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DOMESTIC AND INTERNATIONAL LIABILITY FOR THE BAY OF CAMPECHE OIL SPILL

I. FACTS

On June 3, 1979, a massive blowout occurred approximately thirty-eight miles from shore on the high seas in the Bay of Campeche, Gulf of Mexico.¹ At the time, exploratory drilling operations were being conducted on the Ixtoc I oil well by Sedco 135, a mobile semisubmersible drilling rig.² The rig was owned by the Dallas-based drilling company, Sedco, Inc. The blowout resulted in a fire and in a discharge of oil of between ten and thirty thousand barrels a day into the Gulf of Mexico.³ By August 1979, the resulting oil slick extended along the coast of Texas from Brownsville to Matagorda Island.⁴ The slick sullied privately owned beaches, coastal public parks and fishing areas during the summer tourist season.⁵ Fall and winter storms periodically caused renewed contamination of the Texas territorial waters and shore.⁶ The well was finally capped nine months later on March 25, 1980.⁷

Sedco, Inc. had leased the rig to Perforaciones Marinas del Golfo, S.A. [hereinafter "Permargo"], a private Mexican drilling contractor;⁸ Sedco had also contracted to provide personnel and spare parts for the drilling operations to Permargo.⁹ Permargo was operating under a drilling contract with Petroleos Mexicanos [hereinafter "Pemex"], the Mexican national oil company.¹⁰

In anticipation of suit, Sedco filed a motion on September 11, 1979, under the Limitation of Liability Act¹¹ to exonerate itself from liability.¹² Alternatively, it moved to limit liability to \$300 thousand, a figure representing the value of the rig after the blowout and Sedco's earnings from its contracts with Permargo.¹³

1. In Re Complaint of Sedco, Inc., Civ. No. H-79-1880 (S.D. Tex., filed Sept. 1, 1979). Original Claim of the State of Texas, at 2.

2. *Id.*

3. *Id.* at 2-3.

4. *Id.*, Original Answer of Tex., at 1. [hereinafter *Original Answer*].

5. *Id.*

6. N.Y. Times, Mar. 25, 1980, § 1, at 1, col. 1.

7. *Id.*

8. *Original Answer*, *supra* note 4, at 1.

9. *Id.*

10. *Id.* Sedco had no direct contact with Pemex.

11. 46 U.S.C. §§ 182-189 (1851).

12. In Re Complaint of Sedco, Civ. No. H-79-1880, at 1.

13. *Id.* at 4.

In accordance with Supplemental Rule F(3) of the Federal Rules of Civil Procedure, the federal government had to consolidate any claims it intended to pursue against Sedco with the limitation of liability proceeding. The United States government successfully moved to join statutory and negligence counter-claims against Sedco with its claim that Sedco was not entitled to limit its liability.¹⁴ The United States alleged contamination of the navigable waters of its two hundred mile fisheries zone, of the waters above the continental shelf and adjacent uplands owned by the United States, and alleged damage to the resources pertaining to those waters.¹⁵ Further, the federal claim alleged liability against Sedco *in rem* and *in personam* for cleanup expenses of \$6 million which the Coast Guard had incurred to remove and treat the oil.¹⁶

The State of Texas moved to consolidate its statutory, negligence and trespass claims with the federal claim against Sedco.¹⁷ Texas joined a claim against Permargo for \$175 thousand as joint tortfeasor for replacement or restoration of damaged natural resources and compensation for current oil removal costs.¹⁸ The State alleged loss of tax revenues due to the impact of the oil spill on the state's tourism and seafood industries and on the general economy of the affected coastal area.¹⁹ Further, the State sought reimbursement for expenses it incurred to mitigate the effects of widespread press coverage of the oil spill upon the tourist and recreational industries.²⁰

Private parties joined four separate class actions and forty-seven private actions against Pemex and Permargo with the Sedco limitation action, alleging a total of more than \$300 million in damages.²¹ The class actions

14. In Re Complaint of Sedco, Civ. No. H-79-1880 (S.D. Tex., Oct., 1979) (Order granting legal proceedings against parties other than Sedco and permitting the United States to consolidate separate statutory causes of action with the limitation of liability proceeding).

15. *Id.*, Claim of the United States, at 2.

16. *Id.* at 4.

17. *Id.*, Texas Motion to file a Complaint and for Consolidation, at 1-2.

18. *Id.*, Original Claim of the State of Texas, at 3. The State claims damages in excess of \$10 million, subject to amendment to a limit of \$50 million, when further information regarding the full impact of the oil spill on the State's ecological system can be assessed. The State is also claiming \$100 thousand damages for reimbursement of oil removal costs, and seventy-five thousand dollars in civil penalties for violations of the Texas Water Code. *Id.* at 4.

19. *Id.*

20. *Id.*

21. In Re Complaint of Sedco, List of Claimants. Pursuant to the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602-1611 (1976), PEMEX, although an agency or instrumentality of a foreign government, § 1603(b), is not entitled to jurisdictional immunity. It committed an act outside the territory of the United States in connection

represent fishermen,²² Willacy County, Texas claims on behalf of property owners and lessees,²³ and private parties dependent on tourism for their livelihood.²⁴

The following discussion attempts to demonstrate that relief for any of the parties will be difficult to obtain. Neither domestic nor international law was designed to deal with blowouts occurring on the high seas. Recent international conventions focus on vessel source pollution. Such a focus is the result of two factors: the difference between the average amount of oil discharged from the spill of an oil tanker as compared with that resulting from an oil blowout; and the less frequent occurrence of oil blowouts. For example, the Torrey Canyon oil tanker disaster released a record nineteen million gallons of oil into the English Channel;²⁵ although the worst in history,²⁶ the Ixtoc I blowout only discharged approximately three hundred thousand gallons of oil over a ten month period.²⁷ Oil blowouts occur at a lesser rate of approximately 2.5 per 1000 wells drilled.²⁸

While current domestic legislation does exist to cover pollution from oil blowouts, its applicability extends only to the two hundred mile limit; monetary liability is restricted; and private parties have no right of action.²⁹ The effectiveness of this legislation is further impaired by the continued applicability of the antiquated 1851 Limitation of Liability Act.³⁰ The 1851 Act severely diminishes a polluter's liability in certain circumstances.³¹

Legislation passed by the House, September 19, 1980,³² popularly known as the Superfund,³³ would cure some of these defects. The bill raises the fund

with a commercial activity of the foreign state which caused a direct effect in the United States. § 1605(a)(2). For a previous denial of immunity to PEMEX, see *e.g.* S.T. Tringali Co. v. The Tug PEMEX XV, 274 F. Supp. 227 (S.D. Tex. 1967); United States v. Tug PEMEX XV, 1 A.M.C. 896 (1960).

22. In Re Complaint of Sedco, Oct. 1979) Civ. No. H-79-1892 (S.D. Tex., Oct., 1979). Fishermen, shrimpers, crabbers and oystermen are claiming damages in the amount of \$155 million, at 1.

23. *Id.* These parties are Intervenor in Civ. No. H-79-1892.

24. In Re Complaint of Sedco, Civ. No. H-79-2389 (S.D. Tex., Oct., 1979). The private parties' claim is for \$100 million.

25. S. REP. NO. 95-427, 95th Cong., 1st Sess., 34 (1977).

26. 125 CONGR. REC. H 6365, (daily ed. Jul. 20, 1979).

27. See *supra* note 3.

28. R. EASTON, BLACK TIDE 8 (1972).

29. Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376 (1972).

30. U.S.C. §§ 181-195 (1851).

31. See text, *infra*, at 59-62.

32. H.R. 85, 96th Cong., 1st Sess. (1979).

33. H.R. 85 is to be distinguished from H.R. 7020, 96th Cong., 2d Sess. (1980), which is also called "Superfund," but deals strictly with hazardous substances other than oil.

limit from which compensation is paid from a present maximum of \$50 million to \$200 million,³⁴ provides for strict liability for removal costs,³⁵ grants private parties³⁶ and States³⁷ a private right of action, and recognizes claims for property damage³⁸ and for economic loss.³⁹ Hence, under this legislation, all the plaintiffs to the Sedco suit would be granted relief. Unless the bill or one similar to it is passed by the Senate,⁴⁰ however, private parties must rely on traditional common law claims such as negligence, nuisance, trespass or strict liability for damage caused by offshore drilling operations.

Mexico and the United States have taken steps to reach an agreement regarding cooperation in the prevention of pollution. For example, a Memorandum of Understanding was signed June 6, 1979, establishing norms for cooperation between the two countries on environmental programs.⁴¹ Last year the United States National Response Team proposed a joint United States-Mexican Contingency Plan to deal with oil and other hazardous chemical pollution.⁴² The Plan calls for a coordinated and integrated response to pollution incidents by both governments; it addresses the question of organization and funding. Hopefully, an agreement can be reached similar to the one which exists between Canada and the United States on offshore drilling operations. The US-Canadian agreement provides for strict liability for any pollution in the Beaufort Sea resulting from oil exploration activities.⁴³ The plethora of existing and planned oil drilling operations⁴⁴ in the Gulf of Mexico underscores the urgent need for a similar agreement with Mexico. However, the Ixtoc I blowout must be decided under the provisions of existing domestic legislation and international law. Thus, the following discussion will focus on present potential sources of recovery and the reasons why they provide inadequate relief.

34. See *supra* note 32, at § 102(a).

35. *Id.*, at § 104(a).

36. *Id.*, at § 103(b)(2), (4).

37. *Id.*, at § 103(b)(5).

38. *Id.* at § 103(a)(2), (3).

39. *Id.*, at § 103(a)(6).

40. H.R. 85 is stalled in Senate Committee.

41. 17 INT'L LEGAL MATS. 1056 (1978).

42. Hearings Before the Merchant Marine and Fisheries Comm. and the Water Resources Subcomm. of the Public Works and Transp. Comm., Sept. 8-9, 1979, Blowout of the Mexican Oil Well: Ixtoc 1, Corpus Christi, Tex. 96th Cong., 1st Sess., at 80 (Statements of Rear Adm. Paul A. Yost, Comm'r., 18th Coast Guard Dist. (1980)).

43. United States-Canada Accord Regarding Oil Spill Liability, 1974, 25 U.S.T. 1280, T.I.A.S. No. 7861.

44. PEMEX announced its intention to drill fifty offshore oil wells in the Gulf of Mexico between Oct. and March, 1979-80. N.Y. Times, Oct. 8, 1979, § 1, at 2, Col. 3.

II. UNITED STATES LEGISLATION

A. 1851 *Limitation of Liability Act*⁴⁵

Arguably, the Limitation of Liability Act presents the greatest possible bar to recovery. The Act provides that the liability of a vessel owner shall not exceed the value of his interest in the vessel and its pending freight.⁴⁶ In *Norwich & N.Y. Transp. Co. v. Wright*,⁴⁷ the Supreme Court held that the owner's interest should be calculated according to the value of the ship and her cargo *after* the cause of the loss had occurred.⁴⁸ In accordance with the *Wright* interpretation, Sedco is seeking to limit its liability to \$300 thousand — the value of the rig after the blowout and its earnings from its contracts with Permargo.⁴⁹ The Sedco case illustrates the enormous gap that exists between limited liability on the one hand and the actual amount of damages which one will be held accountable for on the other. Even the \$20 million Sedco has collected in insurance⁵⁰ falls far short of the more than \$360 million of damage claims in the instant case.

The two major issues to be determined regarding the applicability of the Limitation Act are whether or not the accident was within the "privity or knowledge of the owner,"⁵¹ and whether an offshore drilling rig can be classified as a vessel.

The vessel owner may only limit his liability if the damage was not within his "privity and knowledge." "Within the privity and knowledge" has been defined to mean that the owner is aware of the fault in his vessel that caused the accident.⁵² Whether or not Sedco had knowledge of the cause of the accident on the Ixtoc I is a complex fact question. Sedco did have personnel on board. It is unclear exactly what authority was vested in the Sedco personnel or what responsibility was assumed by the charterers, Permargo and Pemex, who also had management personnel onboard the rig.⁵³

Similarly, the answer to the second issue under the Limitation Act, whether a semisubmersible drilling rig can qualify as a "vessel," is unclear. The Act itself defines vessels as "all seagoing vessels, and . . . vessels used on lakes or rivers or in inland navigation, including boats, barges, and

45. 46 U.S.C. §§ 183–189 (1851).

46. *Id.*, at § 183(a).

47. 80 U.S. (13 Wall.) 104 (1871).

48. *Id.* at 113.

49. *See supra* note 13.

50. *Am. Law.*, Dec. 1979, at 13.

51. 46 U.S.C. § 183(a).

52. *U.S. v. Ohio Valley Co., Inc.*, 516 F.2d 1184, 1186 (7th Cir., 1975).

53. *See supra* note 4.

lighters."⁵⁴ The compound structure of the Act's definition suggests an intention to differentiate between "seagoing vessels," and "boats, barges, and lighters," craft which travel only on inland waterways. Webster's Dictionary defines "seagoing" as "designed or adapted for sailing the open sea in distinction from rivers or harbors."⁵⁵ The Sedco 135 was stationed on the high seas and has, in fact, covered a distance of 15,947 miles in long distance tows over the high seas.⁵⁶ The question remains whether a structure that is not self-propelled and is stationary during most of its operative life is sufficiently mobile to fall within the Act's definition of "seagoing."

A semisubmersible rig is arguably analogous to a barge, and thus qualifies as "seagoing" under the second half of the Act's definition of "vessels." Both are used in transportation. The former transports equipment; the latter transports cargo. Some barges, like the Sedco 135, are not self-propelled, but are towed by tugs.

Fifth Circuit interpretations of the term "vessel" have varied according to context and the statutes involved. Mobile drilling rigs have generally been found to be "vessels" in the context of Jones Act cases.⁵⁷ However, in *Cook v. Belden Concrete Products, Inc.*,⁵⁸ the Fifth Circuit drew a confusing distinction: submersible drilling barges and floating dredges were found to be within general maritime jurisdiction, even while moored.⁵⁹ The Court reasoned that they are exposed to the hazards of the sea and are designed for navigation and commerce.⁶⁰ They are equipped for transportation of passengers, cargo or equipment from place to place across navigable waters. A floating construction platform, on the other hand, was held not to be a vessel when engaged in its primary function as a stationary construction platform.⁶¹ The Court drew an analogy between such a construction platform and dry docks to which the Fifth Circuit had not yet accorded vessel status.⁶²

Like submersible drilling barges, the Sedco 135 is designed for navigation and subject to the risks and hazards of the sea. The rig is subject to the

54. 46 U.S.C. § 188.

55. WEBSTER'S THIRD NEW INT'L DIC. (4th Ed. 1976).

56. In Re Complaint of Sedco, Inc., Civ. No. H-79-1880, Memo. of Sedco in Opposition to Claimants' Motion to Dismiss, at 4.

57. Mobile drilling rigs were found to be "vessels" in *Hicks v. Ocean Drilling and Exploration Co.*, 512 F.2d 817 (5th Cir. 1975); *Marine Drilling Co. Inc. v. Aulin*, 363 F.2d 579 (5th Cir. 1966); *Producers Drilling Co. v. Gray*, 361 F.2d 432 (5th Cir. 1966); including the Sedco 135 in *Loftis v. Southeastern Drilling Inc.*, 43 F.R.D. 32 (E.D. La. 1967).

58. 472 F.2d 999, 1000 (5th Cir. 1973), *cert. den.*, 414 U.S. 868 (1973).

59. *Id.*

60. *Id.* at 1002.

61. *Id.*

62. *Id.*

risks of navigation while in transit and to risks of blowouts while in operation. It has travelled many miles in long distance tows on the high seas, transporting equipment from place to place on navigable waters. Thus, Sedco 135 arguably falls within the Act's definition of vessel. Alternatively, if the Court focuses upon the stationary status of the rig while in operation, upon its lack of self-propulsion, and upon its failure to travel for the purpose of "commerce," then Sedco 135 would apparently not be found to qualify as a vessel.

The Fifth Circuit in *Dresser Industries v. Fidelity & Casualty Co. of New York*,⁶³ recently found a mobile drilling "jack-up" rig to be a fixed object, and not a vessel.⁶⁴ The self-elevating offshore drilling unit was conducting drilling operations. The Court stressed the stationary character of the rig at the time of the collision with Dresser's diesel supply vessel.⁶⁵ The Court explained that the rationale mandating liberal interpretation of Jones Act cases was inapplicable in that case.⁶⁶ The decision was based on the Court's interpretation of the insurance contract existing between Dresser and Fidelity & Casualty Co.⁶⁷ The insurance deductible was \$100 thousand for collisions with fixed objects, as opposed to \$200 thousand for collisions with vessels.⁶⁸ The Court reasoned that the contract's differentiation in deductible amounts was due to the parties' recognition that the risk of collision between an ocean-going vessel and another ship was greater than the risk of the vessel colliding with a fixed structure.⁶⁹ Hence, the Court's decision was dictated by the evidence of which risks the parties themselves had assumed in their contract.

In contrast, the Sedco case is not concerned with the expectations of parties to a written contract, but rather with the liability for a negligent oil spill where the rig owner is attempting to make use of the provisions of the Limitation Act to greatly reduce his liability. The Fifth Circuit cases addressing the Limitation of Liability Act do not offer clear guidelines as to whether a semisubmersible drilling rig will be considered a vessel. Assuming the Court finds the Limitation Act inapplicable — either because the cause of the accident was "within the privity and knowledge" of the rig owner or because the rig cannot be considered a "vessel" — the provisions of the

63. 580 F.2d 806 (5th Cir. 1978).

64. *Id.* at 807.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

Federal Water Pollution Control Act⁷⁰ may offer limited relief to the federal government.

B. *Federal Water Pollution Control Act*⁷¹

The Federal Water Pollution Control Act (hereinafter "FWPCA") is the 1972 Amendment to the 1970 Water Quality Improvement Act.⁷² The Clean Water Act of 1977 amended the FWPCA;⁷³ the 1977 Act provides that the owner or operator of an offshore facility shall be liable to the United States for the actual costs of oil removal, not to exceed \$50 million.⁷⁴ If the discharge was the result of willful negligence or misconduct within the privity and knowledge of the owner, the owner or operator will be liable for the full amount of the removal costs.⁷⁵ The amount of the removal costs will include any expenses incurred by the Federal Government or State⁷⁶ in the restoration or replacement of natural resources damaged or destroyed as a result of the oil discharge.⁷⁷

The compensation provisions of the FWPCA apparently do not apply, however, because of the Act's definition of "offshore facility." Under the Act, an offshore facility is "in, on, or under, any of the navigable waters of the United States," or "subject to the jurisdiction of the United States."⁷⁸ The "navigable waters of the United States" extend only to the three mile territorial sea limit.⁷⁹ The legislative intent was, in fact, to extend the Act's jurisdiction to a two hundred mile limit.⁸⁰ The Sedco rig was operating six hundred miles from the United States coast,⁸¹ unquestionably beyond the jurisdiction of the Act. Thus, the Sedco rig is not an offshore facility within the meaning of the Act. The FWPCA is inapplicable to the Sedco dispute.

Were the Act to be found applicable to the Sedco case, the FWPCA's provisions would satisfy the United States' and the State's claim for cleanup

70. 33 U.S.C. §§ 1251-1376 (1972).

71. *Id.*

72. 33 U.S.C. §§ 1151 et seq. (1970).

73. 33 U.S.C. §§ 1251-1376 (1977).

74. *Id.* at § 1321(f)(3).

75. *Id.*

76. 33 U.S.C. § 1321(e)(2)(H).

77. *Id.* at § 1321(f)(4).

78. *Id.* at § 1321(0)(2).

79. *Id.* at § 1321(0)(3).

80. S. REP. NO. 95-370, 95th Cong., 1st Sess. (1977), reprinted in [1977] U.S. CODE CONG. & AD. NEWS 4326, 4390.

81. This approximate figure was extrapolated from geographical coordinates cited in Original Claim of Tex., *supra* note 1, at 2.

costs, but they would offer no compensation to the private parties who have been damaged by the pollution. The State may be reimbursed from the fund for cleanup costs it incurred.⁸² Furthermore, the state or local government is not preempted from imposing liability on the polluter, through its own compensation statute, provided its terms are not in conflict with those of the FWPCA.⁸³ In the instant case, Texas does not have a compensation statute specifically tailored to redress the damage caused by the Ixtoc I blowout. However, the State's civil⁸⁴ and criminal pollution penalties⁸⁵ will be sufficiently compensatory of its \$175 thousand cleanup expenses.

C. *Outer Continental Shelf Lands Act*⁸⁶

The Offshore Oil Spill Pollution Fund⁸⁷ established by the terms of the Outer Continental Shelf Lands Act Amendments (hereinafter "OSCLA") of 1978⁸⁸ also cannot afford relief. The Act extends United States jurisdiction solely to offshore facilities located on the Outer Continental Shelf.⁸⁹ The Shelf is defined as "the submerged lands lying seaward of the territorial sea of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control."⁹⁰ Article 24 of the Convention on the Territorial Sea and the Contiguous Zone⁹¹ provides that a state's jurisdiction is to extend to the twelve mile contiguous zone only as necessary to control infringement of customs, fiscal, immigration, or sanitary regulations within its territory or territorial sea.⁹² As the Sedco rig lies well beyond the contiguous zone, the jurisdictional requirements of the Act bar application of the recovery provisions of OCSLA.

82. 33 U.S.C. § 1321(c)(2)(H).

83. *Id.* at § 1321 (0)(2).

84. TEX. WATER CODE ANN. tit. 2, § 26.122 (Vernon) (1972). Civil penalties range from a minimum of \$50 to a maximum of \$1000 for each act of violation and for each day of violation or injunctive relief.

85. Criminal penalties range from a minimum of \$10 to a maximum of \$1000 for each day that the violation occurs. *Id.* § 26.213. If the discharge was willful or negligent from a point source (a drilling rig is within the definition of "point source"), then a fine of twenty-five thousand dollars may be imposed upon conviction. *Id.* § 26.212(c).

86. 43 U.S.C. §§ 1331 et seq. (1953).

87. 43 U.S.C. § 1802(8) (1978).

88. 43 U.S.C. §§ 1801 et seq. (1978).

89. *Id.* at § 1811 (18).

90. 43 U.S.C. 1331(a) and 43 U.S.C. 1301(a)(1) and (2).

91. Convention on the Territorial Sea and the Contiguous Zone, done at Geneva, Apr. 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205, in force Sept. 10, 1964.

92. *Id.* Art. 24.

If the Amendments were applicable, they would provide funds for oil removal⁹³ and, unlike the provisions of the FWPCA, would also make funds available for damage to public or private interests caused by such discharges. Claims may be asserted for injury to or destruction of real or personal property,⁹⁴ loss of use of real or personal property,⁹⁵ loss of use of natural resources⁹⁶ and loss of tax revenue due to such injury.⁹⁷ Claimants may be United States private citizens or a State.⁹⁸ Thus, if this spill had occurred from drilling on the United States portion of the continental shelf, all the claims asserted in this case would be compensable. In contrast to the liability limitations of the FWPCA, the OCSLA Amendments provide absolute liability for State and Federal Government cleanup costs.⁹⁹ Removal costs incurred by other parties are limited to \$35 million.¹⁰⁰ Private claims are to be presented to the owner, operator or guarantor.¹⁰¹ If full and adequate compensation is unavailable because the owner is financially incapable of meeting all obligations, a claim for uncompensated damages may be presented to the Fund.¹⁰²

As this blowout occurred on the high seas and is, therefore, not within the purview of the FWPCA or the OCSLA Amendments, the parties are relegated to the only remaining existing legislation which has been applied to oil polluters, i.e., Section 13 of the 1899 Rivers and Harbors Appropriations Act,¹⁰³ popularly known as the Refuse Act.¹⁰⁴

D. *The Refuse Act*¹⁰⁵

The Refuse Act prohibits any discharge of refuse matter from or out of any floating craft of any kind into the navigable waters of the United States.¹⁰⁶ The Act is applicable to both vessels and offshore facilities and

93. 43 U.S.C. § 1812(a).

94. *Id.*, at § 1813(a)(2)(19).

95. *Id.*, at § 1813(a)(2)(B).

96. *Id.*, at § 1813(a)(2)(D).

97. *Id.*, at § 1813(a)(2)(F).

98. *Id.*, at § 1813(b)(2), (b)(5).

99. *Id.*, at § 1814(a). This liability is limited under certain circumstances. See 43 U.S.C. § 1814(b) and (c). The FWPCA imposes a \$50 million dollar maximum for government cleanup costs if there is no willful negligence. 33 U.S.C. § 1321(k).

100. 43 U.S.C. 1814(b)(2).

101. *Id.*, at § 1817(a).

102. *Id.*, at § 1817(d).

103. 33 U.S.C. § 401 et seq. (1899).

104. *Id.*, at §§ 407-411.

105. *Id.*

106. *Id.*, at § 407.

jurisdiction is not limited to facilities located within the United States territorial sea or contiguous zone. Furthermore, the Supreme Court in *U.S. v. Standard Oil*¹⁰⁷ held that oil is "refuse" within the meaning of the Act.¹⁰⁸ While the Act's flexibility of application would appear to make it the suitable method through which the parties may seek a remedy for their injuries, the Act does not provide adequate compensation to the injured parties in the event of a major oilspill. Intended as a preventative measure, the Act punishes violators with a criminal penalty of up to \$2,500 or imprisonment of one month to one year, or both.¹⁰⁹ The payment of such a sum could hardly be considered sufficient to act as either a deterrent to the business of oil exploration today, or as adequate compensation for injury incurred as a result of an oilspill.

A different section of the Rivers and Harbors Act has been expanded by judicial interpretation to afford greater relief to the federal government than the provisions of the Act allow. Section 15, popularly known as the Wreck Act,¹¹⁰ requires removal by the owner of a sunken craft.¹¹¹ If the sunken craft is not removed within thirty days and it constitutes an obstruction to navigable waters of the United States, the Secretary of the Army may dispose of it at his discretion.¹¹² The owner is not indemnified from the proceeds of sale. Criminal penalties are also available against violators.¹¹³ While an oilspill is clearly not within the purview of the Wreck Act, consideration of the Act is appropriate as an example of judicial expansion of existing remedies in favor of the federal government. If the Court were willing to similarly expand the relief granted pursuant to the Refuse Act, it would serve as a vehicle for recovery of federal government cleanup costs.

In *Wyandotte Co. v. U.S.*,¹¹⁴ the Supreme Court held that the remedies and procedures for enforcement of Section 15 are not exclusive and do not foreclose *in personam* relief against a party who negligently sinks a vessel in a navigable waterway.¹¹⁵ *Wyandotte* granted the federal government standing to sue *in personam* for costs incurred in removing a barge which sank with a deadly cargo of liquid chlorine while being pushed on the Mississippi River.¹¹⁶ The Court reasoned that criminal liability was inadequate to ensure the full

107. 384 U.S. 224 (1966).

108. *Id.*, at 230.

109. *See* 33 U.S.C. § 411.

110. *Id.* at § 409.

111. *Id.*

112. *Id.*, at §§ 414-415.

113. *Id.*, at § 411.

114. 389 U.S. 191 (1967).

115. *Id.* at 200-201.

116. *Id.* at 194.

effectiveness of the statute as Congress intended.¹¹⁷ The maximum \$2,500 fine and the Government's *in rem* rights would not serve to reimburse the United States for removal expenses.¹¹⁸ Furthermore, denying *in personam* relief to the Government would permit the extraordinary result of a wrongdoer shifting responsibility for the consequences of his negligence onto his victim. The Court found the Government met the necessary requirements for standing: (1) the the interest of the United States fell within the class that the statute was intended to protect; (2) the harm that had occurred was of the type the statute was intended to forestall.¹¹⁹ Consequently, the Court considered the civil action proper, despite the criminal language of the statute.¹²⁰ The United States thus gained a private right of action in the context of obstructions in U.S. navigable waters.

A similar analysis is applicable to oil pollution from a blowout under the Refuse Act. In examining the legislative intent behind the Act, the *Standard Oil* Court clarified the definition of "serious injury" to United States watercourses; such injury included serious injury caused by pollution.¹²¹ Pollution is one of the harms the statute was intended to forestall. The Supreme Court in *U.S. v. Republic Steel Corp.*¹²² reiterated the well established principle that the navigable waters are to be deemed the public property of the nation, and subject to the requisite legislation by Congress.¹²³ Thus, the United States government is the principal beneficiary of the Act. If the federal government was granted standing to recover its costs of removing a barge from a navigable waterway under the Wreck Act, it would seem only consistent to grant it standing to recover its cleanup costs for its oil removal operations. Otherwise, subjecting the polluters merely to the \$2,500 fine would result in the responsibility of the pollution damage being shifted to the victims, the United States of America and the State of Texas.

Alternatively, the Court in the Sedco case may not be willing to expand the remedies applicable under the terms of the Refuse Act as the Supreme Court was in *Wyandotte*. The Wreck Act specifically granted the government *in rem* remedies. Hence, expansion to *in personam* remedies was not radical or inconsistent with the purposes of the Act. The Refuse Act, in contrast, does not provide for government compensation. Expanding a purely criminal penalty to a civil penalty represents a far greater step than expanding a pre-existing civil penalty.

117. *Id.* at 202.

118. *Id.*

119. *Id.*

120. *Id.*

121. 384 U.S. at 229.

122. 362 U.S. 482 (1960).

123. *Id.* at 492.

Another critical distinction is that the owners in *Wyandotte* were clearly willfully negligent in abandoning their barge; evidence establishing that Sedco or Permargo were guilty of the same degree of wrongdoing as the owners in *Wyandotte* may be difficult to obtain. Finally, both private and State parties are disadvantaged under the Refuse Act. Since only the federal government qualifies as "within the class the statute was intended to protect," the Act is an insufficient vehicle for recovery for all injured parties. Thus, the Refuse Act may provide a limited form of relief, i.e., cleanup costs for the federal government, but only if the Court is willing to expand the existing penalties to include civil relief and grant the government a private right of action, as the Supreme Court did in *Wyandotte*.

In summary, domestic legislation does not provide sufficient relief from the damage caused by a blowout on the high seas. The Limitation of Liability Act remains in effect, arguably vitiating the provisions of more recent statutes such as the FWPCA and the OCSLA. Although the latter Acts are intended to compensate victims of oil spills, they overlap, and their jurisdiction is restricted to two hundred miles offshore. Application of the Refuse Act is totally dependent on judicial interpretation of the purpose of the Act. Hence, none of the parties can rely on existing legislation for relief.

III. COMMON LAW REMEDIES

There remains the possibility of applying traditional common law concepts of negligence and strict liability for abnormally dangerous activities as a basis for recovery to both governmental and private parties.

A. *The State*

A widely accepted theory for state standing to sue is that of a *parens patriae* suit. Under the *parens patriae* theory the state may maintain a cause of action for injury to its proprietary interests as owner and/or trustee for the citizens of the state of the natural resources lying in or adjacent to its coastal waters.¹²⁴ The Supreme Court in *Geer v. Connecticut*¹²⁵ found that a state's right to preserve its natural resources flows from the existence of the state's police power.¹²⁶ However the theory does not include recovery by the state for the benefit of individuals whose property was damaged.¹²⁷

124. See *State of Maine v. M/V Tamano*, 357 F. Supp. 1097, 11Q2, (S.D. Me. 1973). *State of Maryland, Dept. of Natural Resources v. Amerada Hess Corp.*, 350 F. Supp. 1060, 1067 (Md. 1972); *California State Dept. of Fish and Game v. S.S. Bournemouth*, 307 F. Supp. 922, 929 (C.D. Cal. 1969).

125. 161 U.S. 519 (1896).

126. *Id.* at 534.

127. *Oklahoma v. Cook*, 304 U.S. 387 (1938).

Secondly, the state may argue for recovery on a theory of public nuisance. Nuisance requires proof of "substantial and unreasonable" interference with the use and enjoyment of one's property.¹²⁸ The discharge of tar balls and slick onto the state's beaches arguably constitutes a substantial and unreasonable interference with their use. One question asked to determine whether the damage is so substantial as to amount to a nuisance is whether its nature is continuous or recurring.¹²⁹ There is authority qualifying a one hundred twenty-two day onslaught of air pollution as "continuous and recurring."¹³⁰ As this spill has intermittently polluted the Texas shores for nine months, it could well be considered continuous and recurring. In order for the state to sustain its burden of proof it would need to establish that Sedco or Pemex-Permargo intentionally acted without due care. However, the Court may have difficulty in establishing any generally accepted standard of care against which to measure Sedco's conduct in a relatively new activity such as offshore drilling. Furthermore, Sedco's sinking of the rig has effectively destroyed any discoverable evidence from the rig itself. The language barrier will also complicate efforts to gather proof of negligence.

Finally, the state may institute a tort action for injury resulting from an abnormally dangerous activity. The Restatement (Second) of Torts¹³¹ lists the factors to be considered in determining whether an activity is abnormally dangerous, and thus subject to strict liability:

- (a) existence of a high degree of risk of some harm to the person, land or chattels of others;
- (b) likelihood that the harm resulting from the activity will be great;
- (c) inability to eliminate the risk by the exercise of reasonable care;
- (d) extent to which the activity is not a matter of common usage;
- (e) inappropriateness of the activity to the place where it is carried on; and
- (f) extent to which its value to the community is outweighed by its dangerous attributes.¹³²

Given the relatively minor rate of blowout occurrences, offshore oil exploration does not clearly involve a high degree of risk of harm to the marine environment. The gravity of the harm depends upon the conditions that exist in each blowout, and the difficulty of capping the particular spill. Whether

128. W. PROSSER, LAW OF TORTS 595 (4th Ed. 1971).

129. *Id.* at 579-580.

130. *In Re Oswego Barge Corp.*, 439 F. Supp. 312, 320 (N.D.N.Y. 1977).

131. RESTATEMENT (SECOND) OF TORTS (1966).

132. *Id.*, at § 520.

the risk can be eliminated by due care is unclear. Sometimes the most sophisticated equipment cannot gauge precise geological conditions with exactitude. The activity is not of common usage, as it is not carried on by any large percentage of the population.¹³³ The activity may be considered appropriate to the locality: drillers have no choice in their selection of locality; oil drilling must be carried on where oil is to be found.¹³⁴ The value of the activity to the community as the source of much needed energy may well vitiate the other ultrahazardous aspects of the activity. Thus, application of the Restatement 2d test does not clearly establish offshore oil exploration as an abnormally dangerous activity. However, balancing the possible risks against the value of the activity, the Court may find that the value of offshore oil drilling operations outweighs the risks involved.

In summary, a *parens patriae* suit seems the least problematic option open to the State to sustain its claim of compensable injury. Negligence and nuisance theories present evidentiary difficulties. Success in applying the Restatement 2d test for an abnormally dangerous activity depends upon judicial weighing of the risks against the value of the activity to the community.

B. *Private Parties*

The landmark case of *Union Oil v. Oppen*¹³⁵ held that the diminution of aquatic life in the Santa Barbara Channel as a result of an offshore blowout constituted a legally compensable injury to commercial fishermen for lost profits.¹³⁶ The Court found the fishermen had the requisite privity to maintain a negligence action against the oil drillers.¹³⁷ The Court reasoned that the defendants could reasonably have foreseen damage to the aquatic life as a result of their negligently conducted drilling operations.¹³⁸ Thus, the consequential injury to the business of commercial fishermen was foreseeable. Recovery was limited to the fishermen's demonstrable loss of profits, suggesting that losses suffered by other businesses in the area would not be compensable.¹³⁹ American courts have usually denied claims for economic

133. *Id.*, at § 520(d). See Comment on clause (d).

134. *Id.*

135. 501 F.2d 558 (9th Cir. 1974).

136. *Id.* at 570.

137. *Id.* at 569.

138. *Id.*

139. *Id.* at 570.

losses suffered by non-riparian businesses which indirectly depend upon fishing, water recreation or beach tourism as sources of income.¹⁴⁰

There is authority in Texas recognizing the right of a plaintiff who operated a swimming pool in the channel of a river to recover lost profits resulting from defendant's pollution of the river.¹⁴¹ Other jurisdictions have found that damage to a hotel's private beach was recoverable.¹⁴² The most far-reaching decision to date, *Petition of N.J. Barging Corp.*,¹⁴³ granted owners of waterfront homes damages for depreciation in rental values, annoyance, inconvenience, discomfort and loss of aesthetic pleasure.¹⁴⁴

In summary, among the private parties, the beach owners and other small businesses dependent on tourism are not likely to succeed in alleging a compensable injury under traditional tort law. Only fishermen with demonstrable loss of profits due to the oilspill may recover on a negligence theory if the Court adopts the *Union Oil* reasoning.

IV. INTERNATIONAL LAW

The United States may seek relief in the International Court of Justice for Mexico's violations of international law. The sources for *opinio juris* as defined in the *North Sea Continental Shelf Cases*¹⁴⁵ are judicial opinions, treaties, United Nations activities, declarations of regional organizations, municipal law and International Law Association commentaries.¹⁴⁶

A. Judicial Opinions

In the *Trail Smelter Arbitration*¹⁴⁷ between the United States and Canada, the principle of customary international law, *sic utere tuo*,¹⁴⁸ was applied. The Court in the *Trail Smelter* case held that no state has the right to use or permit the use of its territory in such a manner as to cause injury by

140. See e.g. *Petition of Kinsman Transit Co.*, 388 F.2d 821 (2d Cir. 1968); *Stevenson v. East Ohio Gas Co.*, 73 N.E.2d 200 (Oh. 1946); *Sinram v. Pa. RR.*, 61 F.2d 767 (2d Cir. 1932); *H.R. Moch Co. v. Rensselaer Water Co.*, 247 N.Y. 1960, 159 N.E. 869 (N.Y. 1928).

141. *Fort Worth & Rio Grande Railway Co. v. Hancock*, 286 S.W. 335, 336 (Tex. Civ. App. 1926).

142. *Small v. U.S.*, 33 F.2d 702 (3rd Cir. 1964).

143. 168 F. Supp. 925 (S.D.N.Y. 1958).

144. *Id.* at 936-937.

145. *North Sea Continental Shelf Cases*, [1969] I.C.J. 1.

146. *Id.* at 44.

147. *Trail Smelter Arbitration*, 3 R. Int'l. Arb. Awards 1905 (1949); 35 AM. J. INT'L. L. 684 (1941).

148. One must so use his own as not to do injury to another. BLACK'S LAW DICTIONARY (5th Ed. 1978).

fumes in or to the territory of another or the property of persons therein.¹⁴⁹ The case must be of serious consequence, and the injury established by clear and convincing evidence.¹⁵⁰ Canada was held liable for damages to the United States for injury in the State of Washington resulting from a privately owned and operated Canadian smelter.¹⁵¹

Water pollution is certainly analogous to air pollution, and the consequences are arguably more readily ascertainable. The damage originated from the operations of Mexico's national oil company on Mexico's continental shelf over which it has sovereign rights. Mexico is more directly responsible for the oil pollution of the State of Texas and of the waters of the United States than Canada was for air pollution of the State of Washington. In the instant case, the Mexican national oil company and its subcontractors, rather than a private corporation, are implicated. The consequences of this oil spill are clearly serious, and injury did, in fact, occur. An analogy to *Trail Smelter* indicates Mexican liability for the damage to United States coastal waters and resources resulting from the exploration activities of the Mexican national oil company on its territorial waters.

B. *United Nations Activities*

Principle 21 of the Stockholm Declaration,¹⁵² one of the final documents of the 1972 U.N. Conference on the Human Environment, essentially reiterated the *sic utere tuo* principle.

Principle 21 states that countries have the responsibility to insure that activities within their jurisdiction or control do not cause damage to the environment of other states or to areas beyond the limits of national jurisdiction.¹⁵³ A Mexican delegate, in quoting the Mexican minister of foreign affairs, stated unambiguously that "it was the responsibility of all states to avoid activities within their jurisdiction or control which might cause damage to the environment beyond their national frontiers and to repair any damage caused."¹⁵⁴ In the light of such a statement, there is no question that Mexico has a definite international legal obligation towards the United States for the pollution resulting from Mexican drilling operations.

Principle 21 does not represent the notion of strict liability for extraterritorial environmental damage. There is evidence from the debates in

149. See *supra* note 147, 35 AM. J. INT'L. L. at 716.

150. *Id.*

151. *Id.* at 717.

152. Rep. of the U.N. Conf. on the Human Env., U.N. DOC. A/CONF. 48/14, at 7 (1972).

153. *Id.*

154. Statement by Gonzales-Martinez, U.N. DOC. A/C.2/SR. 1470, at 7 (1972).

drafting Principle 21 that some measure of negligence must be established before recovery is awarded.¹⁵⁵ Principle 22 mandates that states further develop international law regarding liability and compensation.¹⁵⁶ Principle 22 thus recognizes by implication that there is as yet no established practice of compensation for environmental damage.

The requirement of negligence for recovery is in conformity with international case law. In the *Corfu Channel* case,¹⁵⁷ Albania was held liable for the property damage and loss of human life which resulted from minefield explosions in Albanian territorial waters. Liability was contingent, however, on knowledge of the existence of the mines.¹⁵⁸ Knowledge was inferred from the fact that the mines must have been laid at a time when there was close Albanian surveillance over the Strait.¹⁵⁹ In the instant case, however, the Court may find it difficult to establish that the operators were capable of gauging the precise geological conditions which gave rise to the blowout. Recovery on the basis of international judicial opinion thus presents the same evidentiary difficulties that would be encountered in a negligence suit in an American or Mexican court.

C. Regional Declarations

Mexico has declared its obligation to prevent pollution of the sea by oil exploration and exploitation in a number of regional declarations. The Declaration of Santo Domingo affirmed Mexico's duty to refrain from performing acts which may pollute the sea and its seabed, either inside or outside its jurisdiction.¹⁶⁰

Mexico also approved the Lima Declaration of the Latin American States on the Law of the Sea.¹⁶¹ The Lima Declaration recognizes in its prefatory language that the coastal states should take steps to protect the health and interests of their populations from utilization of the marine environment. Such utilization has given rise to grave dangers of contamination of the waters and disturbance of the ecological balance.¹⁶² The introduction declares

155. See HANDL, *The Case for Mexican Liability for Transnational Pollution Damage Resulting from the Ixtoc I Oilspill*, 2 HOUSTON J. OF INT'L. L. 229, 232 (1979).

156. *Id.* at 232-233.

157. *Corfu Channel Case* [1949], I.C.J. 4.

158. *Id.* at 22.

159. *Id.* 22-23.

160. Declaration of Santo Domingo, U.N. Doc. ST/LEG/SER. B/2 601 (1972).

161. Declaration of the Latin American States on the Law of the Sea (Lima), reprinted in 10 INT'L. LEGAL MATS. 207 (1971).

162. *Id.*

that in exercising its sovereign rights of exploration of the seabed, the states must mutually respect the rights of other neighboring coastal states.¹⁶³

Mexico signed the Montevideo Declaration of the Law of the Sea¹⁶⁴ in 1970. The Montevideo Declaration resolved that the signatory states take measures to establish a system of liability for the resulting damages from exploration and exploitation activities.¹⁶⁵

Thus, Mexico cannot claim it owes no duty to compensate the United States for pollution of its waters. Mexico has repeatedly affirmed its obligation to prevent pollution, respect the rights of neighboring coastal states, and establish a system of liability.

D. *International Conventions*

Mexico may be liable for violations of Conventions to which both Mexico and the United States are parties. Both are signatories to the 1958 Convention on the High Seas.¹⁶⁶ Article 24 of the Convention provides:

Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil . . . resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject.

Although the government of Mexico has pertinent regulations in accordance with the Convention, the 1958 Convention has little practical significance. The Convention is not self-executing, relying on the signatory states to enforce their own regulations. Mexico cannot be forced to impose damages on its oil exploitation contractors.

Mexico and the United States have similarly signed the Convention on the Continental Shelf.¹⁶⁷ Article 5 of the Convention provides that the exploitation of the natural resources of the continental shelf must not result in any unjustifiable interference with conservation of the living resources of the sea. By endangering both the shrimp spawning grounds and the already endangered Kemp's ridley sea turtle nesting grounds in the Texas waters,¹⁶⁸ Mexico has violated Article 5.

163. *Id.* at 208.

164. Montevideo Declaration on the Law of the Sea, reprinted in 9 INT'L LEGAL MATS. 1081 (1970).

165. *Id.*

166. Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82, Article 24.

167. Convention on the Continental Shelf, done at Geneva, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311, in force June 10, 1964.

168. 125 CONGR. REC. H. No. 6366-67 (Jul. 20, 1979).

Similarly, Article I(2) of the Convention on Fishing and Conservation of the Living Resources of the High Seas,¹⁶⁹ to which Mexico and the United States are signatories, provides that all states have the duty to adopt or cooperate with other states in adopting such measures for their nations as may be necessary for conservation of the living resources of the high seas. The Sedco case demonstrates that Mexico has adopted the required policies of Article I(2); unfortunately, the country has failed to adopt the requisite practical measures to enforce the terms of the Convention.

In summary, Mexico has been eager to be a party to regional and international declarations and conventions which assert a country's responsibility to ensure that exploitation of its natural resources does not lead to contamination of the environment of other nation states. However, as the conventions are not self-executing, and as all of the declarations rely on the good faith efforts of the signatories for compliance, these documents represent nothing more than statements of good intentions. The duties are present, but if a State refuses to enforce the Conventions' requirements upon itself, nothing can be done to compel its compliance. Furthermore, the International Court of Justice only acquires jurisdiction over a State if that State consents to the Court's jurisdiction.¹⁷⁰ Thus far, Mexico has denied responsibility for the consequences of the Ixtoc I oil spill;¹⁷¹ in light of these denials, the country's voluntary submission to the jurisdiction of the International Court would appear highly unlikely.

V. MEXICAN LAW

Lastly, all the party plaintiffs may file claims in the Mexican Courts. The accident constitutes a violation of both Mexican tort law and its petroleum operation regulations. Mexican tort law, similar to our negligence law, imposes liability for damages arising out of "illicit acts or acts contrary to good customs", unless the damage is caused by the fault or inexplicable negligence of the victim.¹⁷² A blowout arguably constitutes an "illicit act." The victims also may allege the drilling was conducted contrary to industry standards. Again, however, the burden of proof would be difficult to sustain for a finding of negligence.¹⁷³

169. Convention on Fishing and Conservation of the Living Resources of the High Seas, *done* at Geneva, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285, *in force* March 20, 1966.

170. SLUTHOFF-LEIDEN, DOCUMENTS ON THE INTERNATIONAL COURT 77 (1974).

171. Wash. Post, Sept. 30, 1979, § 1, at 2, cols. 1-2.

172. FEDERAL CIVIL CODE OF THE REPUBLIC OF MEXICO Art. 1910 (Schoenrich ed., 1950).

173. See text *supra* at 67-69.

Mexico imposes absolute liability upon those who engage in ultra-hazardous activities. These are defined as "apparatus . . . which are dangerous in themselves, by reason of the velocity which they develop, their explosive or inflammable nature . . ." ¹⁷⁴ The operation of a semisubmersible rig would appear to fall within this definition. The rigs develop pressure ("velocity") during the drilling; the oil and gases which spew forth during the blowout are inflammable.

The blowout might be considered a violation of the Regulations for Petroleum Operations. The Regulations mandate that during drilling work all necessary equipment be installed to guarantee the safety of the operation. ¹⁷⁵ All necessary precautions are to be taken to avoid environmental contamination as well as accidents and risk-taking in the course of the drilling. ¹⁷⁶ However, the measure of damages which may be awarded for inadequate safeguards or unfounded risk-taking is not clear.

In summary, given the problems of substantive and procedural conflicts of laws, the great expense involved in pursuing claims in Mexican courts, the language barrier, the difficult burden of proof and the uncertainty of gaining any substantial measure of damages, seeking recovery in the Mexican Courts would not appear to be worthwhile for the United States government, the State of Texas or the private parties involved.

VI. CONCLUSION

In conclusion, domestic legislation must be altered to ensure recovery from offshore blowout damage. The antiquated Limitation of Liability Act should be repealed. The Act creates confusion, forces an inordinate amount of time and money to be spent on preliminary jurisdictional questions, ¹⁷⁷ and often leads to inequitable results because of artificial "vessel" classifications. The original purpose of the Act was to protect the United States merchant marine's ability to compete with that of Great Britain; ¹⁷⁸ this purpose can better be served by specific legislation requiring that ships be adequately insured. Thus, the companies engaging in these activities could be required to build into their production costs the cost of self-insurance to cover not only

174. FEDERAL CIVIL CODE OF THE REPUBLIC OF MEXICO. Art. 1913 (Schoenrich ed., 1950)

175. Regulations for the Petroleum Operations, D.O. Ch. I, Art. 94, 358-29, and Art. 32, at 358-61 (Feb. 27, 1974).

176. *Id.*

177. More than a year will have elapsed in the Sedco case before the jurisdiction issues are determined.

178. 23 CONG. GLOBE, 31st Cong., 2d Sess. 714 (Remarks of Sen. Davis) (1851).

the cost of replacing a destroyed rig, but also any compensation for damaged resources and private property for which they might be held liable.

Alternatively, should Congress adopt a national policy designed to encourage oil exploration to obtain much needed energy, it might enact compromise legislation similar to the Superfund bill.¹⁷⁹ In exchange for strict liability for cleanup expenses as well as for private property damage and economic losses,¹⁸⁰ the companies may look to the fund to cover any amounts over \$50 million, for which their insurance would be inadequate.¹⁸¹ Since the fund is constituted of money from federal taxes imposed upon oil refineries and terminals,¹⁸² oil owners are to reimburse the refineries and terminals for these taxes. Thus, oil companies as a class contribute towards compensation for damage caused by a member of the class.

Finally, it is in both Mexico's and the United States' interest to conclude a bilateral agreement similar to that existing between the United States and Canada. The United States will be anxious to substitute Mexican oil for the loss of supplies from the strife-torn Middle East. Mexico needs to retain the goodwill of the American companies that supply Pemex with necessary equipment and technological instruction. Such an agreement might impose strict liability for any pollution damage resulting from offshore oil drilling operations, leaving it to each country to determine whether government or industry will be responsible for these costs.

In the United States, the companies engaging in oil exploration need some certainty as to the scope of their liability. Without this certainty they cannot determine what amounts to build into their production costs. Hopefully Congress will adopt legislation soon so as to resolve the questions of liability and limitations thereon in such a way that the financial resources of either government or industry are not overburdened.

Hilde D. Preston

179. H.R. 85, 96th Cong., 1st Sess. (1979).

180. *Id.*, at § 104(a).

181. *Id.*, at § 104(b)(5), (f)(1).

182. *Id.*, at § 102(d)(1).

183. *Id.*