

**UNITED STATES MISSION TO THE UNITED NATIONS
NEW YORK**

May 8, 2009

The Permanent Mission of the United States of America to the United Nations presents its compliments to the Secretariat of the United Nations and has the honor to refer to the Secretariat's note LA/COD/45 of 15 October 2007, as well as its related letter of 15 December 2008, regarding a questionnaire on transboundary oil and gas resources that was developed by an International Law Commission working group on shared natural resources. The Government of the United States hereby presents its response to that questionnaire and requests the Secretariat's assistance in transmitting this response to the International Law Commission.

The Permanent Mission of the United States of America to the United Nations takes this opportunity to renew to the United Nations the assurances of its highest consideration.

DIPLOMATIC NOTE

International Law Commission's
Questionnaire on Shared Natural Resources

Response of the United States

The United States appreciates the opportunity to respond to the questionnaire circulated by the International Law Commission's working group on shared natural resources on 15 October 2007. Our responses are as follows:

- 1. Do you have any agreement(s), arrangement(s) or practice with your neighboring State(s) regarding the exploration and exploitation of transboundary oil and gas resources or for any other cooperation for such oil or gas? Such agreements or arrangements should include, as appropriate, maritime boundary delimitation agreements, as well as unitization and joint development agreements or other arrangements. Please provide a copy of the agreement(s) or arrangement(s) or describe the practice.**

Aside from certain provisions in one maritime boundary treaty with Mexico (described below), the United States has not entered into any international agreements or arrangements, nor established any practice with neighboring States, in relation to transboundary oil and gas reservoirs along the U.S. maritime or continental shelf boundaries with Mexico or Canada. We also are not aware that any such transboundary reservoirs have been identified. The United States also has identified no agreements, arrangements or established practice with its neighboring States specific to the exploration and exploitation of transboundary oil and gas resources along its land boundaries.

The United States has two maritime boundary and delimitation agreements with Mexico. The first is the U.S.-Mexico Treaty on Maritime Boundaries (signed at Mexico City May 4, 1978; entered into force November 13, 1997), which establishes the maritime boundary between the United States and Mexico out to 200 miles in the Gulf of Mexico and the Pacific Ocean, using the principle of equidistance. See attachment A. This agreement does not address the exploration or exploitation of transboundary oil and gas resources. In addition, the agreement left two "gaps," or areas outside the EEZ jurisdiction of either state: one in the eastern Gulf (which concerned Mexico, Cuba, and the United States), and one in the western Gulf (which concerned the United States and Mexico).

To address the gap in the western Gulf, the United States and Mexico concluded the Treaty on the Delimitation of the Continental Shelf in the Western Gulf of Mexico Beyond 200 Nautical Miles, with annexes (signed at Washington June 9, 2000; entered into force January 17, 2001) ("Western Gap Treaty"). See attachment B. Again, applying the principle of equidistance, the agreement allots 62% of the 17,190 km² area to Mexico and 38% to the United States. The agreement also established a "buffer zone" extending 1.4 nautical miles on either side of the boundary in the Western Gap, within

which neither party may engage in drilling or exploitation of the continental shelf for a period of ten years.

While unitization and joint development arrangements were not part of this agreement, the agreement does address the subject of possible oil and gas transboundary reservoirs. In particular, the agreement requires each Party, in accordance with its national laws and regulations, to facilitate requests from the other Party to authorize geological and geophysical studies to help determine the possible presence and distribution of transboundary reservoirs. In addition, each Party is required to share geological and geophysical information in its possession in order to determine the possible existence and location of transboundary reservoirs. In the event any transboundary reservoir is identified, moreover, the agreement obligates the Parties "to seek to reach agreement for the efficient and equitable exploitation of such transboundary reservoirs." See art. V(1)(b).

2. Are there any joint bodies, mechanisms or partnerships (public or private) involving exploration, exploitation or management of the transboundary oil or gas?

We have identified no joint bodies, partnerships or formal mechanisms with Mexico or Canada to address exploration, exploitation and management of transboundary oil or gas. Along its maritime boundary, the United States itself does not engage in these forms of activity, but instead issues Outer Continental Shelf leases within U.S. jurisdiction on a competitive basis to private oil and gas companies. These leases and their operators must adhere to the U.S. laws and regulations, as well as the terms of the lease. Please see the Outer Continental Shelf Lands Act (OCSLA) and its implementing regulations, the most pertinent of which are found at 30 C.F.R. Parts 250, 256, and 260.

3. If the answer to question 1 is yes, please answer the following questions on the content of the agreements or arrangements and regarding the practice:

(a) Are there any specific principles, arrangements, or understandings regarding allocation or appropriation of oil and gas, or other forms of cooperation?

There are no principles, arrangements, or understandings regarding allocation or appropriation of oil and gas production from transboundary reservoirs, as no transboundary reservoirs have been identified along the U.S. maritime boundary. The only forms of cooperation concern data sharing and other limited forms of cooperation described in the Western Gap Treaty with regard to possible transboundary reservoirs.

(b) Are there any arrangements or understandings or is there any practice regarding prevention and control of pollution or regarding other environmental concerns, including mitigation of accidents?

Because the United States has no arrangements or practices regarding the exploration and exploitation of transboundary oil and gas resources, there are no related arrangements or understandings regarding pollution prevention and control or other environmental concerns. As a domestic matter, oil and gas operators operating in areas under U.S. jurisdiction are required to follow all U.S. laws and regulations, many of which relate to pollution and environmental issues. For example, see generally the OCSLA, and specifically its implementing regulations at 30 C.F.R. Part 250. In addition, U.S. Government inspectors visit and inspect offshore facilities regularly to ensure that all equipment and facilities comply with regulatory requirements.

4. Please provide any further comments or information, including legislation, judicial decisions, which you consider relevant or useful to the Commission in the consideration of issues regarding oil and gas.

There is no U.S. legislation or judicial decision specifically addressing transboundary reservoirs at this time and the relevant agency in the federal government currently lacks domestic legislative authority to enter into a cooperative development arrangement (such as a joint plan, allocation, or unitization arrangement) with a neighboring State. Our Outer Continental Shelf operators are subject to a number of laws and regulations, including provisions for domestic unitization arrangements between leaseholders in certain circumstances. In general, operators are allowed to explore, develop, and produce hydrocarbons from their leased acreage pursuant to the "modern rule of capture," which requires (for example) resource conservation practices and maximizing ultimate recovery from resource reservoirs.

5. Are there any aspects in this area that may benefit from further elaboration in the context of the Commission's work?

The United States believes that state practice in the area of transboundary oil and gas resources is divergent and relatively sparse, and that specific resource conditions likewise vary widely. In addition, development of oil and gas resources, including transboundary resources, entails very sensitive political and economic considerations. Given these factors, the United States does not believe it would be helpful or wise for the Commission to study this area further or attempt to extrapolate rules of customary international law from limited practice.