

UNITED STATES-MEXICAN RELATIONS:
BLOWOUT OF THE MEXICAN OIL WELL
IXTOC I

by Robert D. Tomasek



The Ixtoc I oil well blowout has embroiled a large number of governmental and nongovernmental participants in a complex foreign policy debate. With each group pursuing partisan goals, resolution of the many controversies has been difficult.

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The political consequences of the Ixtoc I blowout of June 3, 1979 have embroiled a large number of governmental and nongovernmental participants in a new debate on foreign policy. Each participant has pursued partisan goals, making a resolution of the controversy extraordinarily difficult. With each participant critical and cynical about the motivations and actions of those in opposition, it has often been difficult to distinguish between narrow self interests and policies advocated because they are felt to be right. This *AUFS Report* will describe how each participant became involved, the objectives sought, the actions taken, and how these affected the whole problem area.¹

For readers interested in international relations theory, the Ixtoc I case may be considered a nonsecurity, environmental issue between the U.S. and Mexico. While the involvement of many participants would be expected, some—such as Texas state officials, and the Padre Island resort owners who brought suits against Sedco, Permargo, and PEMEX—are unusual. As a problem in foreign policy analysis, this complexity renders it more interesting, but it certainly does not advance the chances for a solution.

Sedco, Permargo, and PEMEX

Sedco, Permargo, and PEMEX were all involved in the operation of Ixtoc I when the blowout took place. Sedco, located in Texas and formerly owned by the present Texas governor William Clements, is one of the world's largest oil rig leasing companies. Since it is being sued by the resort owners, the Texas Attorney General, and the U.S. Justice

Department, its representatives have argued that it was not responsible for the blowout. In testimony at the two congressional hearings on the oil spill and in the court defense conducted by several large Houston law firms, Sedco has insisted that it merely leased the oil rig and was not responsible for any operational decisions when the accident occurred. It has given detailed testimony describing how it was first contacted by Perforaciones Marinas Del Golfo, S.A., Permargo, a privately owned Mexican drilling company that had been awarded two long-term offshore drilling contracts by PEMEX, to supply a rig. Under this type of lease contract, company spokesmen have asserted, the 17 Sedco employees had no control of the operation: the decision on how to drill the well and what to do when the emergency began rested with Permargo and PEMEX. Indeed, Sedco claims that several employees expressed reservations about how the emergency was being handled, but they were overruled by PEMEX officials on shore.²

The sharpest criticism of Sedco is probably to be found in the Texas Attorney General's office. The criticisms are of two types. First, lawyers there argue that Sedco had more operational responsibility than it now admits. They are meticulously examining Sedco's operating contracts in other parts of the world to determine operational patterns; they are also trying to get evidence from people on the scene to determine exactly what happened during the emergency. Sedco's action in towing the rig further out to sea and sinking it, the lawyers charge, was an attempt to destroy

evidence and they do not accept Sedco's argument that this was done because the damaged rig was a navigational hazard. Second, the Attorney General's office blames Sedco for forcing it and the U.S. Department of Justice to file suits by a certain date when they would have preferred to keep their options open. The Sedco lawyers used an anachronistic 1851 statute stipulating that shipowners involved in an accident could limit liability to \$300,000 and force a district judge to set a date when all suits had to be filed (October 23, 1979).³ Early court proceeding may thus have prejudiced the outcome of quiet negotiations with Mexico before they were given a chance to succeed.⁴ The last argument is open to doubt, however, since Mexico (read PEMEX, the state-controlled oil monopoly) had already rejected liability on August 24, 1979. Moreover, when the suits were filed, the Texas Attorney General sued Sedco and Permargo and the U.S. Department of Justice Sedco only.

Permargo did not get much attention in this case until it was pointed out that Jorge Díaz Serrano, director of PEMEX, was also the owner of the private company. Conflict of interest charges were at least partially laid to rest when Díaz Serrano appeared before the usually inactive Mexican Congress to explain that he had divested himself of Permargo interests several months before the blowout occurred.

PEMEX, a semiautonomous state enterprise, has total charge of developing Mexico's immense oil wealth. State oil enterprises are common in Latin America, but what especially interests scholars is PEMEX's huge

budgetary allotment, its large bureaucracy, its technical expertise developed since Mexico's nationalization of foreign oil in 1938, and its ability to go its own way limited only by the Mexican president.⁵

When the blowout occurred in June 1979, PEMEX felt that it had the expertise to handle the situation effectively, and it was willing to spend millions in the effort. It hired Red Adair and his specialized team, contracted for a huge "sombbrero" that was put over the well, drove thousands of metal balls into the well opening, and drilled two relief wells to take the pressure off Ixtoc I.⁶ That none of these techniques was successful until March 24, 1980 didn't particularly trouble PEMEX, since it felt that the blowout was an enormous technical challenge, that bad weather continually hindered its operations, and that it tried every conceivable solution. PEMEX also felt it did the best it could to collect the oil around the blowout, since it brought over from France and Norway booms to enclose the oil and skimmers to scoop it up. In PEMEX's published account of its role, it notes that this is its only oil blowout among the hundreds of wells it has drilled on the continental shelf, that the U.S. record on oil spills is worse, that the oil spill caused no real damages to fishing in the Caribbean, that tanker spills are much more common, and that the huge demand for oil means that some spills are bound to occur.⁷

That is the PEMEX side. Opposing views abound, and much of the criticism links PEMEX's actions at the time of the blowout to earlier problems with the state enterprise. Thomas G. Sanders describes PEMEX drilling operations in Tabasco, where critics in the state charge that it drains off wealth without leaving any permanent economic improvements.⁸ One Mexican critic felt PEMEX is niggardly in allocating only 0.88 percent of its huge budget for environmental considerations.⁹ On the oil spill, criticisms reached a crescendo. U.S. Senator Weicker from Connecticut repeatedly accused PEMEX of lying about the amount of oil it was collecting around the blowout and about the progress it was making in capping the well. One specialist from the Massachusetts Institute of

Technology observing the operations felt that PEMEX did not know how to use the booms and skimmers, got carried away with useless gadgetry in trying to cap the well, and let pride prevent it from utilizing U.S. expertise.¹⁰ The U.S. Department of Interior rather smugly testified that an oil blowout like this could not have occurred in the U.S. after 1971 due to regulations requiring thorough checks of leases, the type of equipment being used, and the adequacy of training programs required of oil rig operators.¹¹ Lastly, there were rumors circulating in the U.S. that PEMEX secretly cleaned up Mexican beaches hit by the oil, and that PEMEX was fundamentally indifferent to whether ecological damage had occurred.

The efficiency and truthfulness of PEMEX are difficult to determine, as the conflicting testimony in the congressional hearings demonstrates. In regard to PEMEX's Mexican clean-up operations, interviews in Mexico established that PEMEX did an efficient job, in public, with damages apparently being assessed and recompensed immediately.¹² Mexico was fortunate in that the oil did not seep into the Laguna del Carmen, which is important for shrimp, but instead hit in scattered places along the coast north of Veracruz for two weeks before currents moved it out to sea. There are no resort areas on the east coast north of Veracruz, and Mexican shrimp fishermen were not affected. Moreover, Mexico has been concerned about short- and long-run ecological damage to the Caribbean from Ixtoc I, resulting in numerous governmental department and university studies.¹³

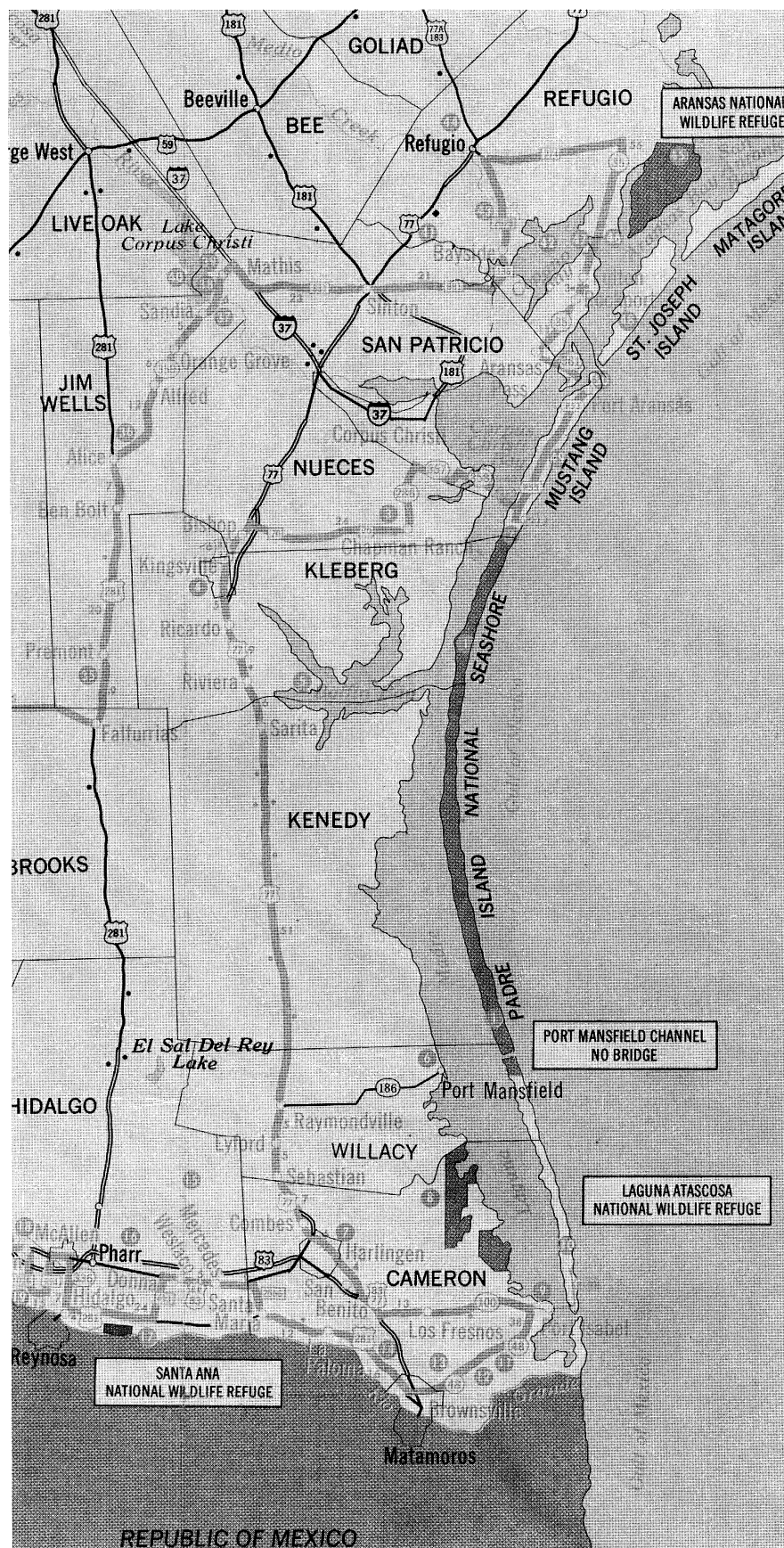
The Oil Spill on Padre Island and the Liability Suit

Padre Island stretches about 113 miles from Port Aransas on the north almost to Mexico on the south and is separated from the mainland by the shallow Laguna Madre, which is a refuge for birds and a breeding ground for shrimp. The Ixtoc I oil spill hit the five mile resort area of South Padre Island in early August, impacted the beaches intermittently for five weeks, and by August 24 had drifted as far north as Port Aransas before currents moved

it out to sea in September. According to contingency plan priorities, the Coast Guard was to use booms at the Aransas Pass, Mansfield Channel, and Brazos Santiago Pass to prevent oil from seeping into the Laguna Madre, to clean up the resort beaches as quickly as possible, and to finish by cleaning up oil from the sand of the 80 miles of national seashore where no resorts are located.

During my research I found it difficult to measure the amount of damage that occurred. Those personally affected felt they had suffered enough economic losses to justify legal suits. In the congressional hearing they presented percentage data from their chambers of commerce showing their loss of income, and they emphasized that this did not merely involve resort owners, but also retail stores, gas stations, marinas, fishing charter captains, the seafood plant at Port Mansfield that had to shut down, the shrimp fisherman from Port Mansfield that could not get through the closed Mansfield Channel, the Port Mansfield and Willacy navigation and utility districts which lost the income needed to pay back their revenue bonds, and the 1,200 workers from Port Isabel who worked in South Padre Island.¹⁴ The city manager of South Padre Island also related to me how the falloff of sales tax and a special hotel tax had been detrimental to the whole city budget.¹⁵

Things could have been much worse. If Ixtoc I had occurred in February instead of June, more of the resort income would have been lost and the oil might have hit further along the coast. There was no return of the oil in summer 1980 as had been feared, since Ixtoc I was finally capped on March 24, 1980. Winter tourists and college students on spring break came back in their usual numbers. Aransas Pass, a main ship channel leading into Corpus Christi, never had to be closed (which would have damaged the oil and grain economy of that port city). Not more than 15 birds were harmed since most flew back to the Laguna Madre. Shrimp fishermen did not find that shrimp were contaminated, and like their counterparts in Mexico, had a good season the following year. The oil



Site of Ixtoc I blowout and blow-up (left) of South Padre Island area at the tip of Texas.

traveled so far that much of its toxicity was lost by the time it hit Padre Island. Thus one cannot measure its impact solely by pointing out that Ixtoc I was the world's largest oil spill. Furthermore, condominium building continued without interruption on South Padre Island, and Canadian investors who had never heard of this resort area before decided to invest after television news coverage.

These points are made for two reasons. First, Governor Bill Clements of Texas made some of the same points when arguing that a downplaying of the whole affair without legal suits would have led eventually to Mexico paying some liability on its own initiative. Second, since the Texas Attorney General and the U.S. Department of Justice have sued Sedco for ecological damage as well as clean-up costs, new research will have to establish how ecological damage can be assessed for both the short- and long-run.¹⁶

The decision to initiate a legal suit can be better understood if the feelings of frustration and powerlessness that preceded this action are described. The frustration began two weeks before the oil even hit the beaches, since ABC and NBC television, Texas newspapers, and

the director of the contingency plan all publicized the event so much that tourism fell off before the disaster occurred. Then, when their congressional representatives held a two-day congressional hearing in Corpus Christi on their behalf, and their state representatives had hearings in the Texas legislature on the disaster, the people of South Padre Island expected some type of disaster compensation. (Two possibilities existed: amending legislation which would add them to the superfund oil compensation program, or a special bill similar to that resulting from the 1947 Texas City explosion which gave direct compensations to the victims.) Their congressmen's strong efforts for special legislation were defeated, however, and the Small Business Administration was slow in processing disaster loan applications. (Only 85 of 127 interest-bearing loans were granted.)

The sense of helplessness among the South Padre islanders is understandable. They felt their grievances would be ignored by the U.S. in its endeavor to obtain more oil from Mexico, and they even sent a telegram to Secretary of State Vance expressing this concern. Most felt that Texas Governor Bill Clements was not sympathetic. The Attorney General, Mark White, visited the beaches and made speeches about the enormity of the disaster, but many suspected his apparent concern was to gain political advantage over the Governor.

In the end, the South Padre Islanders filed a class action suit. Initiated by Houston's Jamail law firm, it outdid the other two suits by naming PEMEX as well as Sedco and Permargo as defendants. The damage liability was set at \$355,000,000 to cover what the suit describes as an "unmitigated disaster of catastrophic proportions." It details the many ways in which injuries took place, and cites evidence of why it feels all three defendants were negligent and should be held liable. The complainants expect that if a U.S. district judge finds Permargo and PEMEX guilty, and they refuse to compensate, he will then order seizure of their bank accounts and equipment in the U.S. to meet the damages.

The deterioration in U.S.-Mexican relations that would result from this

action leads some to argue that no group of individuals should have the right to weaken the country's national interest. Others defend the right to bring suit as consistent with democratic participatory action. The trend among most international lawyers, moreover, is to give more legal rights to individuals and groups within a state.¹⁷ Finally, the Federal Sovereign Immunities Act of 1976 stipulates that citizens can sue a foreign corporate enterprise for detrimental effects, and provides for federal district court original jurisdiction along with its right to order seizure of assets—the latter to avoid U.S. State Department involvement in a situation that makes it vulnerable to pressure from a foreign government.

The Role of the State Department and Justice Department

The U.S. State Department in many ways was caught in the middle on this foreign policy issue, and has responded to its critics in two ways. First, it emphasizes that it took the initiative at different times and did not just respond to events. Second, it stresses that it tried to be fair to the complainants and, at the same time, attempted to prevent actions that would harm U.S.-Mexican relations.

The State Department describes how it attempted to negotiate with Mexico for three years before the oil spill an agreement modeled after the U.S.-Canadian treaty of 1974 that would require a joint cooperative effort on oil spills and the sharing of the clean-up costs. (Indeed, an agreement was close to being signed by summer 1980.) It also insists that it had excellent working relations with the Mexican government and PEMEX during the oil spill, in that it offered Mexico assistance and facilitated what cooperation there was, and obtained accurate information from PEMEX on how it was progressing in containing the oil and in capping the well.¹⁸

Personal liability and clean-up costs, the State Department says, it offered to discuss informally, without legal demands. During this time, the State Department advised that complainants refrain from suing PEMEX, given its close relationship to the Mexican government, and was finally able to convince Texas

Attorney General White of the wisdom of this strategy.

Critics challenge the State Department version of events and strategy. Senator Weicker felt that the State Department did not push the Mexican government and PEMEX for accurate information on the progress of capping Ixtoc I, and thus were as poorly informed as the congressional committees. A public interest group of lawyers from the Center for Law and Social Policy in Washington, D.C. took on Ixtoc I as one of their many environmental projects, and by announcing that they would monitor the State Department closely to see whether it was pressing for damages, inferred that it did not expect much action.¹⁹ Other critics also felt that the need for Mexican oil would lead the State Department to downplay the damage issue. Ironically, though, the most vehement criticism came from the Mexican government, when it announced on August 24 that it would accept absolutely no liability, since the coordinator of U.S.-Mexican affairs, Robert Krueger, had made public the U.S. desire for damage discussions before Mexico could respond officially.²⁰

The role of the U.S. Department of Justice is subject to similar uncertainty. It became active on October 23, 1979 when it announced a \$6,000,000 federal suit against Sedco for clean-up costs carried out by governmental agencies, plus an unspecified but substantial amount for damages to natural resources, property, and commerce. It claimed that the Sedco oil rig was unseaworthy and the crew was incompetent and negligent.²¹ Like the suit brought by Texas Attorney General White against Sedco, it was filed right before the October 23 court deadline and also utilized the 1972 Water Pollution Control Act to charge Sedco with environmental damage. Neither suit charged PEMEX. In August U.S. Attorney General Benjamin Civiletti had stated that it would be a "silly proposition" to bring legal reprisals against Mexico. However, Texas Attorney General White, who had excellent working relations with his national counterpart, proudly mentioned to reporters in September that he had convinced the U.S.

Attorney General that he had the authority to sue PEMEX under the 1976 Sovereign Immunities Act.²² (The U.S. State Department and presidential office may have persuaded the U.S. Attorney General not to sue PEMEX, although the Justice Department did say that it still had the power to sue other parties and that an interdepartmental group was considering the situation.)

Texas: The Governor Versus the Attorney General

Governor Bill Clements, a Republican, and Attorney General Mark White, a Democrat, had a strained relationship even before the Ixtoc I blowout occurred, so that the event became embroiled immediately in Texas party politics. The Governor maintains that quiet diplomacy with Mexico will eventually bring them around to paying liability damages while litigation will make them more adamant.²³ Clements himself is a flamboyant, outspoken type who believes strongly in informal personal diplomacy. In his first eight months of office, without checking with the U.S. State Department, he visited Mexican President López Portillo, had meetings with the governors of four northern Mexican states, urged other U.S. governors to do the same, and arranged for the Mexican governors to visit Austin with a great fanfare of publicity. He feels that the governors can solve problems of energy, drug traffic, trade, and illegal aliens more effectively at the state level, since they are closest to the scene, than at the national level. Indeed, Governor Clements' efforts have elicited praise from the governor of Nuevo León and others.²⁴

Governor Clements' critics charge that his ownership of Sedco explains his preference for quiet diplomacy. Clements points out that he placed his shares in trust upon taking office, that he had not been involved in management decisions since, and that he had nothing to do with the Sedco decision to limit liability through the old 1851 navigation act. Attorney General White, the Governor charges, is using the legal suits to advance his candidacy over other Democratic contenders for the next governor's race. He also feels that U.S. Attorney General Civiletti brought suit against Sedco for partisan gain. While he now regrets having said that the oil spill was "much ado about nothing" and that

there was "no use crying over spilled milk," he made the statements, he claims, in an effort to counter media overkill. The state agencies under his control, he says, did a good job in helping to clean up the oil spill, and PEMEX itself, he believes, did all it could to cap the well. Finally, he cites the Texas Shrimp Association's conclusion that shrimp were not affected as affirmation of his belief that no permanent damage resulted.

The Governor's main critics are those affiliated with the Democratic Party and they have hit hard. Congressman Henry Gonzalez in a floor speech accused both the Governor and Díaz Serrano of having a similar conflict of interest and of placing personal gain above everything else. Harry Hubbard, head of the Texas AFL-CIO, felt the Governor lacked honesty and mentioned that the AFL-CIO might itself sue Sedco if need be to protect the citizens of Texas.

The position of Attorney General Mark White can be presented just as sympathetically.²⁵ He bristles at those who accuse him of political motivations, argues that it is his job as Attorney General to protect the state of Texas and Texans from damages, and says that his policy would be the same if he were a Republican. The informal negotiations favored by the Governor, White believes, led Mexico to believe it could evade legal responsibilities. By reserving the option to sue Sedco, Permargo, and PEMEX, he argues, he not only gave his lawyers time to sift through the evidence and determine who was at fault, but also make Mexico uneasy and thus perhaps more willing to negotiate. He stresses that this strategy did not mean that he was trying to start a fight with Mexico, since a lawsuit could only be the last resort, and that when the October 23 legal deadline forced him to act, he did not sue PEMEX since the U.S. State Department convinced him this would be counterproductive.

The Attorney General's suit of \$10,000,000 is against both Sedco and Permargo, but the feeling is that Sedco can be held the most responsible for damages to cover the Texas state government's oil clean-up costs plus any permanent ecological harm. The suit is being prepared by environmental lawyers who feel that Sedco is responsible under specific

Texas state laws as well as the 1972 Water Pollution Control Act. They are happy that the U.S. Justice Department is carrying on a parallel suit against Sedco. They are amused that Sedco, after criticizing them for not going along with the informal negotiating strategy, has itself in desperation had its Houston law firms file a countersuit against both Permargo and PEMEX charging them with all the responsibility.²⁶

Congressional Perceptions and Actions

There was neither strong interest nor action by Congress on the Ixtoc I blowout. The congressional representatives of Padre Island constituencies, E. de laGarza and Joe Wyatt, had the House Committee on Merchant Marine and Fisheries, of which they are members, conduct hearings in Corpus Christi on September 8 and 9, 1979. These hearings provided a catharsis for those injured but did not lead to any practical results since bills initiated to force the Secretary of Transportation to provide direct damage compensations were defeated. These representative actions would be an indication of normal legislative concern. Of more importance were the viewpoints and actions of Representative Henry Gonzalez, Senator Lloyd Bentsen, and Senator Lowell Weicker, since all three were especially active and attempted to affect foreign policy.

Representative Henry Gonzalez from San Antonio utilized what might be called the blunt approach. In five congressional speeches²⁷ he blamed Governor Clements and Díaz Serrano, head of PEMEX, for a conflict of interest, PEMEX for letting pride take over, the U.S. government for allocating a "pitiful" \$4,000,000 for the clean-up operation, and the presidency for a lack of leadership in that negotiations should have taken place previously for an international agreement determining responsibility for oil spills. The majority of blame, though, he placed on the Mexican government. Mexico's last two presidents, he charges, have been vehemently anti-American, as reflected in President López Portillo's deliberate discourtesies to President Carter during their first presidential meeting. López Portillo's attitude on damage liability for the oil spill Gonzalez described as "arrogance which does not bespeak the kind of maturity that one would hope for a man

charged with the powers he holds." Moreover, he feels the Mexican press has vituperated editorially for eight years against the U.S. and this has helped to poison the atmosphere. Finally, he implies that Mexico could learn a lot from Canada, which is a real friend.

This viewpoint led Representative Gonzalez to say that it was Congress that had the responsibility to "awaken the slumbering powers of government." On September 19, 1979, he introduced a concurrent resolution that expressed the sense of Congress that the President should establish a temporary commission consisting of representatives of seven departments, five representatives of the general public, and affected governors, which would evaluate the damage from Ixtoc I. The resolution also directed the U.S. President to request Mexico to cooperate with this commission in assessing the damage and determining responsibility and obtaining compensation once this is done, with the President to report to Congress each year on the progress made.²⁸ This resolution, needless to say, was not well received by the U.S. State Department, President Carter, Governor Clements, or the Mexican government, and was quickly buried.

Senator Lloyd Bentsen approached the issue in a more reflective manner. His interest has always been in the totality of U.S.-Mexican relations, and he has played an important role in the annual meeting of U.S. and Mexican legislators. He considers himself a long-standing friend of Mexico, and thus in some ways is a good barometer of how relations are progressing. In December 1979 his patience seemed to have reached the breaking point. The result was a long speech in the Senate on U.S.-Mexican relations, which was approved beforehand by other important Senators and considered a friendly warning to Mexico.²⁹

Senator Bentsen first expressed his concern on a number of Mexican moves such as ending asylum for the Shah of Iran, sponsoring a conference on the independence of Puerto Rico, making statements about the stability of the dollar, and rejecting oil spill liability. He then stated that the U.S. had made a real effort in the past to settle the Chamizal and Colorado River salinity

problems, that it is the only country that would tacitly accept so many Mexican illegal aliens, and that Mexico can count on friendly U.S. legislators to further its trade. However, he reminded Mexico that it cannot always demand concessions without accepting responsibilities, and the true test of the relationship is not the existence of problems but whether the two countries can establish enough good will and mutual respect to resolve them. He found it discouraging that the oil spill should inflame tensions so much, and that Mexico should so abruptly deny any liability, and wondered how Mexico would react if a U.S. oil spill washed up on the resort beaches of Cancun or Cozumel. Senator Bentsen was very clear in stating what he feels is an underlying factor of Mexican foreign policy when he said "we are not prepared to be patsies for Mexican political leaders who like to court public opinion by tweaking the nose of Uncle Sam."

Senator Lowell Weicker of Connecticut was by far the most vigorous on Ixtoc I, pressing the issue almost to the point of obsession. Connecticut is a long way from Texas, but his interest in oil spills came about from his fervent opposition to the leasing of oil concessions off the Georges Bank. He felt that any oil spill damage would be considerable, and was trying to determine from the Ixtoc I case just how effective a clean-up operation would be in his own area. There is more to his interest than this, however. He was annoyed with PEMEX for what he felt was untruthfulness, and even more disturbed with the U.S. State Department for not getting accurate information from PEMEX and not pressing the Mexican government for damage compensations. He attributed this to the U.S. need for Mexican oil, and was concerned that the U.S. would take any indignity to get it. Senator Weicker was instrumental in getting a congressional hearing on Ixtoc I in December 1979.

Senator Weicker's frustrations finally boiled over when he introduced an amendment during the early stages of the Senate floor debate on the \$75,000,000 aid bill to the new revolutionary government in Nicaragua.³⁰ The amendment

stipulated that the U.S. would authorize no aid to Mexico until the U.S. President certified to Congress that Ixtoc I had been capped. Weicker's action was unexpected and unappreciated. The ensuing debate was strained. Senator Weicker argued that he realized the stoppage of aid would not hurt Mexico, but he considered that his amendment was an effective symbolic way to force Mexico to give accurate information and to utilize U.S. expertise to hasten the capping of the well. Senator Tower of Texas heatedly opposed the amendment, calling it tantamount to a temper tantrum and an insult and affront to Mexico. Senator Zorinski, Chairman of the Subcommittee on Western Hemisphere Affairs of the Senate Foreign Relations Committee, tactfully pointed out that cutting off the \$9,000,000 to Mexico for narcotics control and \$500,000 for birth control programs would actually hurt the U.S. more than Mexico. Finally Senator Zorinski with the help of Senator Bentsen was able to smooth things over by persuading Senator Weicker to drop his amendment in exchange for a letter that Senators Zorinski and Lugar would write to Secretary of State Vance requesting him to get accurate information from the Mexican government on the progress of capping the well. Even though Senator Weicker was allowed to write the letter the response from the Assistant Secretary for Congressional Relations indicated that the State Department had very little information and merely reported what PEMEX said it was doing.³¹ Since this episode in late January 1980 little has been heard from Congress on Ixtoc I.

Mexican Foreign Policy on Ixtoc I

A major point of contention has been Mexico's assertion on August 24, 1979 rejecting liability because Bob Krueger, the coordinator of U.S.-Mexican relations, surprised and embarrassed Mexico by going public officially. U.S. State Department officials reject this interpretation. They state that reliable sources informed them that Mexico was willing to enter into negotiations, especially since Díaz Serrano felt some liability was due, but at the last moment splits within the government developed on what position to take, which resulted in the Krueger announcement being used as an excuse to take a hard line. It

was also felt that a hard-line strategy would give them optimal bargaining power since they could always back down later.³² The drawback of this resolute approach, though, is that Mexican newspapers immediately made it a nationalistic issue.

Mexico's rejection of Ixtoc I liability did not lead to a complete deterioration of relations, however, since many other issues of greater importance affect the two countries. Most important for the U.S. is importation of more Mexican oil, and for Mexico it is the status of millions of illegal aliens in the United States. The two-year deadlock over the price of Mexican natural gas was of great concern to both governments and Mexico was also extremely worried at that time about U.S. antidumping regulations being applied to her tomato and vegetable exports. It does not appear that Ixtoc I made it more difficult to resolve the natural gas problem because agreement was reached on September 22, 1979. Similarly, there was never any suggestion of canceling the meetings scheduled for September 28-29 between Presidents Carter and López-Portillo.

The Director of Mexican Affairs in the U.S. State Department stated that both governments had managed to keep Ixtoc I within the proper perspective, and this is probably an accurate assessment.³³ There was even some hope that Mexico would give way during the presidential meeting of September 28-29, since evidently U.S. officials were led to believe that Mexico would enter into liability talks if this issue were combined with discussions on other environmental problems as well.³⁴ Hopes were raised when the presidential communiqué made mention of a joint effort to resolve environmental problems. On returning to Mexico City, though, President López Portillo addressed 100,000 people gathered in the Zócalo and declared that Mexico would not pay liability damages, especially since the U.S. had never paid damages to Mexicali Valley farmers who were hurt by the salt water of the Colorado River. This speech extinguished all hopes and has set the tone of Mexican policy ever since.

My comprehensive interview with Sergio González Gálvez, Director of

the Legal Division of the Mexican Ministry of Foreign Affairs, was designed to cover Mexican decision-making—especially that relating to the August 24 announcement—the seriousness of Ixtoc I as a foreign policy issue, and possible solutions to the problem.³⁵ On decision-making, he stated that the president had been deeply upset by the Krueger announcement and it was not used as a pretext. Also, he emphasized that he had long discussions with the President about whether any legal liability existed in international law before the decision was made. He said that he himself had read books and articles trying to determine what the law was on the subject, and from his assessment he advised the President that there was liability only on tanker oil spills, not on oil rig blowouts. In response to my question of whether the President was not merely trying to use the law for reaffirmation of a decision that he had already made, he replied that this was not so, and that the President was interested in the law and that it played an important part in his decision. Asked whether Mexico would have taken the same legal position if a U.S. oil rig blowout had washed oil ashore at the Mexican resorts of Cancun or Acapulco, he replied yes, that Mexico would not have pressed for damages. Finally, when asked whether it wasn't good domestic politics to be so adamant, he replied that there was no particular domestic crisis at that time to be that concerned about.³⁶

Asked whether it made any difference to Mexico that Attorney General White of Texas and the U.S. Department of Justice were not suing PEMEX, González Gálvez described to me how PEMEX unfortunately had clauses in its contract with Sedco that held it responsible for damage from any catastrophe. Since PEMEX would probably have to pay the damages, a successful suit against Sedco would eventually affect Mexico. He stated that the Mexican leaders felt besieged with suits and believed that the resort owner's suit of \$355,000,000 was exorbitant. On my question of what would happen if a district court judge ordered the seizure of PEMEX assets in the U.S. to meet damages, he replied that the Mexican leaders had already given this possibility a lot of thought. If this occurred they

would feel deeply offended and would retaliate by reducing oil exports to the United States. He then agreed with my belief that this would create a crisis between the U.S. and Mexico. Asked whether they were aware of Senator Weicker's aborted amendment, he replied that their embassy kept them well informed, and that they would not be upset if U.S. aid was withdrawn since it was not that important. When I explained that Senator Weicker did not represent congressional sentiment and actually withdrew the amendment himself, he replied that nevertheless they saw the handwriting on the wall and were already ordering helicopters from France for their narcotics control program.

Could Ixtoc I have been handled better, I asked. Lamenting the absence of strong treaty law on oil rig blowouts, we agreed that it would probably be the North Atlantic European states that would formulate such treaties, since they already have treaties covering spills from oil tanker accidents, and have more consensus than the U.S. and Mexico.³⁷ Should another oil spill take place in the future, he indicated that the U.S. and Mexico would shortly announce a treaty that will provide for joint leadership and agency cooperation in handling the spill. He mentioned that Mexico was also willing to include payment for cleanup costs, but that the U.S. rejected this, feeling it would prejudice the present court cases. He also mentioned that the U.S. State Department proposed setting up a joint compensation fund to handle damages from any future oil spill, but Mexico had rejected this as being too expensive. (This seems unfortunate since a joint compensation fund would automatically depoliticize any future accidents. The U.S. Congress, however, might also decide that it would be too costly.)

The end of the interview left both of us somewhat despondent about the way the Ixtoc I case could affect U.S.-Mexican relations, and since then I have reflected upon two possible solutions. The first is to persuade the U.S. and Mexico to send the case to the International Court of Justice or to establish a special arbitration commission³⁸ to decide under existing international law whether Mexico is liable or not.³⁹

Neither the U.S. nor Mexico has suggested either approach, mainly because they feel that such a course puts each side in a win or lose all situation. Both countries rejected similar approaches in their handling of the Colorado River salinity issue. Moreover, it is doubtful that the resort owners would drop their case, and Mexican leaders might find it difficult to explain to their people why they suffered a loss in the International Court after their legal position had been publicized so extensively.

My own proposal is to hold a comprehensive environmental confer-

ence, before which Mexico would have agreed to pay \$100,000,000 to \$200,000,000 damages to the resort owners (instead of the probably excessive \$355,000,000). In return, even though the Colorado River salinity issue was resolved in 1976 and Mexico officially has not asked for indemnification of the Mexicali Valley farmers since, the U.S. would agree to pay Mexicali Valley farmers about the same amount of damages.⁴⁰ President López Portillo could announce that he had defended Mexican interests and thus could afford to be benevolent on Ixtoc I damage liability, especially a reduced amount. The resort owners

could be persuaded that the reduced damages are probably more accurate as to what they actually lost, and that an out-of-court settlement at least guarantees something. While Congress might balk at having to authorize Colorado River salinity damages, it might do so as a means of preventing a future situation where Mexico would reduce oil exports to the U.S. if a district judge ordered the seizure of PEMEX assets in this country.

(May 1981)

NOTES

1. The Ixtoc I blowout made for varied and at times unusual research. Traditional research sources—two congressional hearings and the *Congressional Record*—were very useful. Going through the *Dallas Morning News* for six months to see how Texas politics affected the issue, and to read the legal suit initiated by the Padre Island resort owners, offered a change of pace. Field research consisted of interviews with two Texas state officials in Austin, with resort owners in Port Aransas and South Padre Island, with the associate director of the University of Texas Marine Institute in Port Aransas, with the city manager of South Padre Island, with a high official of the U.S. Embassy in Mexico City, and with the director general of legal affairs in the Mexican Ministry of Foreign Affairs.

2. For the detailed testimony and a copy of the leasing contract, see both U.S. Congress, House, Committee on Merchant Marine and Fisheries, Hearings on Blowout of the Mexican Oil Well Ixtoc I, 96th Congress, 1st session, September 8, 9, 1979, pp. 20-80; and U.S., Congress, Senate, Committee on Commerce, Science, and Transportation and Committee on Energy and Natural Resources, Joint Hearings on Campeche Oil Spill, 96th Congress, 1st session, December 5, 1979, pp. 67-88.

3. Sedco lawyers seem to have unearthed the 1851 statute in response to the resort owners' liability claim of \$355,000,000. Had the resort owners claim been more moderate, probably Sedco would not have argued the

dubious proposition that a towed rig is similar to a ship.

4. This information was provided by Ken Cross, an environmental lawyer in the Texas Attorney General's office. The interview took place in late May 1979.

5. For solid information on PEMEX in two recent books on Mexican oil, see Edward J. Williams, *The Rebirth of the Mexican Petroleum Industry* (Lexington, Mass.: Lexington Books, D.C. Heath and Co., 1979), chapter 4, and Richard B. Mancke, *Mexican Oil and Natural Gas: Political, Strategic, and Economic Implications* (New York, N.Y.: Praeger Special Studies, 1979), chapter 4.

6. For understandable, objective accounts of the efforts see William K. Stevens, "Coming Soon: The Biggest Oil Spill Ever," *The New York Times*, July 20, 1979, p. E20; Malcolm W. Browne, "Continuing Mexican Oil Spill Baffles Industry Experts," *The New York Times*, October 5, 1979, p. A1; Malcolm W. Browne, "Mexico Thwarted in Efforts to Cap Runaway Oil," *The New York Times*, October 20, 1979, p. A14; Alan Riding, "Runaway Oil Well Still Foiling Mexico," *The New York Times*, December 13, 1979, p. A11.

7. See Instituto Mexicano del Petroleo, *Informe Técnico Sobre La Perforación y Accidente del Pozo Ixtoc No. 1* (Mexico, D.F.: PEMEX, 1979), 111 pages.

8. Thomas G. Sanders, "The Economic Development of Tabasco, Mexico" [TGS-7-'77], *AUFS Reports*, North America Series, vol. V, no. 8, 1977.

9. This critic is an engineer in the *Instituto Politécnico Nacional*. See *El Universal*, June 22, 1979, p. 1.

10. See U.S., Congress, Senate, Joint Hearings on Campeche Oil Spill, pp. 88-101 for the detailed analysis of Professor Jerome Milgram.

11. *Ibid.*, pp. 120-125.

12. Indeed, the U.S. clean-up operation was not a model of efficiency. The U.S. is supposed to have a contingency plan with an expert from the National Oceanic and Atmospheric Administration in charge, supervising the coordination with state agencies, utilizing marine institute expertise, deciding in advance which private contractors would clean up the oil, and working closely with the Coast Guard that handles the booms and skimmers. In my interviews there were complaints from Texas state officials, the Marine Institute, the Padre Island leaders that their expertise and advice was not fully utilized, and the congressional hearings contained criticism of the Coast Guard for not having enough equipment and not knowing how to utilize the equipment they had. Thus it seems rather presumptuous to assume that U.S. expertise could have helped PEMEX very much in her clean-up operation. For all the testimony plus reports and recommendations on the U.S. oil clean-up operation, see U.S., Congress, Senate, Joint Hearings on Campeche Oil Spill, pp. 18-31, 54-67, 101-120, 128-142, and U.S., Congress, House, Hearing on Blowout of the Mexican Oil Well Ixtoc I, pp. 80-108, 136-164, 281-345.

13. This observation and much of the information on the oil spill along the Mexican coast came from an interview with a technical expert in the U.S. Embassy in Mexico City who prefers to remain unidentified. In this June 1979 interview it was mentioned that the research effort has involved five Mexican agencies, scientific cruises in the Caribbean to collect data, and a number of academic papers presented at conferences.

14. The description of the losses are extensive and quite exact. See U.S., Congress, House, Hearing on Blowout of the Mexican Oil Well Ixtoc I, pp. 108-124, 166-201.

15. City Manager Kirby Lilljedahl, interviewed in early June 1979, gave me information on other economic losses. He also described the leadership in initiating the legal suit, and evaluated the efficiency of the clean-up operation. He previously had provided me with a copy of the legal suit.

16. The question of ecological damage is difficult to assess. The American Petroleum Institute since 1971 has had a yearly research budget of \$400,000 to \$750,000, much of which has been allocated to professors and institutes, yielding more than 85 professional publications. Many of the research projects and findings are reported in U.S. Congress, Senate, Joint Hearings on Campeche Oil Spill, pp. 144-177. The research downplays the ecological damage. For this reason it is suspect to environmentalists. Professor Pat Parker at the University of Texas Marine Institute in Port Aransas is very critical of the U.S. government for not providing adequate funding for research to determine the long run ecological consequences of Ixtoc I. His Institute carried on extensive research of all aspects of Caribbean ecology before Ixtoc I, but the Governor's cutting of Institute funds has meant it is impossible to carry on comparative follow through studies. Interview with Pat Parker in early June 1979.

17. An older book that has since been reprinted and is one of the best on the ways in which the rights of individuals and groups can be improved in international law is Philip C. Jessup, *A Modern Law of Nations* (New York, N.Y.: The Macmillan Co., 1956).

18. See the State Department testimony in U.S., Congress, Senate, Joint Hearings on Campeche Oil Spill, pp. 21-27 and U.S. Congress, House, Hearings on Blowout of the Mexican Oil Well Ixtoc I, pp. 201-217. The same points were made

to me in the interview I had with the technical expert in the U.S. Embassy in Mexico City.

19. This Center for Law and Social Policy is not only involved in 20 to 30 specific international environmental issues, but is also active on trade and human rights problems. For a detailed description of each of their projects, write for their 16-page report *International Project: The Center for Law and Social Policy*, September 1979. Their address is 1751 N Street, N.W., Washington, D.C. 20036.

20. It seems to me that the State Department was in a no-win situation. The South Padre Island resort owners went their own way with a liability suit, feeling that the State Department would not really press Mexico for damages, but if the State Department had backed them, Mexico would have been even more adamant.

There are certain areas that need more research. Why did the U.S. go public on August 23? Was this important—or did it just give Mexico the pretext to get out of liability she had previously rejected? If going public was poor policy, does it illustrate a lack of direction in the State Department, with the legal advisers, the political officers, and the science experts who were deeply involved, all possibly disagreeing on the approach that should be taken? Finally, why were the discussions for a cooperative oil spill agreement so slow, and if it had been in effect when the oil spill occurred, would the cooperative efforts have generated enough goodwill to have fostered at least more thought by the Mexican government on whether they should accept damage liability?

21. *Dallas Morning News*, October 24, 1979, p. 3A.

22. *Dallas Morning News*, September 6, 1979, p. 36A

23. The *Dallas Morning News* has excellent coverage of the political battles between the Governor and the Attorney General, plus a daily account of the oil spill when it was at its worst. For the Governor's position, see the *Dallas Morning News*, August 28, 1979, p. 13A; August 29, 1979, p. 1A; August 30, 1979, p. 3D; September 28, 1979, p. 1A; October 6, 1979, p. 28A; November 21, 1979, p. 6A; December 1, 1979, p. 29A. The newspaper's editorial on August 28, 1979 (p. 2D) favored the Governor's position against lawsuits.

24. For a description of the Governor's personal diplomacy, see the *Dallas*

Morning News which covered it quite well. See the issues of August 30, 1979, p. 2D; October 28, 1979, p. 38A; November 7, 1979, p. 24A; January 23, 1980, p. 14A.

25. The *Dallas Morning News* gave equal coverage to the position of the Attorney General. See August 21, 1979, p. 1A; August 22, 1979, p. 14A; August 25, 1979, p. 26A; August 29, 1979, p. 14A; September 1, 1979, p. 25A; September 8, 1979, p. 25A; September 12, 1979, p. 1A.

26. These observations are derived from the interview with Ken Cross, an environmental lawyer in the Attorney General's office. For information on the suit itself, see *Dallas Morning News*, October 19, 1979, p. 13A.

27. See U.S., Congress, House, *Congressional Record*, 96th Congress, 1st session, vol. 125, no. 111, September 5, 1979, p. H7343-7344; *Congressional Record*, 96th Congress, 1st session, vol. 125, no. 121, September 19, 1979, pp. H8203-8204; *Congressional Record*, 96th Congress, 1st session, vol. 125, no. 128, September 28, 1979, p. H8687; *Congressional Record*, 96th Congress, 2nd session, vol. 126, no. 13, January 31, 1980, pp. H487-488; *Congressional Record*, 96th Congress, 2nd session, vol. 126, no. 40, March 12, 1980, p. H1825.

28. See U.S., Congress, House, House Concurrent Resolution 188, 96th Congress, 1st session, September 19, 1979, to get the exact wording of this long, complicated concurrent resolution.

29. See U.S., Congress, Senate, *Congressional Record*, 96th Congress, 1st session, vol. 125, no. 181, December 17, 1979, pp. S18772-18774. The *Dallas Morning News*, December 18, 1979, p. 1A, gave the speech good coverage.

30. For this very interesting debate see U.S., Congress, Senate, *Congressional Record*, 96th Congress, 2nd session, vol. 126, no. 11, January 29, 1980, pp. S511-521.

31. For the full text of the letter and the response, see U.S. Congress, Senate, *Congressional Record*, 96th Congress, 2nd session, vol. 126, no. 30, February 26, 1980, p. S1797.

32. The *Dallas Morning News*, August 25, 1979, p. 18A, utilized a number of sources to put this account together. Their depth reporting is much better than that of the *New York Times* not only on the Ixtoc I issue, but on other aspects of U.S.-Mexican relations as well. Moreover, their coverage as far as numbers of articles is much more extensive.

33. *Dallas Morning News*, August 31, 1979, p. 4A.

34. *Dallas Morning News*, September 29, 1979, p. 3A.

35. This long interview took place in early July 1979. The position of Director of the Legal Division is important, roughly equivalent to that of an Assistant Secretary of State in the U.S. State Department. My questions were pointed; I found Sergio González Gálvez was knowledgeable—not evasive—and analytically sharp. He was not strongly nationalistic and his ability to express himself forcefully and logically led me to believe that he was the type of adviser who would be listened to.

36. Experts on Mexican foreign policy would suggest a follow through on this response to get at whether the policy doesn't spring from broader domestic concerns, and not particular crises which are precluded or contained very quickly by the rather authoritarian nature of the political system. I would agree with this critique, but I felt that the sensitive nature of this whole subject, which implies that the appeal to the public on foreign policy is a compensation for economic problems and a way to offset the opposition, would damage the rest of the interview. For those interested in how Mexican foreign policy relates strongly to domestic concerns, see Yoram Shapira, *Mexican Foreign Policy Under Echeverría* (Beverly Hills, Calif.: Sage Publications, 1978), especially chapter 3, and a review essay by Wolf Grabendorff, "Mexico's Foreign Policy—Indeed a Foreign Policy?" *Journal of Interamerican Studies* (February 1978), pp. 85-92 in

which the author reviews four Mexican books which stress domestic concerns in the shaping of Mexican foreign policy.

37. The North Atlantic states have treaties dealing with cooperative efforts on oil spills, with the assumption that the oil spills would be from tankers. See James Barros, and Douglas Johnson, *The International Law of Pollution* (New York, N.Y.: The Free Press, 1974), pp. 209-213.

38. This proposal was made by Professor Robert N. Wells, Jr. in a letter to the *New York Times*, September 9, 1979, p. 18, section 4. Professor Wells, Jr. is like many others who refer to the 1941 arbitration of the Trail Smelter case. In this case a Canadian lead-zinc smelter that vented destructive fumes onto farms across the border was ordered to pay monetary damages.

39. Congressman Ike Skelton of Missouri asked the Congressional Research Service to write a legal analysis on whether Mexico was liable, and received a meager six paragraph evaluation that was hardly worth the reprinting in the *Inter-American Economic Affairs* (Autumn 1979), pp. 93-96. Congressman Skelton had it printed in U.S., Congress, House, *Congressional Record*, 96th Congress, 1st session, vol. 125, no. 116, September 12, 1979, p. E4437-4438 without comments. A more thorough legal analysis is that of Professor Günther Handl prepared for a congressional hearing, in which he argues that Mexico is liable even if no negligence is shown, since continental shelf drilling is an abnormally dangerous activity which

automatically denotes liability if accidents take place. See U.S., Congress, House, Hearings on Blowout of the Mexican Oil Well Ixtoc I, pp. 258-263. In my interview with Sergio González Gálvez he referred to legal writings that convinced him there was no specific international law on liability for oil rig spills.

40. President López Portillo's mention of damages for Colorado River salt is for domestic political consumption. Damages were not a major demand during the negotiations leading up to the 1976 resolution agreement. I checked with the U.S. Embassy in Mexico City and with the International Boundary and Water Commission in El Paso on whether Mexico had made any official damage claims since 1976, and they both replied negatively. Legally the U.S. does not owe Mexico anything for damages, since the 1976 Colorado River salinity agreement took a different direction. In the 1976 agreement, the U.S. did agree to assist Mexico in improving the irrigation channels in the Mexicali Valley but Mexico did it alone. For those who complain that my solution is a give-away of U.S. money to Mexicali Valley farmers, I would respond that this would substitute for the U.S. funds that were never spent for the part of the 1976 agreement just described.