts to establish maritime jurisdictional boundaries in the Gulf of Mexico.<sup>21</sup> These negotiations eventually led to the TMB, as it was known before the TMDCS was signed and ratified.<sup>22</sup> During the Carter administration, “[t]he United States claim[ed] a territorial sea of 3 nautical miles in breadth, . . . a fishery conservation zone of 200 nautical miles in breadth, and sovereign rights for the purpose of exploring and exploiting the resources of the continental shelf.”<sup>23</sup> On the other hand, Mexico was one of the

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18 See Treaty on Peace, Friendship, Limits, and Settlement, Feb. 2, 1848, U.S.-Mexico, art. V, 9 Stat. 922, T.S. No. 207.

19 *Id.*

20 See Jorge A. Vargas, *Mexico's Legal Regime Over Its Marine Spaces: A Proposal for the Delimitation of the Continental Shelf in the Deepest Part of the Gulf of Mexico*, 26 U. MIAMI INTER-AM. L. REV. 189, 238 (1995) [hereinafter Vargas II].

21 See Vargas I, *supra* note 16, at 461.

22 See *id.* at 463.

23 Mark B. Feldman & David Colson, *The Maritime Boundaries of the United States*, 75 AM. J. INT'L L. 729, 730 (1981) citing the Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 15 U.S.T. 1606, 516 U.N.T.S. 205; The Fishery Conservation and Management Act, 16 U.S.C. § 1801, (1984); and The Convention on the Continental Shelf, Apr. 29, 1958, 15 U.S.T. 471, 516 U.N.T.S. 205.

first countries to establish a 200 nautical mile exclusive economic zone ("EEZ") demarcating its territorial jurisdiction in 1976.<sup>24</sup> This was achieved by amending Article 27 of the Mexican Constitution during President Echeverría's administration.<sup>25</sup> Text inserted after paragraph seven provides:

The Nation will exercise control over an area situated outside the territorial seas and adjacent to them, under the rights of sovereignty and the jurisdiction that the laws of the Congress determine. The exclusive economic zone will extend to two hundred nautical miles from where the territorial seas start. In those cases in which this extension produces conflict with the exclusive economic zones of other countries, the boundaries of these zones will be determined by means of agreements with those countries.<sup>26</sup>

The creation of preliminary maritime zones between Mexico and the United States prompted further negotiations of boundaries between the two countries, leading to the Exchange of Notes on November 24, 1976.<sup>27</sup> Pursuant to the Exchange of Notes, the maritime boundaries were set at 200 nautical miles offshore of each respective coastline.<sup>28</sup> Because the boundaries established in the Exchange of Notes were merely "provisional," further agreement was necessary.<sup>29</sup> As a result, the United

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24 Jorge A. Vargas, *U.S. Marine Scientific Research Activities Offshore Mexico: An Evaluation of Mexico's Recent Regulatory Legal Framework*, 24 *DENV. J. INT'L L. & POL'Y* 1, 36 (1995); see also Vargas I, *supra* note 16, at 462.

25 "Decree on Constitutional Change to Account for Exclusive Economic Zone beyond Limits of Territorial Sea," D.O., Feb. 6, 1976, *reprinted in* 15 *I.L.M.* 380, 380-81; see also Vargas I, *supra* note 16, at 462; *Constitución Política de los Estados Unidos Mexicanos* [CONST.], art. 27 [hereinafter MEX. CONST.].

26 MEX. CONST. art. 27. On a larger scale, Article 27 of the Mexican Constitution also contains the provisions that regulate Mexico's water rights, as well as its physical resources. See Jose Ramon Cossio Diaz, *Constitutional Framework for Water Regulation in Mexico*, 35 *NAT. RESOURCES J.* 489, 489 (1995); see also *Introduction to the Regulatory Law to Article 27 of the Constitution in the Petroleum Sector* (West 1997), at 1997 WL 771479 (pointing out that Article 27 is extremely important to dominion and control over Mexican physical resources).

27 Agreement Effected by Exchange of Notes Signed at Tlatelolco, Mexico, Nov. 24, 1976, U.S.-Mex., 29 *U.S.T.* 196 [hereinafter Exchange of Notes]; see also Vargas I, *supra* note 16, at 462.

28 Exchange of Notes, *supra* note 27.

29 See Vargas II, *supra* note 20, at 191 (explaining that the boundaries listed in

States and Mexico completed a formal agreement in 1978.<sup>30</sup> On May 4, 1978, then-U.S. Secretary of State, Cyrus Vance, signed the Treaty on Maritime Boundaries in Tlatelolco, Mexico.<sup>31</sup> The terms of the TMB, establishing the jurisdictional maritime boundaries of both the United States and Mexico, were identical to those provided in the Exchange of Notes.<sup>32</sup> Pursuant to Mexican Constitutional law,<sup>33</sup> two-thirds of the Mexican Senate ratified the TMB very shortly after it was signed in Tlatelolco,<sup>34</sup> and it became known as the *Decreto de Promulgación del Tratado Sobre Límites Marítimos entre los Estados Unidos Mexicanos y los Estados Unidos de América*.<sup>35</sup>

### B. U.S.'s Delay in Ratification of the TMB

Much to Mexico's dismay, the United States was not as accepting of the TMB. As late as September 16, 1980, the U.S. Senate "indefinitely postponed consideration" of the treaty when certain questions arose concerning the presence of oil and gas deposits in the deepest part of the Gulf.<sup>36</sup> As one commentator stated in an attempt to describe U.S. concerns: "[b]ecause of the

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the Exchange of Notes were only provisional in character).

<sup>30</sup> See TMB, *supra* note 7.

<sup>31</sup> Vargas I, *supra* note 16, at 463.

<sup>32</sup> See TMB, *supra* note 7; see also Sheinbein, *supra* note 3, at 589 (stating that pursuant to the TMB, each country's national jurisdiction extended seaward 200 nautical miles).

<sup>33</sup> See MEX. CONST. art. 76, para. 1 (stating the Mexican Constitution provides among the "exclusive powers of the Senate" the power "to approve the international treaties and diplomatic conventions subscribed by the Executive of the Union") (translation by Jorge Vargas in Vargas II, *supra* note 20, at 220 n.1612).

<sup>34</sup> Vargas II, *supra* note 20, at 220.

<sup>35</sup> John R. Schmertz & Mike Meier, *Mexico Publishes Treaty with U.S. Regarding Maritime Boundaries in Gulf of Mexico and Pacific Ocean*, 4 INT'L L. UPDATE 35, 35 (Mar. 1998). The TMB was passed pursuant to Mexico's Federal Oceans Act ("FOA") (Ley Federal del Mar de México), which provides that in Mexico's marine spaces, "the nation will exercise the powers, rights, jurisdictions, and authorities established in this Law, in accordance with the Political Constitution of the United Mexican States and International Law." Ley Federal del Mar de México, D.O., Jan. 8, 1986, reprinted in 25 I.L.M. 889, 890. The Mexican FOA was designed to codify, update, and systematize the domestic legislation in force regulating the Mexican marine environment, resources, and environmental protection. See *id.* at 900.

<sup>36</sup> Vargas I, *supra* note 16, at 463; see also 126 CONG. REC. S25550 (daily ed. Sept. 16, 1980).

serious and permanent consequences that derive from this act of national sovereignty, the establishment of national boundaries is one of the most important decisions a nation can make under international law.”<sup>37</sup> This statement illustrates the serious nature of determining national boundaries, and may explain the reasoning behind the United States’ long and detailed consideration of the demarcation of its maritime boundaries within the Gulf of Mexico.<sup>38</sup>

Dr. Hollis D. Hedberg, a former executive of Gulf Oil Corporation and professor emeritus of geology at Princeton University may have first put doubt into the mind of the U.S. Senate.<sup>39</sup> Dr. Hedberg indicated to the Senate Committee on Foreign Relations that the central Gulf of Mexico contained “some of the most promising, although very deep-water, petroleum prospective acreage off the U.S. coast anywhere.”<sup>40</sup> A U.S. Geological Survey, which was conducted at the U.S. Senate’s request, verified Dr. Hedberg’s statement.<sup>41</sup> The statement brought attention to the fact that there did indeed exist these large deposits of hydrocarbons and natural gas in the Gulf of Mexico, but they were unfortunately located within Mexico’s EEZ, pursuant to Article 1 of the TMB.<sup>42</sup> In addition, Dr. Hedberg’s thesis opposed the use of Mexican offshore islands as base points from which to measure the 200-mile zone demarcating the maritime boundary in the Gulf of Mexico—

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37 Vargas II, *supra* note 20, at 190.

38 *See id.* at 191–92 (stating that the United States has historically maintained quite clearly defined jurisdictional boundary lines, therefore avoiding conflicts which typically may involve debates with neighboring countries that are emotionally-draining and politically-charged).

39 *See* Vargas I, *supra* note 16, at 464.

40 *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 on Foreign Relations, 96th Cong., 2nd Sess., at 29 (1980)* (statement of Hollis Hedberg, Professor Emeritus of Geology, Princeton University, Princeton, N.J.) [hereinafter Hedberg Statement].

41 Vargas I, *supra* note 16, at 464; *see also U.S., Mexico Advance Gulf Treaty Effort: Move Could Open Up ‘Donut Hole’ Acreage*, PLATT’S OILGRAM NEWS, Nov. 17, 1997, available at 1997 WL 8881802 [hereinafter *Open Donut Hole*].

42 Vargas II, *supra* note 20, at 221 (explaining that the mineral-rich areas to which Dr. Hedberg was referring were situated south of the U.S. boundary, within Mexico’s EEZ); *see also* TMB, *supra* note 7, at 1074.

which led the U.S. Senate to question the implementation of the TMB.<sup>43</sup> After the U.S. Geological Survey supporting Dr. Hedberg's statements was completed in 1981, no further action was taken to ratify the TMB until the mid-1990s.<sup>44</sup> However, apart from the potential oil and gas issue that Dr. Hedberg addressed, there was no other significant opposition to TMB ratification.<sup>45</sup>

A combination of catalysts prompted the U.S. Senate to consider once again ratification of the TMB in the mid-1990s. First, Mark Feldman, Deputy Legal Advisor to the U.S. Department of State, was successful in persuading the U.S. Senate that Dr. Hedberg's statement lacked legal merit.<sup>46</sup> Mr. Feldman pointed out that, contrary to Dr. Hedberg's thesis, international law has long approved the use of islands as base points in demarcating maritime boundaries under a coastal state's jurisdiction or sovereignty.<sup>47</sup> Second, further technological advances made it possible for deepwater exploration within the deepest parts of the Gulf of Mexico, which were located in over 10,000 feet of water.<sup>48</sup> In order for U.S.-based oil and gas companies to begin exploration in these deep-water areas that lie beyond the U.S.'s national jurisdiction, it was imperative that the jurisdictional boundaries be formally established.<sup>49</sup> Third, six domestic energy groups<sup>50</sup> were largely responsible for urging

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43 See Hedberg Statement, *supra* note 40, at 29.

44 See API Statement, *supra* note 10.

45 See *id.*

46 See *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 on Foreign Relations, 96th Cong., 2nd Sess., at 22-23* (statement of Mark B. Feldman, Deputy Legal Advisor, U.S. Dept. of State) [hereinafter Feldman statement]; see also Sheinbein, *supra* note 3, at 592; Vargas II, *supra* note 20, at 221

47 Vargas II, *supra* note 20, at 221-22 and nn.131, 172; see also *Fisheries Case (U.K. v. Nor.)*, 1951 I.C.J. 116, 134 (Dec. 18); Law of the Sea: Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 15 U.S.T. 1606, 1608.

48 See Sheinbein, *supra* note 3, at 593; see also Vargas I, *supra* note 16, at 459-60.

49 See *International News: U.S. Energy Groups Request Ratification of Border*, ENERGY ALERT, June 9, 1997, available at 1997 WL 9035618 [hereinafter *International News*] (stating that improved technology and new federal tax incentives for deep-water drilling have encouraged oil companies to drill farther out into the Gulf of Mexico, creating an urgent need for formal ratification of the maritime borderline).

50 See *id.* (identifying the six energy groups as the American Petroleum Institute,

“prompt ratification” of the TMB, explaining that this unresolved issue was hindering oil and gas exploration in the Gulf of Mexico.<sup>51</sup> These six energy groups urged Senate Majority Leader Trent Lott of Mississippi and Senate Foreign Relations Committee Chairman Jesse Helms of North Carolina to work towards ratification of the TMB.<sup>52</sup>

On September 25, 1997, the six energy groups submitted a written statement to the Senate Committee on Foreign Relations, outlining particular reasons for their support of the ratification of the TMB.<sup>53</sup> Among others, the main reasons included:

*Consistent with International Law Principles:* The principles used by the State Department in negotiating the maritime treaty were generally recognized international law principles at the time the treaty was negotiated and have since been reaffirmed in other negotiations. This is significant because, if the boundary were being negotiated today, those same principles of international law would be used and would result in virtually the same boundary.

*Use of Islands:* The principles used in negotiating the boundary were, and remain, consistent with the general U.S. interest of giving full effect to islands off the U.S. coast. For example, the boundary agreement with Cuba gives full effect to the Florida Keys and the Dry Tortugas. The U.S. has other important island interests, including the Alexander Archipelago in southeastern Alaska affecting the maritime boundary with Canada.

*U.S. Economic and Energy Interests:* When this treaty was last debated, technology did not exist to allow companies to evaluate or develop the deeper waters of the Gulf immediately adjacent to the boundary. Today,

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the Independent Petroleum Association of America, the National Ocean Industries Association, the Mid-Continent Oil & Gas Association, the Domestic Petroleum Council, and the International Association of Drilling Contractors).

51 *Id.*

52 *Id.*

53 API Statement, *supra* note 10.

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. To ensure the orderly development of these valuable deep water Gulf of Mexico resources and maximize federal revenues, it is in the interest of the U.S. to promptly ratify the treaty and to commence negotiations on the Western Gap as soon as possible thereafter.

*Gap Negotiations:* Senate ratification of the treaty will clear the path for further negotiations between the U.S. and Mexico 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 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.<sup>54</sup>

The U.S. Senate finally ratified the TMB on October 23, 1997.<sup>55</sup> The TMB had been left in a state of "legal limbo" for over eighteen years, "collecting dust in the archives of the U.S. Senate."<sup>56</sup> The United States and Mexico then exchanged Instruments of Ratification on November 13, 1997, just as Mexican President Ernesto Zedillo was visiting Washington, D.C.<sup>57</sup> The treaty entered force between the United States and Mexico on November 13, 1997.<sup>58</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> 143 CONG. REC. S11165-02 (daily ed. Oct. 23, 1997); *see also* Sheinbein, *supra* note 3, at 593 (describing some of the reasons the Senate passed the Treaty).

<sup>56</sup> Vargas I, *supra* note 16, at 463.

<sup>57</sup> *See Open Donut Hole, supra* note 41.

<sup>58</sup> *See id.*

*C. Effect of TMB—'Western Gap' or 'Doughnut Holes'*

Once the U.S. Senate ratified the U.S.-Mexico TMB, the maritime jurisdictional boundary lines were extended to 200 nautical miles off of each country's respective coastlines.<sup>59</sup> Because the boundary lines did not overlap in some areas, there was a Western Gap of 4.5 million acres of seabed, roughly the size of the state of Iowa, left undivided by the TMB.<sup>60</sup> The Western Gap is located between Texas and Mexico's Yucutan Peninsula.<sup>61</sup> The economic significance of this area for petroleum exploration is great. The unexplored sources of hydrocarbons and natural gas in the deepest part of the Gulf of Mexico—beyond the maritime boundary regions—contain between 2.24 billion to 21.99 billion barrels of oil and 5.48 trillion to 44.40 trillion cubic feet of gas.<sup>62</sup> It has been reported that both countries stand to gain millions of dollars in royalties, as well as increased economic benefits, if exploration and production of oil and gas in the Western Gap is undertaken.<sup>63</sup>

It is understandable that access to the Western Gap is of extreme importance to both the United States and Mexico for legal, economic, environmental, and national security reasons.<sup>64</sup>

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<sup>59</sup> TMB, *supra* note 7 (listing the geodetic lines connecting the longitude/latitude coordinate points, forming the maritime boundaries between the United States and Mexico).

<sup>60</sup> See Eric Kronenwetter, *U.S., Mexico Make Progress on 'Doughnut Hole,'* OIL DAILY, Aug. 2, 1999, available at 1999 WL 10013530 [hereinafter Kronenwetter II]; see also *Open Donut Hole*, *supra* note 41. As discussed *supra* note 12 and accompanying text, there is also an Eastern Gap left undivided by the TMB, but complications with Cuba will make further delimitation of this area difficult. Margaret L. Tomlinson, *Recent Developments in the International Law of the Sea*, 32 INT'L L. 599, 605 (1998).

<sup>61</sup> TMDCS, *supra* note 6, at Annex 1–2.

<sup>62</sup> UNITED STATES DEPARTMENT OF THE INTERIOR, OPEN-FILE REPORT 81–265, GEOLOGICAL FRAMEWORK, PETROLEUM POTENTIAL, PETROLEUM-RESOURCE ESTIMATES, MINERAL AND GEOTHERMAL RESOURCES, GEOLOGIC HAZARDS, AND DEEP-WATER DRILLING TECHNOLOGY OF THE MARITIME BOUNDARY REGION IN THE GULF OF MEXICO 1 (Richard B. Powers, ed. 1981); Vargas I, *supra* note 16, at 460.

<sup>63</sup> Kronenwetter I, *supra* note 60.

<sup>64</sup> See Vargas II, *supra* note 20, at 232; see also Marisa Samuelson, *Bilateral Agreements Signed Between Nation's Leaders*, NOVEDADES EDITORES, Nov. 14, 1997, LEXIS, Mexico Library, Novedad File (noting the profitability that exists because of TMB); Sheinbein, *supra* note 3, at 596–600 (discussing economic and environmental implications of fixing the boundary line).

One author noted that there existed three “*Es*” for extending the boundary line past the current 200 nautical mile mark.<sup>65</sup> These three “*Es*” are:

*Energy Interests:* Delimitation becomes more appropriate as U.S. daily importation of foreign crude oil rises above 50%.<sup>66</sup> Delimitation and further exploration of the large amounts of untapped oil and gas reserves in the Gulf of Mexico may help control the importation of foreign oil.<sup>67</sup> “[M]ore than two-thirds of all . . . oil reserves in the world lie in the Mideast (i.e. in Hussein’s backyard).”<sup>68</sup> Opening the Western Gap area to exploration might lessen the need to rely on foreign energy imports, particularly from the Middle East.<sup>69</sup>

*Economic Interests:* One of NAFTA’s major aims is the expansion of the job sector.<sup>70</sup> Further domestic oil exploration will create jobs.<sup>71</sup> In addition, delimitation of the Western Gap will help American oil producers meet the growing demands of petroleum consumption.<sup>72</sup> With the utilization of remote operating vehicles, American oil producers can now employ 3-D seismic analysis and improved geophysical technology to reach the deep-water reserves of the Western Gap.<sup>73</sup>

*Environmental Interests:* If the delimitation of the Western Gap occurs, government agencies, such as the Minerals

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65 Sheinbein, *supra* note 3, at 595–600 (articulating the policy reasons for adopting a bilateral boundary agreement).

66 *Id.* at 595.

67 *See id.* at 595–96 (citing *Maritime Boundary and Bird Treaties: Hearings on the Ratification of the U.S.-Mexico Maritime Boundary Treaty Before the Senate Comm. on Foreign Relations* (Sept. 25, 1997) 1997 WL 603206).

68 *Id.* at 596 (quoting Richard Foster, Great Decisions: Troubled Region Requires U.S. Involvement, MILWAUKEE J. SENTINEL, Mar. 16, 1997, at 2).

69 *Id.*

70 *See* North American Free Trade Agreement, Dec. 17, 1992, U.S.-Mex.-Can., Preamble, 32 I.L.M. 289 (entered into force on January 1, 1994).

71 Sheinbein, *supra* note 3, at 596 (reporting that there are already 1.5 million employees that rely on the U.S. oil industry, and that number is growing).

72 *See id.* at 598 citing Randolph E. Schmid, ‘97 Prices Allow U.S. to Rebuild Oil Inventory, ANCHORAGE DAILY NEWS, Jan. 16, 1998, at F4, available at WL 5451527 (showing that American consumption of petroleum has risen as much as 1.7 percent in boom years, like 1997).

73 *See* Sheinbein, *supra* note 3, at 597–98 (commenting that the success rate of seismic analysis has risen from 40% to over 70%).

Management Service, will be able to monitor the “well-being” of the marine environment, including that of submarine life and coastal reefs.<sup>74</sup>

Because of recent technological developments allowing exploration of the deepest parts of the Gulf of Mexico, further negotiations concerning the delimitation of the Western Gap quickly became crucial.<sup>75</sup> These negotiations eventually resulted in the signing and ratification of a new treaty, the TMDCS.<sup>76</sup>

### III. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

#### A. *History of the UNCLOS*

A review of the history of the United Nations Convention on the Law of the Sea (“UNCLOS”) is necessary to understand the background status of the delimitation negotiations of the TMB and the TMDCS.<sup>77</sup> The UNCLOS proved to be the largest treaty ever negotiated.<sup>78</sup> Because the International Court of Justice could not properly resolve maritime issues, the UNCLOS provided a tribunal specializing in the law of the sea.<sup>79</sup> Interestingly, however, four of the participating countries, the United States, Israel, Turkey, and Venezuela, declined to vote for the Convention.<sup>80</sup> The United States refused to sign the UNCLOS in 1982 because it contained what the United States considered to be “flaws in the regime it would have established

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<sup>74</sup> *Id.* at 599.

<sup>75</sup> Vargas II, *supra* note 20, at 192 (“A sense of urgency follows from reliable predictions that the U.S. will have the technology to exploit these mineral riches by the year 2000.”); Vargas I, *supra* note 16, at 460 (noting the recent technological developments that allow the exploitation of mineral reserves in the deepest parts of the Gulf of Mexico, even at points where the water is as much as 12,270 feet deep).

<sup>76</sup> *See* TMDCS, *supra* note 6.

<sup>77</sup> *See generally* LAW OF THE SEA, *supra* note 16 (containing an explanation of the history of the UNCLOS in a letter to the Senate from President Clinton).

<sup>78</sup> Ian Townsend-Gault & Hasjim Djalal, *Laws for the Ocean*, UNESCO COURIER, July 1, 1998, available at 1998 WL 10846794.

<sup>79</sup> *Id.* (explaining that the conference would address issues such as how to promote fairness to landlocked states and how to increase preservation of the marine environment).

<sup>80</sup> *Id.* (adding that seventeen countries abstained from voting for the UNCLOS).

for managing the development of mineral resources of the seabed beyond national jurisdiction.”<sup>81</sup> Although the Reagan administration refused to sign the initial UNCLOS treaty,<sup>82</sup> there have been compromises made to the 1982 version of the UNCLOS in the area of mining.<sup>83</sup> As a result, the United States signed the revised treaty (with annex) during the Clinton administration,<sup>84</sup> because it finally resulted in a “[r]egime that is consistent with our [U.S.] free market principles and provides the United States with influence over decisions on deep seabed mining commensurate with our interests.”<sup>85</sup> The Third UNCLOS finally entered force on November 16, 1994.<sup>86</sup>

The relevant provision of the UNCLOS concerning the delimitation negotiations of the Western Gap is Article 137 of Part XI, which provides that “[n]o 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.”<sup>87</sup> The UNCLOS provides that the “Area” concerned—the Western Gap—is under the exclusive authority and jurisdiction of the International Sea-Bed Authority.<sup>88</sup> That is, the UNCLOS would disallow this area to become subject to the jurisdictional rights of any independent country because it is beyond the limits of national jurisdiction.<sup>89</sup> The ultimate question that faced the United States and Mexico as they delved into delimitation negotiations was whether the Western Gap was under the exclusive jurisdiction of the

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81 See Letter from the President to the U.S. Senate, October 7, 1994, U.S. Dept. of State Dispatch Supp. Feb. 1995, Vol. 6, No. 1, reprinted at 34 I.L.M. 1396 (Sept. 1995) [hereinafter Letter from the President] (communicating to the Senate the history of the UNCLOS treaty).

82 Townsend-Gault & Djalal, *supra* note 78.

83 Letter from the President, *supra* note 81; see also Townsend-Gault & Djalal, *supra* note 78.

84 Townsend-Gault & Djalal, *supra* note 78.

85 Marian Nash (Leich), *U.S. Practice: Contemporary Practice of the United States Relating to International Law*, 88 AM. J. INT'L L. 719, 733 (1994) (statement of Warren Christopher).

86 Townsend-Gault & Djalal, *supra* note 78.

87 UNCLOS, *supra* note 15, art. 137.

88 *Id.*

89 See Law of the Sea, *supra* note 16, art. 1.

International Authority, or whether it was considered part of the “high seas.”

*B. Mexico’s Interpretation of the UNCLOS*

A strict legal reading of the UNCLOS, such as the one initially undertaken by Mexico, suggests that the Western Gap is part of the International Area, constituting the “common heritage of mankind,”<sup>90</sup> held in trust for the people of the world.<sup>91</sup> The concept of a “common heritage of mankind” took root during the UNCLOS drafting procedure, in which a “serious ethical problem” had to be addressed.<sup>92</sup> Specifically, if national jurisdiction were allowed to spread unchecked, the UNCLOS drafters found it difficult to conceive a manner in which they would be able to distribute the ocean’s natural resources fairly.<sup>93</sup> The drafters solved the problem by limiting national jurisdiction and recognizing these oceanic areas as the “common heritage of mankind.”<sup>94</sup> Thus, according to Mexico’s interpretation of the UNCLOS, neither the United States nor any of its corporations would have authority to “explore or exploit” the natural resources located within the International Area.<sup>95</sup> Consequently, Mexico seemed to have viewed the submarine area as virtually untouchable.<sup>96</sup> Interestingly, during the UNCLOS drafting, Mexico itself made a substantial contribution to the definition and meaning of the International Area, including the concept of the “common heritage of mankind.”<sup>97</sup> Therefore, it is not surprising for Mexico to have adhered to a strict interpretation of the UNCLOS.

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90 *Id.* art. 136.

91 Townsend-Gault & Djalal, *supra* note 78.

92 *Id.*

93 *Id.*

94 *Id.*; Law of the Sea, *supra* note 16, art. 136.

95 Vargas I, *supra* note 16, at 465 (stating Mexico’s interpretation of the UNCLOS in regard to the Western Gap).

96 *See id.*

97 *See* ALBERTO SZÉKELY, MÉXICO Y EL DERECHO INTERNACIONAL DEL MAR 202–04 (1979).

*C. U.S. Interpretation of the UNCLOS*

In contrast, the United States simply did not accept Part XI of the UNCLOS. It was particularly concerned with the powers of the International Authority.<sup>98</sup> As discussed above, the United States refused to sign the 1982 UNCLOS because of perceived flaws in Part XI.<sup>99</sup> There was reason to believe, however, that the United States would become a party to UNCLOS in the wake of an agreement signed in 1994, which had the Convention integrate the new U.S. mining proposals.<sup>100</sup>

The United States rejected the concept that the Western Gap subsoil and submarine seabed was part of the International Area, and concluded that it should not be considered part of the "common heritage of mankind."<sup>101</sup> In sum, the United States adhered to the view that the Western Gap is a submarine area subject to the same principles that apply to the "high seas" and was not under the jurisdiction of the International Sea-Bed Authority.<sup>102</sup> If this submarine area is part of the "high seas," then the law considers it to be "open and freely available for use by all states, regardless of their location."<sup>103</sup> The United States adopted a quasi-"rule of capture" view of the Western Gap area.<sup>104</sup> According to Jorge A. Vargas, Professor of Law at the University of San Diego:

In the same fashion that anyone can fish the high seas, for example, the United States considers that its corporations and its nationals have the right to explore

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98 Vargas I, *supra* note 16, at 466.

99 See *supra* note 81 and accompanying text (explaining the U.S. reluctance to accept Part XI of the 1982 UNCLOS because of flaws in the regime for management and development of mineral resources); Vargas I, *supra* note 16, at 477-78.

100 See *supra* notes 87-88 and accompanying text; see also Vargas I, *supra* note 16, at 478 (explaining that the United States signed an agreement in 1994 that changed the deep seabed mining regime as it existed in the 1982 UNCLOS to a format more agreeable to the United States).

101 Vargas I, *supra* note 16, at 466.

102 *Id.* (reporting the U.S. idea that just as there is a universal right to fishing on the high seas, there should be a universal right to explore and exploit the disputed area).

103 ARND BERNAERTS, BERNAERTS' GUIDE TO THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 36, 42 (1988) (discussing the concept of the "high seas" under Article 87 of the UNCLOS).

104 See Vargas I, *supra* note 16, at 466; see also Vargas II, *supra* note 20, at 231.

and exploit the resources in that submarine area, as well as the right to conduct maritime scientific research activities therein, since they are located beyond the limits of national jurisdiction. For the United States the International Authority has neither regulatory powers, nor any control over the States, its corporations or its nationals, in the conduct of any activities in the so-called Area. The United States views extracting oil from the deep seabed as legally equivalent to catching fish from the high seas.<sup>105</sup>

If the Western Gap were considered part of the "high seas," instead of the International Area, then it would be "open to all States, whether coastal or land-locked."<sup>106</sup> This would allow companies from any nation to conduct oil and gas exploration practically on a "first-come, first-served" basis.<sup>107</sup>

#### *D. Resolving the UNCLOS Issue*

In order to resolve the UNCLOS issue with delimiting the Western Gap, special attention had to be brought to Article 76(1) of the UNCLOS.<sup>108</sup> Article 76(1) is a pivotal clause that classifies the continental submarine shelf into two different categories: the "physical" shelf and the "legal" shelf.<sup>109</sup> Article 76(1) provides:

The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea [1] throughout the natural prolongation of its land territory to the outer edge of the continental margin, or [2] to a distance of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.<sup>110</sup>

In other words, Article 76(1) of the UNCLOS allows a coastal state to delimit its jurisdictional boundary in two

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105 Vargas I, *supra* note 16, at 466.

106 See LAW OF THE SEA, *supra* note 16, arts. 86–87.

107 See *supra* note 105 and accompanying text.

108 Vargas I, *supra* note 16, at 468.

109 *Id.*

110 LAW OF THE SEA, *supra* note 16, art. 76(1).

different manners.<sup>111</sup> First, if a coastal state possesses an actual “physical” continental shelf (including the continental margin) that extends beyond 200 nautical miles from the coastline, then the jurisdictional boundary can coincide with the outer edge of the continental shelf (possibly extending the jurisdictional boundary much farther than 200 nautical miles).<sup>112</sup> Second, if the continental shelf of a coastal state is fairly narrow and does not extend beyond 200 nautical miles, Article 76(1) will allow the state to establish its jurisdictional boundary by “legally” extending this boundary to a distance of 200 nautical miles off the coastline, creating a “legal” continental shelf.<sup>113</sup>

In the 1970s, when the Exchange of Notes—and later, TMB—were in negotiations, there was no geological data available to indicate that Mexico’s continental shelf extended beyond the 200-mile “legal” continental shelf.<sup>114</sup> During this period, very few coastal states possessed continental shelves extending beyond 100 or 150 nautical miles.<sup>115</sup> Mexico was not one of those countries.<sup>116</sup> Consequently, according to the Exchange of Notes in 1976, Mexico noted that the maritime boundary did *not* apply to the continental shelf.<sup>117</sup> At the time the Exchange of Notes was proposed, the initial interest in establishing a maritime boundary agreement between the United States and Mexico was simply to establish a jurisdictional line out to the 200 nautical mile EEZ, without consideration of the length of Mexico’s continental shelf.<sup>118</sup>

However, recent seismic and geological studies have indicated that Mexico’s continental shelf does extend beyond the 200 nautical mile boundary.<sup>119</sup> Thus, Mexico does possess a

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111 Vargas I, *supra* note 16, at 469.

112 *Id.*

113 *Id.* at 469–70.

114 *See id.* at 472.

115 *See id.* at 469 (noting that the only coastal states reporting to have continental shelves extending beyond 100 to 150 nautical miles in the 1970s were Australia, Argentina, Canada, India, Russia, and the United States).

116 *Id.*

117 Vargas I, *supra* note 16, at 474; Exchange of Notes, *supra* note 27, at 6–8.

118 Exchange of Notes, *supra* note 27, at 7; Vargas I, *supra* note 16, at 474.

119 *See* Vargas, *supra* note 20, at 235. Because studies have confirmed that Mexico’s continental shelf does extend past 200 nautical miles, it has been described as a

“physical” continental shelf that extends beyond 200 nautical miles; accordingly, a portion of the Western Gulf containing this extension should be geologically characterized as “a natural prolongation of its land territory to the outer edge of the continental margin,” as provided by Article 76(1) of the UNCLOS.”<sup>120</sup>

Under Article 76(1), Mexico would gain the legal right to extend its maritime jurisdictional boundaries to meet the natural boundary of the continental margin, as well as “sovereign rights for the purpose of exploring and exploiting the [natural] resources” located in this area.<sup>121</sup>

Mexico seemed to have changed its policy with respect to its interpretation of the UNCLOS in light of its extended continental shelf, as it continued delimitation negotiations of the Western Gap with the United States.<sup>122</sup> Procedurally, Mexico would have been allowed under the UNCLOS to enter into delimitation negotiations if it officially adopted the stance that its continental shelf did actually exceed 200 nautical miles.<sup>123</sup> Mexico seemed willing to concede this point, as it later filed a claim before the United Nations asserting that fact.<sup>124</sup> Some argued that Mexico should have made its change of policy on the continental shelf official, in order for the initial delimitation negotiations to have proceeded smoothly under the UNCLOS.<sup>125</sup>

In order to engage in diplomatic negotiations with the United States, Mexico had the burden of producing evidence that the “natural prolongation of its land territory to the outer edge of the continental shelf” actually did exceed 200 nautical miles.<sup>126</sup>

This technical and geological information would then have

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“unique geological continuum.” *Id.*

120 Vargas I, *supra* note 16, at 473.

121 See UNCLOS, *supra* note 15, art. 76(1); Vargas I, *supra* note 16, at 473.

122 See Vargas I, *supra* note 16, at 477.

123 *Id.* at 479–80.

124 *Id.* at 479.

125 See *id.* at 477 (arguing Mexico’s official change of policy would facilitate negotiations with the United States, to maintain beneficial access to the Gulf of Mexico for future generations of Mexican citizens).

126 See Vargas I, *supra* note 16, at 476; UNCLOS, *supra* note 15, art. 76(1);

been submitted to the Commission on the Limits of the Continental Shelf in order to obtain the Commission's determination of issues with respect to Mexico's continental shelf.<sup>127</sup> Only then would diplomatic negotiations have begun between the United States and Mexico for the purpose of delimiting the Western Gap.<sup>128</sup> Vargas concluded, "this submarine delimitation is the only one [yet] to be arranged between these two countries. Mexico's change of policy offers a unique opportunity to settle this question."<sup>129</sup>

It logically followed that if Mexico's policy reflected the position that its continental shelf exceeded 200 nautical miles, past its maritime boundary and into the Western Gap, then the Western Gap could not simply be part of the "International Area."<sup>130</sup> Mexico then negated any existence of submarine land that it considered to be a part of the International Area under the UNCLOS; therefore, this submarine land was now subject to the jurisdiction of individual countries.<sup>131</sup> As a result, the United States had the opportunity to lay claim to the mineral-rich Western Gap areas in the deepest part of the Gulf of Mexico, as it also did not ascribe to the notion that the Western Gap was part of the International Area under the UNCLOS.<sup>132</sup>

As the negotiations came to an end with the passing of the TMDCS, it became clear that both Mexico and the United States acknowledged that the relevant continental shelves do indeed extend beyond 200 nautical miles with respect to Article 76 of the UNCLOS. Secretary of State Madeleine Albright concluded in her Letter of Submittal to President Clinton: "During the negotiations, both sides agreed that all of the seabed and subsoil

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127 See Vargas I, *supra* note 16, at 476.

128 See *id.*

129 *Id.* at 474.

130 *Id.* at 471-73 (arguing that if Mexico were to characterize its continental shelf as extending into the Western Gap, then Mexico would have the right to lay claim to part of the Western Gap); see also Vargas II, *supra* note 20, at 235 (noting Mexico's "geological phenomenon" would make the submarine area in the central Gulf part of Mexico's continental shelf, rather than part of the International Area).

131 Cf. Vargas II, *supra* note 20, at 235.

132 Cf. Vargas I, *supra* note 16, at 473 (stating the Gulf of Mexico may be converted into a semi-enclosed ocean basin, thereby dividing the Gulf between the United States and Mexico).

of the submarine areas beyond the 200-mile EEZ limit in the Western Gulf of Mexico meet the legal requirements described in Article 76 of the UNCLOS.<sup>133</sup>

#### IV. A METHOD USED TO ESTABLISH MARITIME BOUNDARIES

##### A. *The Equidistant Line*

As previously established, the delimitation of the Western Gap was word to the great advantage of both the United States and Mexico. However, it is necessary to discuss the method that was used in achieving the desired results. First, as long as the United States and Mexico claim that the continental shelves extend past the 200 nautical mile boundary established by the TMB, then pursuant to Article 76 of the UNCLOS, the method used to delimit the Western Gap was left to their discretion.<sup>134</sup> When considering the delimitation method to be used, it seems clear that both parties relied on the standard pronounced by the United States and Canada in delimiting the jurisdictional boundaries in the Gulf of Maine in 1984. Under this standard, "International law does not require that ocean boundaries be delimited in accordance with any particular method; rather, it requires that they be delimited in accordance with equitable principles taking into account all of the relevant circumstances of the case in order to produce an equitable result."<sup>135</sup> Arguably, the framers of the UNCLOS may have left the standard for continental shelf delimitation purposefully vague, as many maritime areas and coastlines possess their own unique qualities.<sup>136</sup> The most precise terminology used is that the

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<sup>133</sup> TMDCS, *supra* note 6, at VI.

<sup>134</sup> See Sheinbein, *supra* note 3, at 608.

<sup>135</sup> Sheinbein, *supra* note 3, at 605 (quoting Jonathan I. Charney, *The Delimitation of Ocean Boundaries*, 18 OCEAN DEV. & INT'L L. 497-531, reprinted in RIGHTS TO OCEANIC RESOURCES: DECIDING AND DRAWING MARITIME BOUNDARIES 32 (Dorinda G. Dallmeyer & Louis DeVorse, Jr. eds. 1989); see also L.H. Legault & Blair Hankey, *From Sea to Seabed: The Single Maritime Boundary in the Gulf of Maine Case*, 79 AM. J. INT'L L. 961, 962 (1985).

<sup>136</sup> See Sheinbein, *supra* note 3, at 605 (noting the vague nature of the definition for the resolution of maritime boundaries illustrates the intention that the decision

boundary delimitation should be based on “equitable principles.”<sup>137</sup> Two years before the Gulf of Maine case, the International Court of Justice stated “the equitableness of a principle must be assessed in light of its usefulness for the purpose of arriving at an equitable result.”<sup>138</sup> Because two negotiating countries may have differing interpretations of what constitutes an “equitable result,” hidden behind a political or economic agenda, other more objective methods used when determining boundary demarcation.<sup>139</sup>

To some it appeared as though the equidistance method was one of the most “equitable” ways to delimit the Western Gap by establishing additional boundaries.<sup>140</sup> The Treaty of Tordesillas, signed in 1494, was one of the first examples in history of a treaty that utilized the method of equidistance, based on the concept of geographical symmetry, for the demarcation of maritime boundaries.<sup>141</sup> In modern times, the equidistance method, utilized as a method of drawing maritime boundaries, has provided full use of islands as geodesic points of demarcation, in a sort of “island-mapping” system.<sup>142</sup> Essentially, the equidistance method is one that of draws an equidistant median line<sup>143</sup> between two countries with opposite

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should be left up to the discretion of the ratifying states).

137 *Id.* at 605.

138 *Concerning the Continental Shelf* (Tunis. v. Libya), 1982 I.C.J. 18, 59 (Feb. 24).

139 See Sheinbein, *supra* note 3, at 606; Jan Schneider, *The Gulf of Maine Case: The Nature of an Equitable Result*, 79 AM. J. INT'L L. 539, 539 n.2 (1985) (asking how the I.C.J.'s division of the Georges Bank could be considered “equitable”).

140 See *id.* at 602–04, 606.

141 See Gerald J. Tanja, THE LEGAL DETERMINATION OF INTERNATIONAL MARITIME BOUNDARIES, 2–3 (1990) (noting the equidistance method can be traced to 1494 with the creation of the Treaty of Tordesillas between Spain and Portugal).

142 Sheinbein, *supra* note 3, at 602–03; see Feldman & Colson, *supra* note 23, at 749 (asserting that the modern definition of the equidistance method “is based on the concept of ‘equitable principles’”). The authors also stated:

The boundaries that have been negotiated to date generally have been based on the equidistance method to one degree or another, giving full effect to the islands. This approach has been adopted, not because the equidistance method has any special merit, but because its application in the particular circumstances served U.S. interests and the interests of our treaty partners.

*Id.*

143 See INTERNATIONAL MARITIME BOUNDARIES xix (Jonathan I. Charney & Lewis

continental shelves. The relevant provision of the Continental Shelf Convention, Article 6, provides in pertinent part:

Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary line is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.<sup>144</sup>

In addition, Article 15 of the Statute of the International Court of Justice provides for the delimitation of maritime boundaries in the territorial sea, making direct references to the use of the equidistant line.<sup>145</sup> Lastly, and as a historical note, in 1970 when the United States and Mexico were negotiating the international maritime boundaries out to twelve nautical miles, each country used principles similar to those described here.<sup>146</sup> Specifically, the principles included:

(1) the use of the principle of equidistance; (2) the use of islands; (3) the simplification of the resulting boundary line for practical reasons; and (4) the use of geodesic points, marked by coordinates of longitude and latitude based on the 1927 North American Datum as an essential technical component in the drawing of the

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M Alexander eds., 1996, vol. 1) (defining the equidistant line (also known as the median line) as “[a] line composed of relatively short segments connecting points that are equidistant from the normal baselines, or from claimed (or assumed) baselines from which the breadth of the territorial sea is measured.”).

144 Convention on the Continental Shelf, April 19, 1958, art. 6. 15 U.S.T. 472, 474.

145 See Law of the Sea Convention, *supra* note 16, arts. 15, 74, 83; Jonathan I. Charney, *Progress in International Maritime Boundary Delimitation Law*, 88 AM. J. INT’L L. 227, 227 (1994).

146 See Vargas II, *supra* note 20, at 224; *Could Gulf Oil Lead to a Conflict? Mexican Expert Sees Danger in Undefined Maritime Border*, LATIN AMERICAN NEWSLETTERS, LTD., Apr. 27, 1999, available in LEXIS, News Library, LAN File [hereinafter *Gulf Oil Conflict*] (stating since 1970, the maritime border between the United States and Mexico has been determined on the principle of equidistance).

final boundary on a nautical chart.<sup>147</sup>

Furthermore, the UNCLOS imposes an affirmative duty on coastal states drafting boundaries to devise an equitable solution, taking into account the equidistance method and the potential incorporation of islands as points of separation.<sup>148</sup>

*B. Maritime Boundaries of the United States Based on the Equidistance Method*

A look at the methods historically used by the United States in other maritime boundary cases may have been helpful in assessing which principle was most equitable for use during the TMB delimitation negotiations, which led to the signing of the TMDCS. Generally, the United States has employed the equidistance method in evaluating maritime delimitations.<sup>149</sup> The equidistance method may not be appropriate for use in all situations; however, it has been adopted in the majority of cases because its use in many circumstances has served U.S. interests, as well as the interests of those neighboring countries with whom the United States has negotiated.<sup>150</sup>

*1. United States-Cuba-Bahamas Boundary*

Since 1977, the United States and Cuba have shared an agreed-upon maritime boundary that extends for over 300 nautical miles in an easterly direction from the Gulf of Mexico to a point south of Florida.<sup>151</sup> This boundary was drawn pursuant to the equidistance method and extends to a point south of Florida that is equidistant from the United States, Cuba, and

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<sup>147</sup> Vargas II, *supra* note 20, at 224; *see also* WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY 765 (2d ed. 1983) (stating that a geodesic line is a line which is drawn as the shortest distance between two points, such as an arc of a circle or a sphere; geodesy is the science of surveying portions of the earth's surface which are so large that the earth's curvature has to be taken into account).

<sup>148</sup> Sheinbein, *supra* note 3, at 604; *see* UNCLOS, *supra* note 15, at 88.

<sup>149</sup> *See* Sheinbein, *supra* note 3, at 602-03.

<sup>150</sup> *See id.*

<sup>151</sup> Feldman & Colson, *supra* note 23, at 734; *see* Maritime Boundary Agreement Between the United States of America and the Republic of Cuba, Dec. 16, 1977, U.S.-Cuba, S. EXEC. DOC. NO. H, 96-1, at 11-16 (1979).

the Bahamas.<sup>152</sup> There is also an opposite and adjacent equidistant maritime boundary between the United States and the Bahamas that extends northward through the Florida Straits to a point on the Blake Plateau.<sup>153</sup> Although the United States and Cuba used different geodetic data when drafting the boundaries, there were no fundamental differences concerning the location of the boundaries.<sup>154</sup>

## 2. *United States-United Kingdom Boundaries*

On March 9, 1994, President Clinton sought the advice and consent of the U.S. Senate for ratification of two treaties between the United States and the United Kingdom.<sup>155</sup> These treaties were the Treaty on the Delimitation in the Caribbean of a Maritime Boundary Relating to the U.S. Virgin Islands and Anguilla, and the Treaty on the Delimitation in the Caribbean of a Maritime Boundary Relating to Puerto Rico/U.S. Virgin Islands and the British Virgin Islands, with Annex.<sup>156</sup> In President Clinton's letter of transmittal to the U.S. Senate, he acknowledged that the treaties were each negotiated in compliance with the equidistance method and were "based on modern surveying techniques and calculations."<sup>157</sup> The treaties may have been based on a 1979 reciprocal fishery agreement between the United States and British Virgin Islands.<sup>158</sup> In this agreement, the two governments made clear that their limits of fishery jurisdiction were based on principles of equidistance.<sup>159</sup>

The 1994 maritime boundary treaties were based on work undertaken by both the United States and the United Kingdom,

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152 Feldman & Colson, *supra* note 23, at 734.

153 *Id.* at 734.

154 *Id.* at 746.

155 See Marian Nash (Leich), *Contemporary Practice of the United States Relating to International Law*, 88 AM. J. INT'L L. 515, 519 (1994).

156 *Id.*; see Two Treaties with the United Kingdom Establishing Caribbean Maritime Boundaries, Mar. 9, 1994, U.S.-U.K., S. TREATY DOC.NO. 103-23, (1994), available at 1993 U.S.T. LEXIS 121 [hereinafter Two Treaties].

157 Two Treaties, *supra* note 156, at III.

158 See Reciprocal Fishery Agreement Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, March 27, 1979, U.S.-U.K., T.I.A.S. No. 10545, at 3149.

159 (Leich), *supra* note 155, at 520.

as they sought to determine the equidistant line between the United States and the British Virgin Islands, as well as between the United States and Anguilla.<sup>160</sup> The calculations used to determine the delimitation of the boundaries were based on knowing the exact location of the base points on each coast from which to draft the equidistant line, using geographic locations placed on the North American Datum 1983.<sup>161</sup> These two treaties exemplify certain interesting and rare qualities. First, the Anguilla treaty is composed of one segment that is 1.34 nautical miles in length, probably the shortest maritime boundary in the world.<sup>162</sup> Second, at one point, the United States and British Virgin Islands are no more than .5 nautical miles apart.<sup>163</sup> The boundary in this area comes within approximately .25 nautical miles of each coast.<sup>164</sup>

### 3. *United States-Cook Islands, United States-Tokelau Boundaries*

In 1980, the United States signed maritime boundary treaties with the Cook Islands and with New Zealand: the Treaty Between the United States of America and the Cook Islands on Friendship and Delimitation of the Maritime Boundary,<sup>165</sup> and the Treaty Between the United States of America and New Zealand on the Delimitation of the Maritime Boundary between Tokelau and the United States of America.<sup>166</sup> These two treaties were also negotiated, and the jurisdictional lines drafted, pursuant to equidistant principles.<sup>167</sup>

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160 *Id.*

161 *Id.*

162 *Id.*

163 *Id.*

164 *Id.*

165 Treaty Between the United States of America and the Cook Island on Friendship and Delimitation of the Maritime Boundary Between the United States of America and the Cook Islands, June 11, 1980, U.S.-Cook Islands, T.I.A.S. No. 10774, at 1.

166 Treaty Between the United States of America and New Zealand on The Delimitation of the Maritime Boundary Between Tokelau and the United States of America, Dec. 2, 1980, U.S.-Tokelau, T.I.A.S. No. 10, 775, at 1.

167 Ted L. McDorman, *The Canada-France Maritime Boundary Case: Drawing a Line Around St. Pierre and Miquelon*, 84 AM. J. INT'L L. 157, 174 (1990).

#### 4. *United States-Canada Boundary*

Another important case that may shed some light when determining the applicability of the equidistance method is the Gulf of Maine Case, which delimited the Gulf of Maine between the United States and Canada.<sup>168</sup> Although the equidistance method was not expressly used by the International Court, Canada strongly advocated it.<sup>169</sup> Although the equidistance method was not mandatory, the Chamber of the International Court of Justice acknowledged that it could be considered for the drafting of the boundary proposal.<sup>170</sup>

Canada argued that the equidistance method would have been most useful, in that each coastal state would be allowed to receive as much as possible of its 200 nautical mile boundary entitlement under Article 76(1) of UNCLOS without interfering with the boundary entitlement of the other coastal state.<sup>171</sup> Canada also proposed employing the equidistance method because the geographical relationship between its and the U.S. continental shelves was one of "oppositeness," rather than "adjacency."<sup>172</sup> According to seismic studies, the continental margins of both the United States and Mexico also approach each other from opposite sides of the Gulf of Mexico basin, and tend to merge in the middle of the Gulf.<sup>173</sup> If this is the case, then the Western Gap area is located in the exact area in which the continental shelves of the United States and Mexico merge.<sup>174</sup> Therefore, one could easily take the stance of Canada in the Gulf of Maine case and apply that principle to the case in the Gulf of Mexico. If the continental shelves of the United States and Mexico do in fact merge by approaching each other from opposite directions, then the most equitable and logical

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168 See Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.), 1984 I.C.J. 246 (Oct. 12), *reprinted in* 23 I.L.M. 1197 (1984).

169 See Schneider, *supra* note 139, at 555, 571-73.

170 *Id.* at 570.

171 *Id.* at 555.

172 *Id.* at 561.

173 Vargas I, *supra* note 16, at 472; see *Seismic Satigraphy of the Deep Gulf of Mexico Basin and Adjacent Margins*, in THE GEOLOGY OF NORTH AMERICA, VOL. J: THE GULF OF MEXICO BASIN 353, 377 (Amos Salvador, ed., 1991).

174 *Id.*

method to delimit the center of the Western Gap boundary would be to use equidistance principles.<sup>175</sup>

There are several other countries that used equidistance principles in establishing their maritime jurisdictional boundaries. These include: India in negotiations with Indonesia,<sup>176</sup> Thailand,<sup>177</sup> Burma;<sup>178</sup> Denmark in negotiations with Canada<sup>179</sup> and Norway.<sup>180</sup>

### C. United States-Mexico Consideration

The governments of both the United States and Mexico did eventually concur in the notion that the equidistance method would likely yield the most beneficial results as the two parties negotiated the delimitation of the maritime boundaries in the Western Gap.<sup>181</sup> This was the ultimate method that was used when negotiating the TMDCS.<sup>182</sup>

In her Letter of Submittal to President Clinton, Secretary of State Madeleine Albright noted that the geodetic lines used in the TMDCS were “[i]n keeping with the methodology used in previous U.S.-Mexico maritime boundary treaties, [and the] line represents an equidistant line drawn from the respective U.S. and Mexican coastal baseline.”<sup>183</sup> Additionally, according to Tom Readenger, deputy associate director of offshore operations for

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175 See Sheinbein, *supra* note 3, at 607 (advocating the use of an equidistant line as a basis for demarcation of maritime boundaries in the Gulf).

176 McDorman, *supra* note 167, at 174, *citing* Agreement Regarding the Delimitation of the Continental Shelf in the Great Channel Between Great Nicobar Island and Sumatra, Aug. 8, 1974, India-Indon.

177 *Id.*, *citing* Agreement on the Delimitation of the Seabed Boundary Between the Two Countries in the Andaman Sea, June 22, 1978, Thail.-India.

178 *Id.*, *citing* Agreement on the Delimitation of the Maritime Boundary in the Andaman Sea, in the Coco Channel and in the Bay of Bengal, Dec. 23, 1986, Burma-India.

179 *Id.*, *citing* Agreement Relating to the Delimitation of the Continental Shelf between Greenland and Canada, Dec. 17, 1973, Can.-Den.

180 *Id.*, *citing* Agreement Between Norway and Denmark (Faeroes), June 15, 1979, Nor.-Den.

181 Eric Kronenwetter, *Talks on Gulf ‘Doughnut Hole’ Advance*, OIL DAILY, Nov. 19, 1999, LEXIS, NEWS library, OILDLY File [hereinafter Kronenwetter II].

182 TMDCS, *supra* note 6, at VI.

183 *Id.*

the U.S. Minerals Management Service ("MMS"), "[e]qual distance is the most commonly accepted principal [sic]."<sup>184</sup> In 1997, the United States supported the implementation of the equidistance method for delimiting the Western Gap, and was ready to claim the submarine land at this equidistant line, if its use was approved.<sup>185</sup> After meeting in Mexico City in early November of 1999, word came from the delimitation meetings indicating that the method to be used in setting the maritime boundary would be the equidistance method.<sup>186</sup> Both countries ultimately agreed to use the equidistant method in the delimitation process.<sup>187</sup> Because the boundary lines were drawn equidistant from each country, in compliance with the International Law of the Sea, Mexico actually ended up receiving 62% of the Western Gap area.<sup>188</sup> José Antonio Ceballos, director of Mexico's PEMEX (Petróleos Mexicanos) Exploración y Producción, verified the importance of setting the boundary by stating, "[m]ake no mistake, the overwhelming bulk of the hydrocarbon wealth is on the Mexican side of the maritime boundary."<sup>189</sup>

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184 William Furlow, *U.S., Mexico About to Deal with Boundary "Donut Hole," OFFSHORE*, July 1, 1997, at 60, available at 1997 WL 10234914; see also Jonathan I. Charney, *The American Society of International Law Maritime Boundary Project*, 5 MARITIME BOUNDARIES 10 (Gerald H. Blake ed., 1994) ("[I]t appears . . . that the equidistant line has played a major role in boundary delimitation agreements, regardless of whether they concern boundaries between opposite or adjacent states. In the vast preponderance of the boundary agreements studied, equidistance had some role in the development of the line and/or the location of the line that was established.").

185 Furlow, *supra* note 184, at 60.

186 Kronenwetter II, *supra* note 181, at 5.

187 See Gerald Karey, *U.S., Mexican Officials Agree Doughnut Hole Boundary*, PLATT'S OILGRAM NEWS, June 12, 2000, at 3, 2000 WL 14095587.

188 See *id.*; see also Furlow, *supra* note 184 ("Far from being an arbitrary line bisecting the Gap, this boundary was determined using a complex series of arcs and tangents drawn from the coast line. The formula applied complies with the International Law of the Sea, established in 1994, but gives the US only about one-third of the Gap's area."). After the TMDCS was signed and ratified, Mexico received 3,179 square nautical miles of the Western Gap, whereas the United States received 38% of the total area, or 1,913 square nautical miles. The boundary line itself, defined by the TMDCS, is approximately 135 nautical miles in length. TMDCS, *supra* note 6, at III.

189 Ronald Buchanan, *Pemex Needs an Elephant Find: Gas Requirement Urgent*, PLATT'S OILGRAM NEWS, April 21, 1999, at 1999 WL 12178473.

## V. POST TMB-RATIFICATION NEGOTIATIONS— CONCERNS AND IMPEDIMENTS

### A. *Parties to the Post-TMB (Pre-TMDCS) Negotiations*

As discussed above, the Western Gap area in the Gulf of Mexico is widely known as a hotbed of mineral and petroleum reserves, potentially allowing for very profitable deep-water drilling.<sup>190</sup> Therefore, it was not surprising that negotiations in this area to proceed soon after U.S. ratification of the TMB.<sup>191</sup> The negotiations could not commence, however, until the TMB was actually ratified by the U.S. Senate, as Mexican officials declared that there would be no negotiations until the United States made a “good-faith” effort to ratify the TMB.<sup>192</sup> The United States finally ratified the TMB, and negotiations for the Western Gap began in late 1998.<sup>193</sup> The negotiations were conducted by a Mexican delegation, “headed by the Legal Advisor of the Secretariat of Foreign Relations, and include[d] representatives from the Secretariats of Energy and of the Navy, the National Institute for Statistics, Geography and Cybernetics (INEGI), and [Mexico’s state oil company,] Petrosleos [sic] Mexicanos (PEMEX).”<sup>194</sup> The U.S. delegation was headed by the Legal Advisor of the Department of State, and included officials from the Department of State and the Department of the Interior.<sup>195</sup> U.S. Deputy Assistant Secretary for Oceans and Space Mary Beth West led the negotiations with Mexico.<sup>196</sup>

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190 See Tomlinson, *supra* note 60, at 605 (noting that the ‘donut holes’ hold “potentially huge oil and gas reserves in depths [that] new technology is capable of exploiting”); Kronenwetter I, *supra* note 60; see also *supra* notes 62–63 and accompanying text (discussing the very profitable and potentially vast nature of the petroleum reserves in the Western Gap area of the Gulf of Mexico).

191 Cf. Samuelson, *supra* note 64.

192 Furlow, *supra* note 184, at 60.

193 Palmer Stanley, *U.S. Exploration Highlights*, OIL & GAS INVESTOR, Aug. 1, 2000 at 61, available at 2000 WL 11768563.

194 Mexico, *U.S. Reinitiate Talks on Gulf of Mexico Maritime Boundaries*, U.S. NEWSWIRE, Feb. 2, 1999, LEXIS, NEWS Library, USNWR File [hereinafter *Talks on Boundaries*].

195 *Id.*

196 *U.S., Mexico Soon to Delineate Gulf ‘Gap,’* OIL & GAS JOURNAL, Dec. 15, 1997, at 27–28 [hereinafter *Delineate Gulf Gap*].

*B. Mexico's Concerns*

Despite the fact that the use of the equidistance method for the delimitation of the Western Gap would give Mexico ownership of a majority of the mineral reserves in this area,<sup>197</sup> one of the Mexican government's primary concerns for the Western Gap delimitation negotiations was the protection of Mexico's sovereignty.<sup>198</sup> Mexico urged the rapid delimitation of the Western Gap, because its sovereignty concerns were rising with respect to the unresolved maritime boundaries.<sup>199</sup> Sergio Suárez, a coordinator at the Department of Petroleum and Energy for the Universidad Nacional Autónoma de México, reported that this issue could pose the "threat of a world conflict with unpredictable consequences between a developing nation and a hegemonic superpower, which is the United States."<sup>200</sup> Mexico is in "an uncomfortable position," Suárez continued: "[i]t would be naïve . . . to think that Washington, accustomed to using power more than law, will allow any discussion of the preeminence of its strategic security, particularly if one considers that the Gulf coast of the states of Texas and Louisiana is where the U.S. has its strategic reserves."<sup>201</sup>

To illustrate, Suárez drew attention to the fact that "the 1991 Gulf War started because 'Kuwait tapped crude oil deposits located in the border territory with Iraq . . . [an act which] was not sanctioned either before or after the war.'"<sup>202</sup> Suárez recommended that "Mexican authorities should study this precedent carefully."<sup>203</sup> Indeed, Mexico was concerned about the drilling activities of U.S. privately-based drilling companies,

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197 See *supra* notes 188–189 and accompanying text.

198 See Sheinbein, *supra* note 3, at 600–01 ("Mexico's interest in protecting national sovereignty will be served with the reception of a new maritime boundary treaty.").

199 See *Gulf Oil Conflict*, *supra* note 147, at 184; Ronald Buchanan, *Gulf "Donut Hole" Focus of Study by PEMEX*, PLATT'S OILGRAM NEWS, May 22, 1998, at 3, available at 1998 WL 9828172.

200 *Gulf Oil Conflict*, *supra* note 146, at 184.

201 *Id.*

202 *Gulf Oil Conflict*, *supra* note 146, at 184.

203 *Id.*

such as Shell, Amoco, Mobil, and Texaco.<sup>204</sup> Certain Mexican legislators and various Mexican social and political organizations sought governmental investigation of these U.S.-based companies, with the ultimate goal of suspending their drilling activities.<sup>205</sup>

More specifically, Mexico took the stance that part of the Western Gap was formed by a natural extension of its continental shelf, pursuant to Article 76(1) of the UNCLOS;<sup>206</sup> thus, certain Mexican politicians argued that maritime boundary jurisdiction should be promptly established.<sup>207</sup> Their concern was that, unless delimitation occurred relatively quickly, “foreigners would ‘steal’ Mexico’s oil.”<sup>208</sup> The U.S. position on the matter can be characterized as the “right of capture,” in which the first party to drill in a reserve that straddles the jurisdictional boundary line may lay claim to the mineral extractions from this reserve.<sup>209</sup> Mexican opposition and media, on the other hand, believed that any reserves on the Mexican side simply belonged to Mexico, even if the reserve from which the minerals were extracted extended into the boundary area.<sup>210</sup> This view did not allow accidental drilling extraction in Mexico’s jurisdictional bounds.<sup>211</sup> Mexican opposition leader Senator José Ángel Concello summarized Mexico’s position with respect to the protection of its borders and natural sovereignty. Concello claimed, “It’s like sucking through a straw. These U.S. companies will drill in their territory, but could extract everything contained in that reserve. Natural resources do not respect frontiers.”<sup>212</sup> Although this statement may be true, it is virtually “nonpersuasive for purposes of delimitation,” because

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204 *Id.*

205 *Id.*

206 Buchanan, *supra* note 199, at 3; see UNCLOS, *supra* note 16, art. 76(1).

207 Buchanan, *supra* note 199, at 3.

208 *Id.*

209 See Vargas II, *supra* note 20, at 231.

210 *Cf.* Buchanan, *supra* note 199, at 3 (explaining that Mexican politicians and media believe that foreigners would be “stealing” Mexico’s oil by drilling into reserves which extend from the U.S. legitimate boundaries into Mexico’s continental shelf).

211 Sheinbein, *supra* note 3, at 600.

212 Nick Anderson, *Mexico Fears U.S. Drillers Will Siphon Off Its Oil*, SAN DIEGO UNION-TRIB., Mar. 31, 1996, at I-2, LEXIS, NEWS Library, SDUT File.

the United States could have asserted the same position against Mexico's drilling companies if it wished.<sup>213</sup> Because nature simply does not respect jurisdictional boundaries set by mere mortals, there may be some accidental overlap in drilling between the two country's jurisdictional boundaries, regardless of where the boundary is drawn.<sup>214</sup>

Attempting to protect its sovereignty, Mexico also wished to include in the delimitation negotiations an agreement that recognized the exclusivity of the petroleum resources for both Mexico and the United States.<sup>215</sup> Included in this agreement would be a bilateral mechanism that would be established to protect the geological mantle of both the United States' and Mexico's jurisdictional boundary areas.<sup>216</sup> Under this bilateral maritime mechanism, both the United States and Mexico would have been able to protect their respective country's national sovereignty and national resources by prosecuting violators of the agreement in the event that either party would extract mineral reserves located in the other's jurisdictional boundaries.<sup>217</sup> In the event of a violation, the complaining country would be entitled to receive appropriate compensation.<sup>218</sup> However, under the finalized TMDCS, there is no bilateral mechanism providing for prosecution of either party for the intentional extraction of hydrocarbons that clearly belong to the opposing party.<sup>219</sup>

### C. *SDO's Petition*

The delimitation negotiations between the United States

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213 Sheinbein, *supra* note 3, at 600 (arguing that Mexico's stance is nonpersuasive because the same could be said of Mexican companies drilling along the frontier within Mexico's jurisdiction, with possible resource extraction overlap into U.S. jurisdictional boundaries).

214 *Id.*

215 *Gulf Oil Conflict*, *supra* note 146, at 184.

216 *Id.*

217 *Id.*

218 *Id.*

219 *See generally* TMDCS, *supra* note 6; *see also id.* art. VIII ("Any dispute concerning the interpretation or application of this treaty shall be resolved by negotiation or other peaceful means as may be agreed upon by the Parties.").

and Mexico were significantly hindered on June 29, 1999<sup>220</sup> when the Enid, Oklahoma-based coalition Save Domestic Oil, Inc. (SDO) coalition filed a petition with the U.S. Commerce Department.<sup>221</sup> SDO, which represents U.S.-based independent oil producers, alleged that Saudi Arabia, Mexico, Venezuela, and Iraq dumped crude oil into the U.S. oil market at less than fair market prices when the prices were down.<sup>222</sup> Among other remedies, SDO requested anti-dumping, punitive duties to be paid to the United States to offset an average dumping margin of up to 33% for Mexico.<sup>223</sup> SDO filed the first ever anti-oil-dumping petition in asking the U.S. government to investigate the practices of these four countries.<sup>224</sup> This petition was filed pursuant to the Tariff Act of 1930, which provides the United States with legal remedies for unfair trade practices against it by foreign countries.<sup>225</sup>

Once the petition was filed, the U.S. Commerce Department bore the burden of determining whether SDO had enough industry backing to warrant an investigation into the practices of Saudi Arabia, Mexico, Venezuela, and Iraq.<sup>226</sup> The American Petroleum Institute ("API") and the Interstate Natural Gas

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220 See *Mexico Postpones July 1 Removal of Import Tariff on U.S. Gas*, FOSTER NATURAL GAS REPORT, July 8, 1999, at 2, 1999 WL 8407945 [hereinafter *Mexico Postpones Tariff*]; Kronenwetter I, *supra* note 60, at 6 (noting the filing of SDO's anti-dumping petition caused great political tension between the United States and Mexico, causing a cancellation of talks that were scheduled for late June of 1999).

221 See Matthew Robinson & Eric Kronenwetter, *Dumping Motion Filed: Mexico Eyes Retaliation*, OIL DAILY, June 30, 1999, available in 1999 WL 10012970 [hereinafter *Dumping Motion Filed*]; *Oil Giants Challenge Tariff Call*, THE JOURNAL RECORD, July 14, 1999, 1999 WL 9847200 [hereinafter *Giants Challenge Tariff*].

222 *Dumping Motion Filed*, *supra* note 221; see also *Mexico Postpones Tariff*, *supra* note 220, at 2.

223 *Mexico Postpones Tariff*, *supra* note 220, at 2; see also *Giants Challenge Tariff*, *supra* note 221 (explaining that the U.S. government can impose a tariff if an imported commodity is being sold at less than normal value or below what it costs to produce it).

224 *Mexico Rejects U.S. Claim of Crude Oil Dumping*, PRESS, July 1, 1999, at 26, 1999 WL 19827149 [hereinafter *Mexico Rejects Claim*]; *Mexico Postpones Tariff*, *supra* note 220, at 2.

225 *Mexico Postpones Tariff*, *supra* note 220, at 2.

226 *Dumping Motion Filed*, *supra* note 221; *Giants Challenge Tariff*, *supra* note 221 (noting that, according to the U.S. Commerce Department requirements, an organization that files a petition or complaint must represent at least 25% of domestic oil production).

Association of America urged the Commerce Department to dismiss SDO's petition, claiming that it lacked sufficient support from the U.S. oil and gas industry.<sup>227</sup> The API, which represents major oil producers, also claimed that there was no evidence to support SDO's claim that the foreign countries were illegally dumping oil into the U.S. market.<sup>228</sup> API President Red Cavaney stated, "This anti-dumping petition will only make matters worse because it will have the unintended consequence of making the oil supply system less efficient. . . . [R]eliable historic information shows that prices are established by world oil markets," not illegal dumping strategies.<sup>229</sup> Additionally, George Baker, the director of Houston-based Mexico Energy Intelligence, argued that the potential negative effects of SDO's petition on U.S. oil markets, inflation, and national revenue would substantially outweigh any benefits that would result from allowing relief to SDO.<sup>230</sup> The Mexican government reported that SDO's petition would actually cause Americans to suffer, as American consumers would have to pay more for foreign crude oil.<sup>231</sup>

Ultimately, the U.S. Commerce Department determined that there was insufficient industry support for SDO's petition, and dismissed the claim.<sup>232</sup> As the Commerce Department stated in a release explaining its rationale, "[w]ithout adequate support, [the Department of] Commerce is prohibited by law from initiating investigations."<sup>233</sup> Energy Secretary Bill Richardson characterized the U.S. Commerce Department's decision as "win-win for U.S. consumers and domestic oil

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<sup>227</sup> *With Dumping Petition Denied, Mexican Officials Vow to Repeal Tariff*, INSIDE F.E.R.C., Aug. 16, 1999, at 17, 1999 WL 12171527 [hereinafter *Dumping Petition Denied*].

<sup>228</sup> *Giants Challenge Tariff*, *supra* note 221.

<sup>229</sup> *Id.*

<sup>230</sup> David Lagesse, *Mexico Disputes U.S. Oil Producers' Dumping Allegations*, DALLAS MORNING NEWS, July 17, 1999, at 1F, 1999 WL 21998608.

<sup>231</sup> *Mexico Rejects Claim*, *supra* note 224. In fact, Mexico exports most of its crude oil to the United States. *Id.*

<sup>232</sup> *With Anti-Dumping Petition Rejected, Mexico Resumes Plan to Lift Gas Tariff*, PETROLEUM FINANCE WEEK, Aug. 30, 1999, 1999 WL 23827666 [hereinafter *Anti-Dumping Petition Rejected*].

<sup>233</sup> *Dumping Petition Denied*, *supra* note 227, at 17.

producers.”<sup>234</sup> Along the same lines, the Mexican government claimed,

[t]he strong opposition voiced by many U.S. oil companies, related industries [and] associations, and some public figures all conveyed the same messages: The petition had no basis . . . In fact, it would have had negative consequences for the economies of the U.S. and the affected countries, and could have adversely impacted bilateral relations.<sup>235</sup>

On August 26, 1999, shortly after the Commerce Department’s dismissal of SDO’s petition, SDO indicated it would appeal the decision.<sup>236</sup> The appeal was filed on September 7, 1999 with the U.S. Court of International Trade in New York.<sup>237</sup>

Before SDO’s petition was filed, Mexico imposed a 4% tariff on natural gas imports from the United States.<sup>238</sup> Mexico had planned to lift this 4% tariff on July 1, 1999, which would have been ahead of the schedule outlined by NAFTA.<sup>239</sup> SDO’s petition, however, caused Mexico to reconsider its decision to lift the tariff, as political tensions rose as a result of the anti-dumping petition.<sup>240</sup> PEMEX then found that the dumping margin calculated by SDO was not supported by evidence.<sup>241</sup> Illustrating Mexico’s stance on this issue, Energy Minister Luis Tellez warned the United States that SDO’s petition would ultimately hurt U.S. oil producers if it were allowed to go

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234 *Id.*

235 *Mexico To Drop Gas Tariff*, ENERGY DAILY, Aug. 12, 1999.

236 *Producers Set Dumping Appeal*, ENERGY ALERT, Aug. 27, 1999, 1999 WL 8877611.

237 Eric Kronenwetter & Peter Eisen, *Mexico Keeps Tariff Stand Despite SDO Move*, OIL DAILY, Sept. 9, 1999, 1999 WL 10014223.

238 *See Anti-Dumping Petition Rejected*, *supra* note 232.

239 *Id.*

240 Kronenwetter & Eisen, *supra* note 237 (explaining that Mexico’s decision to remove its 4% gas tariff was postponed for six weeks as a result of SDO filing its anti-dumping petition).

241 *See Embassy of Mexico: Thorough Analysis Reveals Serious Flaws in Anti-Dumping Claims Filed Against Mexican Oil Exports*, U.S. NEWSWIRE, Aug. 5, 1999, 1999 WL 22281193 (explaining that the petition included simple arithmetic errors, inconsistent and incorrect use of data, and omissions of pages from public documents that showed the absence of such dumping).

forward.<sup>242</sup> In retaliation against SDO's petition, Mexico decided to retain the 4% tariff on natural gas.<sup>243</sup>

However, within days of the Commerce Department's ruling, Minister Tellez stated that he planned to lift the 4% tariff imposed against the United States.<sup>244</sup> Minister Tellez claimed that the removal of the gas tariff was a "done deal."<sup>245</sup> SDO's decision to appeal its petition did not affect Mexico's lifting of the gas tariff, however, as the appeal would be directed against the U.S. government instead of against the governments of Mexico, Saudi Arabia, Venezuela, and Iraq.<sup>246</sup>

#### *D. Post-SDO Petition*

Following the Commerce Department's decision to dismiss SDO's petition, and Mexico's decision to lift its 4% gas tariff, delimitation negotiations between the United States and Mexico commenced again in a further attempt to demarcate the Western Gap.<sup>247</sup> Brian Petty, senior vice-president of governmental affairs for the International Association of Drilling Contractors stated, "It's to the mutual benefits of both countries, and we're gratified and greatly encouraged that Mexico has continued to talk with the U.S. despite [Mexico's] concern about the SDO petition."<sup>248</sup> A fifth formal delimitation negotiation meeting between U.S. and Mexican officials occurred in Mexico City, in early November of 1999.<sup>249</sup> The meetings were optimistic, and one source reported the negotiations as having taken a "major step forward."<sup>250</sup>

The two most important tasks of these negotiation meetings were the establishment of boundary lines within the Western

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242 Lagesse, *supra* note 232.

243 Ronald Buchanan & Beth Evans, *Targets of U.S. Dumping Petition Map Plan*, PLATT'S OILGRAM NEWS, July 1, 1999, at 1, available at 1999 WL 17300681.

244 *Dumping Petition Denied*, *supra* note 229; Kronenwetter & Eisen, *supra* note 239.

245 Kronenwetter & Eisen, *supra* note 237.

246 *Id.*

247 See Kronenwetter I, *supra* note 60, at 1.

248 *Id.* at 6.

249 See Kronenwetter II, *supra* note 182.

250 *Id.*

Gap, and a determination of the manner in which natural resources would be addressed in the new treaty—the latter aim being regarded as the more politically sensitive of the two.<sup>251</sup> The U.S. State Department eventually submitted a proposal to the Mexican officials, with the purpose of bringing closure to the issue.<sup>252</sup> Sources suggest the proposal encouraged the use of the equidistance method in drafting the jurisdictional boundary lines, and also proposed a manner in which to deal with mineral reserves that might straddle these jurisdictional boundaries.<sup>253</sup>

*E. Suggestions for Jurisdictional Delimitation Negotiations*

As the final phase of the delimitation negotiations commenced, one author argued that the U.S. and Mexican governments should consider the following suggestions:

- (1) Pay special attention to the geography of the coastline;
- (2) Employ an equidistant line as a basis for demarcation of clear borders;
- (3) Consider the pros and cons of using an alternative method for opening the Western Gap in which land is apportioned in shares to both countries as opposed to being equitably delimited, and in which revenues and responsibilities of industrial/environmental management are also shared;
- (4) Establish interim regulatory practices and an interim means of delimitation of the Western Gap;
- (5) Consult technical experts, such as geologists, mineral experts, and admiralty lawyers, when establishing a precise definition for a maritime boundary line;
- (6) Spend funds sensibly in conducting pre-negotiating surveys of the region;
- (7) Prior to negotiations, conduct a study of the various international agreements signed by the United States and Mexico that may provide added constraints in drafting a workable resolution;
- (8) Devise measures that will account for the general

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251 See Kronenwetter I, *supra* note 60, at 6.

252 Kronenwetter II, *supra* note 182.

253 *Id.*; see discussion *supra* Part IV.A (discussing the equidistance principles used in demarcation of maritime boundaries).

relations of both nations in order to ensure mutual compliance with the impending delimitation agreement;

(9) Keep principles of equity in mind when drafting the agreement; and design the agreement to specifically account for geographic, political, or economic characteristics unique to the Gulf of Mexico.<sup>254</sup>

It is not clear how much consideration was put given to each of these suggestions. However, it is clear that suggestion (2) was followed in establishing the boundary based on equidistance principles.<sup>255</sup> Likewise, special attention was given to background research concerning past maritime boundaries, particularly involving the analysis of other U.S. boundary agreements.<sup>256</sup> By concentrating on historical precedent, future disputes concerning the Western Gap or the Gulf of Mexico as an entire region are less likely, as both countries have a sound, concrete plan to which they have adhered, and hopefully will continue to adhere. The governments of both the United States and Mexico must keep in mind that the Gulf of Mexico is a precious resource that both are lucky to have at their fingertips. In addition, the United States and Mexico should remember these suggestions when and if Eastern Gap delimitation negotiations commence with Cuba.

## VI. TREATY WITH MEXICO ON THE DELIMITATION OF THE CONTINENTAL SHELF—TODAY

### A. *TMDCS is Finalized*

Clearly, the birth of the TMDCS is remarkable, as procedures for determining territorial borders naturally embody “the end of long and delicate negotiations, and [involve] an intricate balancing of legal, technical, and political considerations.”<sup>257</sup> As the result of successful negotiations, the United States and Mexico signed the TMDCS on June 9, 2000,

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<sup>254</sup> See Charney, *supra* note 184, at 11–12.

<sup>255</sup> See generally TMDCS, *supra* note 6; *cf.* discussion *supra* Part IV.A.

<sup>256</sup> See generally TMDCS, *supra* note 6; *cf.* discussion *supra* Part IV.B.

<sup>257</sup> Vargas II, *supra* note 20, at 190.

in Washington, D.C.<sup>258</sup> Secretary of State Madeleine Albright signed the treaty for the United States, and Secretary of Foreign Relations Rosario Green signed the treaty for Mexico.<sup>259</sup> On October 18, 2000, the U.S. Senate gave advice and consent to ratification of the TMDCS, and the Mexican Senate gave its approval on November 28, 2000.<sup>260</sup> The United States and Mexico exchanged Instruments of Ratification in Mexico City at 11 a.m. on Wednesday, January 17, 2001.<sup>261</sup>

*B. Addressing Mexico's Concerns: Transboundary Reserves*

The TMDCS is unique in that it contains a new set of provisions in Articles IV and V that addresses Mexico's greatest concern: the existence of transboundary reservoirs.<sup>262</sup> Specifically, these provisions help create a plan by which the parties can transmit and exchange valuable information concerning the potential existence of these transboundary reserves.<sup>263</sup>

For example, Article IV(1) creates what is known as a buffer zone, otherwise known as the "Area," wherein neither party may drill or produce petroleum for a ten-year period following the TMDCS ratification.<sup>264</sup> This buffer zone is comprised of the area that extends outward 1.4 nautical miles on each side of the 135-nautical mile boundary line.<sup>265</sup> The United States and Mexico

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258 See TMDCS, *supra* note 6, at 5.

259 *Id.*

260 United States Department of the Interior, Minerals Management Service, *Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale*, available at <http://www.gomr.mms.gov/homepg/lseale/178noticep.html> (last visited Feb. 22, 2001).

261 *US, Mexico Complete Gulf of Mexico Treaty Ratification*, PLATT'S OILGRAM NEWS, Jan. 19, 2001, at 6.

262 See TMDCS, *supra* note 6, arts. IV(1), V(1)(a). *But see* Ainger Interview, *supra* note 4 (arguing that although the TMDCS addresses Mexico's concerns about possible transboundary reserves, this is an area that some believe is still somewhat "unresolved," as the treaty cannot completely guarantee that one nation's natural resources, extending into the transboundary area, will be fully protected from production by the opposing nation).

263 See TMDCS, *supra* note 6, arts. IV(4)–V(1).

264 *Id.* art. IV(1).

265 *Id.*; see also *Western Gap Division Agreed*, *supra* note 13, at 30 (noting that the 2.8-mile buffer zone was statistically calculated and designed to encompass any possible transboundary reserves or deposits). There is some evidence that the buffer zone was a

statistically determined that a 1.4 nautical mile buffer zone would provide a greater than 99.9% chance that neither party would be drilling or producing any petroleum that could be contained in a transboundary reserve, thus respecting any natural resources that lawfully belong to the opposing nation in the "Area."<sup>266</sup> As explained above, Article IV(1) contains a 10-year moratorium on all oil and gas exploration within this 1.4-mile buffer zone.<sup>267</sup> This moratorium provides time for the United States and Mexico to learn more about the geophysical characteristics and make-up of the "Area."<sup>268</sup> Once this ten-year period has run, both the United States and Mexico have the option of making this 1.4 mile "Area" available for oil and gas exploration.<sup>269</sup> The moratorium is extremely beneficial in that it alleviates concerns over possible transboundary reserves.<sup>270</sup>

Article IV(5) of the TMDCS requires that each party share with the other any geological data in its possession concerning the existence of any transboundary reserves in the "Area."<sup>271</sup> If either country gains valuable geological or geophysical data indicating a transboundary reservoir, the treaty requires both parties to seek and reach an agreement for the "efficient and equitable exploitation of such transboundary reservoirs."<sup>272</sup> The TMDCS also addresses dispute resolution. Specifically, Article VI requires the parties to discuss any issue regarding the interpretation or implementation of the TMDCS upon the written request of either party.<sup>273</sup> Mark Rubin, upstream general

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tool used to induce Mexico to quickly pass the TMDCS, as there was still opposition in the Mexican Senate stemming from the belief that the United States was attempting to appropriate Mexican oil reserves in the Western Gap. *Id.*

<sup>266</sup> Ainger Interview, *supra* note 4.

<sup>267</sup> See TMDCS, *supra* note 6, art. IV(1).

<sup>268</sup> See *MMS Lauds U.S. and Mexico Continental Shelf Boundary Treaty Agreement*, M2 PRESSWIRE, June 14, 2000, available at 2000 WL 22276453.

<sup>269</sup> *Id.* The parties may also modify the ten-year moratorium, either to shorten or extend this ten-year period, by mutual agreement through an exchange of diplomatic notes. TMDCS, *supra* note 6, art. IV(3).

<sup>270</sup> See discussion, *infra* Part VI.B.

<sup>271</sup> See TMDCS, *supra* note 6, art. IV(5).

<sup>272</sup> *Id.* art. V(1)(b).

<sup>273</sup> *Id.* at 4. Article V(1)(a) also requires the parties to meet together periodically for the purpose of "identifying, locating, and determining the geological and geophysical characteristics of such reserves" *Id.*

manager for the American Petroleum Institute, concluded, “[t]his is a good treaty because it protects the interests of both nations.”<sup>274</sup>

## VII. MMS LEASING IN THE WESTERN GAP

Now that the jurisdictional delimitation of the Western Gap has occurred, many oil and gas companies will flock to this area to commence drilling in the mineral-rich reserves.<sup>275</sup> To ensure the efficient allocation of exploration and drilling rights, the U.S. Minerals Management Service<sup>276</sup> plans to open blocks of the Western Gap for lease by oil and gas companies.<sup>277</sup> Currently, the northern and western Gulf of Mexico supports approximately 4,000 oil and gas platforms.<sup>278</sup> The Gulf lease sales will be made pursuant to the Outer Continental Shelf Lands Act,<sup>279</sup> under which U.S. Interior Secretary Bruce Babbitt has organized a five-year offshore program providing for two annual sales in the Gulf of Mexico.<sup>280</sup>

Opening the Western Gap to lease bidding became a reality in the mid-1990s.<sup>281</sup> In August of 1997, the MMS opened bidding for a portion of the Western Gulf Lease Sale 168, wherein 277 tracts totaling 1.47 million acres were offered for lease.<sup>282</sup> Located in the northern portion of the Western Gap, the tracts

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274 *MMS, Industry Praise Gulf of Mexico Treaty*, THE ENERGY REPORT, June 26, 2000, available at 2000 WL 8749077.

275 *See Gulf of Mexico; Activity Brisk as Operators Extend Boundaries*, PETROLEUM ECONOMIST, Feb. 21, 2001, at 27.

276 *See* U.S. Department of the Interior, Minerals Management Service, Gulf of Mexico OCS Region, *Proposed Notice of Sale 178 Amended to Add Western Gap Blocks*, at <http://www.mms.gov/oc/p/press/2000/press1215.htm> (last visited Jan. 25, 2001) [hereinafter MMS Website] (noting that the MMS, a bureau in the U.S. Department of the Interior, is the federal agency that manages the nation's natural gas, oil, and other mineral resources in the continental shelf).

277 *Id.*; *see also* Kronenwetter II, *supra* note 181.

278 API Website, *supra* note 5.

279 *See* Outer Continental Shelf Lands Act, 33 U.S.C.A. § 1503(e)(3) (1999).

280 *Secretary Babbitt and Mexican Foreign Secretary Gurria Announce Maritime Boundary Talks for the Gulf of Mexico*, NEWS: U.S. DEPARTMENT OF THE INTERIOR, Dec. 11, 1997.

281 *Delineate Gulf Gap*, *supra* note 196, at 28; *see also* Ray Tyson, *Gulf 'Donut Zone' Might Be Hot in Upcoming Sale*, PLATT'S OILGRAM NEWS, July 28, 1997, at 1.

282 *See Open Donut Hole*, *supra* note 41.

for this portion of Sale 168 would sit in approximately 10,000 feet of water, requiring the most advanced deep-water rigs for exploration and drilling.<sup>283</sup> The Western Gulf Sale 168 would have been the fourth overall MMS sale in the Gulf of Mexico.<sup>284</sup> As an illustration of the importance of the Gulf lease sales to the U.S. Treasury, the three prior MMS sales generated a total of \$1.7 billion in high bids.<sup>285</sup> The MMS has reported that oil and gas production as a whole generated more than \$100 billion for the U.S. Treasury between the years of 1956 and 1995.<sup>286</sup> Lease 168 was to include a total of 4,710 tracts, encompassing approximately 25.7 million acres offshore Texas and Louisiana.<sup>287</sup>

The MMS included a clause in its leasing notice stipulating that bids would remain sealed until March 3, 1998; bids would then be opened only if the boundary dispute in the Western Gap had been resolved.<sup>288</sup> Because of the failure to demarcate the jurisdictional boundaries of the Western Gap by March of 1998, bids from this particular sale were apparently returned unopened.<sup>289</sup>

With the end of the negotiations resulting in the TMDCS ratification, the MMS was determined to begin new lease sales. On November 29, 2000, the MMS announced the Proposed Notice of Sale for Outer Continental Shelf Lease Sale 178, Central Gulf of Mexico, opening up 4,366 lease blocks in the Western Gap.<sup>290</sup> On December 15, 2000, the MMS amended this proposed notice, adding 53 more lease blocks for a total of

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283 Ray Tyson, *Gulf Donut Zone Might Be Hot in Upcoming Sale*, PLATT'S OILGRAM NEWS, July 28, 1997 at 1; Delineate Gulf Gap, *supra* note 198, at 28 (noting that the northern portion was available for lease earlier because it was the portion likely to end up on the U.S. side).

284 *Id.*

285 *Id.*

286 API Website, *supra* note 5.

287 Tyson, *supra* note 283.

288 *See Delineate Gulf Gap*, *supra* note 196, at 28.

289 *See id.*

290 Notice of Availability, 65 Fed. Reg. 71119 (Nov. 29, 2000), *available at* 2000 WL 1743518; News Release, U.S. Department of the Interior, Minerals Management Service Office of Public Affairs, *Proposed Notice of Sale 178 Amended to Add Western Gap Blocks*, at <http://www.mms.gov/ooc/press/2000/press1215htm>.

4,409.<sup>291</sup> The MMS estimates that the range of natural resources that may be explored and produced as a result of Sale 178 are 1.53 to 4.39 trillion cubic feet of gas (“TCF”) and .15 to .44 billion barrels of oil (“BBO”).<sup>292</sup> This potential production is estimated at a net value of approximately \$1.2 to \$3.6 billion 2001 U.S. dollars.<sup>293</sup> As MMS Director Walt Rosenbusch remarked, “[d]eepwater areas in the Gulf of Mexico represent an important new frontier for this nation’s energy and economic future and this treaty facilitates access to additional acreage.”<sup>294</sup> To further determine the extent of potential hydrocarbon reserves in the Western Gap, seismic data and interpretation specialists Veritas DGC plan to complete a nonexclusive seismic survey of the area in early 2001.<sup>295</sup> Perhaps many hope these seismic results will reveal vast reserves that can continue to maintain and preserve the production potential of both the United States as well as Mexico. As both nations have agreed to boundary lines in the Western Gap, the time has come to allow them access to the reserves in the Western Gap, as both nations’ essential energy needs may one day depend on this area.

## VIII. CONCLUSION

Access to the Western Gap area in the Gulf of Mexico will assist the United States and Mexico, as well as other nations, with the continued support and maintenance of humanity. It is evident that the mineral resources located in the deep submarine land of the Western Gap are vast, holding great energy potential.<sup>296</sup> Fortunately, the technology needed to explore these deep-water resources has now been developed, and will now be put to use.<sup>297</sup> It is imperative that the governments

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291 See News Release, *supra* note 290.

292 *Id.*

293 *Id.*

294 U.S. Department of the Interior, Minerals Management Service, Office of Public Affairs, *MMS Lauds U.S. and Mexico Continental Shelf Boundary Treaty Agreement*, June 13, 2000, available at <http://www.mms.gov/ooc/press/2000/061300.htm>.

295 See *Western Gap Division Agreed*, *supra* note 12, at 30.

296 See discussion *supra* Part II C.

297 See discussion *supra* Part II B.

of both the United States and Mexico understand the importance of this area, in terms of the future energy supply benefiting our planet as a whole.

Because of the unsettled nature of the law governing maritime boundaries, it was imperative that the United States and Mexico maintain an equitable stance when negotiating. This they did. In future maritime boundary negotiations such as those involving the Gulf of Mexico's Eastern Gap, all nations involved must maintain the same equitable stance that was utilized during the TMDCS negotiations. As discussed, it was beneficial for Mexico to adhere to the position that its continental shelf extended past the 200 nautical mile boundary, pursuant to Article 76(1) of the UNCLOS, in order for the delimitation of the Western Gap to occur. It was by Mexico's adherence to this stance that the positions of each country were closest, therefore aiding in the diplomatic discussion between the United States and Mexico. Additionally, as the method for demarcation was left to the discretion of the two countries in accordance with the UNCLOS, it was important that both countries follow equitable principles during their negotiations. The use of the equidistance method has proven to be most equitable method to employ, resulting from the consideration of past maritime boundary history as well as the ten suggestions discussed in Part V.E. It was well established that the sooner these two countries could delimit the Western Gap in a diplomatic manner, the more beneficial the outcome would be. As we enter a new millennium full of hopes for the future, it is crucial that we carefully handle our natural resource areas in order to supply the energy needed to sustain those hopes. The delimitation of the Western Gap is just such an area and the parties involved should be commended for handling all issues involved with equity and care.<sup>298</sup>

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298 "As nations continue to develop they will require more, not less, total energy; their industrialization and rapidly growing populations will depend on it." Gro Harlem Brundtland, *How to Secure Our Common Future*, SCIENTIFIC AMERICAN, Sep. 1989, at 190.

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\* This Comment received the Gus Schill Writing Award and was named the Best Candidate Paper of 1999-2000 by the *Houston Journal of International Law*.

## IX. APPENDIX

A. *TMDCS, Article I*

Pursuant to Article I of the Treaty with Mexico on the Delimitation of the Continental Shelf:<sup>299</sup>

The continental shelf boundary between the United States of America and the United Mexican States in the Western Gulf of Mexico beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be determined by geodetic lines connecting the following coordinates:

1. 25° 42' 14.1" N.      91° 05' 25.0" W.
2. 25° 39' 43.1" N.      91° 20' 31.2" W.
3. 25° 36' 46.2" N.      91° 39' 29.4" W.
4. 25° 37' 01.2" N.      91° 44' 19.1" W.
5. 25° 37' 50.7" N.      92° 00' 35.5" W.
6. 25° 38' 13.4" N.      92° 07' 59.3" W.
7. 25° 39' 22.3" N.      92° 31' 40.4" W.
8. 25° 39' 23.8" N.      92° 32' 13.7" W.
9. 25° 40' 03.2" N.      92° 46' 44.8" W.
10. 25° 40' 27.3" N.      92° 55' 56.0" W.
11. 25° 42' 37.2" N.      92° 57' 16.0" W.
12. 25° 46' 33.9" N.      92° 59' 41.5" W.
13. 25° 48' 45.2" N.      93° 03' 58.9" W.
14. 25° 51' 51.0" N.      93° 10' 03.0" W.
15. 25° 54' 27.4" N.      93° 15' 09.9" W.
16. 25° 59' 49.3" N.      93° 26' 42.5" W.<sup>300</sup>

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<sup>300</sup> TMDCS, *supra* note 6, art. I (noting Article II adds: The geodetic and computational bases used to determine the boundary set forth in Article I are the 1983 North American Datum ("NAD83") and the International Earth Rotation Service's Terrestrial Reference Frame ("ITRF92")).