The Center for U.S. and Mexican Law at the University of Houston Law Center recently launched a bi-national research project, led by two of the authors of this article, to explore legal and institutional issues relating to the development of shared offshore oil and gas fields in the Gulf of Mexico (the "Gulf"). Recent hydrocarbon discoveries, mainly on the U.S. side of the Gulf near the maritime boundary between the two nations, has spurred efforts to find better methods of effectively managing these transboundary resources in a cooperative fashion. This article examines the substantive provisions and future implications of a recently completed treaty between Mexico and the U.S. dealing with the joint development of hydrocarbons in the maritime boundary region of the Gulf.

With decreasing production from Mexico's easily accessible onshore and offshore hydrocarbon fields, and with growing demand in the United States for more drilling in the Gulf, technological advances in exploration and exploitation (i.e., the use or recovery of natural resources) have led to drilling further into the Gulf and into ever deeper waters, at least on the U.S. side. Experts estimate that between 3 and 15 billion barrels of oil may be recoverable in the deepwater area of the Gulf that is open to U.S. exploitation, making it the biggest U.S. discovery since Prudhoe Bay in Alaska nearly 40 years ago. Meanwhile, Mexico has estimated 30 billion recoverable barrels on its side of the maritime border.

PEMEX, the Mexican national oil company that holds a monopoly on oil and gas production, has lacked the technology and financing to carry out deepwater oil and gas exploration, and as a result the Mexican side of the Gulf remains largely unexplored. By contrast, significant quantities of hydrocarbons are currently being produced on the U.S. side.
of the maritime boundary in a number of widely dispersed deepwater plays in the Gulf. The Mexican and U.S. governments have expressed concern over the potential production of oil and gas in an area known alternatively as the Perdido Foldbelt or Alaminos Canyon Region, located about 150 miles east of Brownsville, Texas. Commercial production in this region has caused unease, particularly in Mexico, because of the possible existence of hydrocarbon reservoirs that may straddle the existing maritime boundary between the two nations, referred to as transboundary reservoirs. While there is no conclusive evidence proving the presence of transboundary deposits, the mere possibility that production on the U.S. side of the boundary may siphon oil from Mexico triggered a series of diplomatic negotiations at the highest levels to address these concerns.

The first diplomatic negotiations resulted in the execution of the “Treaty between the Government of the United States of America and the Government of the United Mexican States on the delimitation of the Continental Shelf in the Western Gulf of Mexico beyond 200 nautical miles,” in 2000. This treaty, known as the “Western Gap Treaty,” first acknowledged the possible existence of transboundary reservoirs and established a ten year drilling moratorium in a “buffer zone” of 2.8 nautical miles measured from each country’s side of the maritime border. The moratorium, while prohibiting exploration and production until 2011, allowed both countries to exchange information and to prepare a strategy for dealing with possibly existing transboundary reservoirs.

Unfortunately, a cooperative solution has not been easy to negotiate or reach. One of the greatest challenges in establishing a regime for joint exploration and exploitation of possible shared petroleum resources in the Gulf is the stark difference between the two countries’ petroleum legal regimes. In Mexico, not only is there a state monopoly of the oil industry, but its constitution prevents the Mexican government from authorizing direct exploitation and production of hydrocarbons by private companies from foreign countries, other than through service contracts. In 2008, Mexico passed reforms to federal law in an attempt to remove some of the restrictions that limit private contracting. Calls for further reforms surfaced in the context of the recent presidential elections, but incoming President-elect Enrique Peña Nieto faces difficult political obstacles to passing the necessary constitutional reforms to allow international oil companies to drill within Mexican boundaries.

Despite the dramatic differences in their regulatory regimes, on February 20, 2012, the United States and Mexico successfully negotiated an international agreement designed to establish a collaborative relationship for joint development of transboundary reservoirs. Officially known as the “Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico” (the “Agreement”), it addresses transboundary reservoirs and attempts to set up a unitization framework for their efficient and equitable exploitation, although it leaves many details for future negotiation.

The Agreement will enter into force pending its ratification by the U.S. Senate and the establishment of internal regulations regarding permits and licenses for U.S. operators to carry it out. Significantly more thorough legal and regulatory reform is needed in Mexico before the Agreement can be effectively implemented. Once implemented, however, the Agreement will terminate the moratorium on drilling in the Western Gap, which was implemented by the Western Gap Treaty on June 9, 2000.

The Scope of the Agreement
Made up of seven chapters and twenty-five articles, the Agreement seeks to “encourage the establishment of cooperative agreements based primarily on the principles of unitization.” It also leaves open the possibility for the development of cooperative agreements outside the framework established in the Agreement. The application of the Agreement is limited in scope to those reservoirs that extend beyond the maritime boundary of the countries and are entirely located beyond nine nautical miles of the coastline of any party. If any of its provisions require the modification of a U.S. license existing before notification of the Agreement’s ratification, then those provisions will not apply to that license.

Reporting Requirements and Information Sharing
Article 4 of the Agreement sets up several reporting requirements for activities conducted near the maritime boundary. Generally, written notice must be provided if either party is aware of the existence of a transboundary reservoir or if a licensee has submitted an exploration plan within three nautical miles of the boundary. If a licensee has submitted a plan for “Development” or “Production” of an area within three miles of the boundary, parties must go beyond just a written notice and must provide the plan to the other party.

Determining the Existence of a Transboundary Reservoir
Article 5 sets up the framework for determining whether a transboundary reservoir exists. The Agreement requires the parties to consult with each other in order to determine the existence of a transboundary reservoir and to share relevant geological information provided by their licensees that determine whether a transboundary reservoir exists. In case the parties fail to reach an agreement on the existence of a transboundary reservoir, then Article 5, in conjunction with others, sets up the framework in which the determination may be made by a Joint Commission or Expert Determination.

Unitization
Chapter 2 deals with the exploration and exploitation of a transboundary reser-
voor or unit and explains the emphasis on the principle of unitization. Article 6 requires that any joint exploration or exploitation of a transboundary reservoir pursuant to a unitization agreement must be approved by both the U.S. and Mexico. In addition, the parties’ executive agencies are required to make a joint determination estimating the amount of recoverable hydrocarbons in the transboundary reservoir and the amount on either side of the maritime boundary. Along with this estimate, the parties must jointly determine the associated allocation of production and, in case of disagreement, the question will be submitted to Expert Determination.

Although it highly encourages unitization, the Agreement permits a licensee to proceed with exploitation of a transboundary reservoir without having to unitize. If either party does not approve a licensee’s unitization proposal or if any licensee fails to sign a unitization agreement after it has been approved, then either nation may authorize its licensee to proceed with the exploitation of the reservoir. The non-unitizing licensee, however, will, among other things, still be subject to the determination of allocation of production mentioned above and required to share production data on a monthly basis. It has been widely opined that, in order for unitization to legally occur in Mexico, the nation’s constitution will need to be amended.

**Cooperation and Facilitating Access to Facilities**

The Agreement calls for the parties to facilitate cooperation between the licensees in carrying out the exploration and exploitation of a transboundary unit, which includes access to facilities near the maritime boundary for those workers participating in activities related to the transboundary unit.

**Dispute Resolution**

The Agreement also establishes three primary mechanisms for resolving disputes: a Joint Commission, arbitration, and expert determinations. The Agreement establishes the Joint Commission as the competent body that will examine any dispute or matter referred to it by the executive agencies relating to the interpretation and implementation of the Agreement. In addition to the Joint Commission, the Agreement encourages consultations between the two parties and allows for nonbinding mediation. If disputes are not resolved through consultations or mediations and are not resolvable through Expert Determinations pursuant to the Agreement, either party may choose to refer the dispute to arbitration pursuant to Article 17. The details of arbitration are left to the Joint Commission to decide. However, the Agreement does suggest that any arbitration decision will not be final, since “[t]he Joint Commission will have 30 days in which to consider the final recommendation in any arbitration instituted pursuant to Article 17. If the Joint Commission is unable to resolve any remaining differences within that time, the dispute will be returned to the parties.”

As is customary in oil and gas contracts, the Agreement calls for expert determinations in settling certain disputes; and although it leaves many of the details on how these determinations will work to the Joint Commission, it does set up a temporary mechanism for expert determinations and describes what issues may be submitted to such determination. One of the most interesting aspects concerning expert determinations is that unlike arbitration, they shall be considered final and binding on the parties.

**Inspections**

The Agreement also allows for inspections by both parties in their respective offshore facilities. The details of when these inspections can take place, as well as under what procedures and circumstances, are not specified in the Agreement and further regulation in this matter will be necessary for adequate implementation.
however, set up a procedure in which inspectors from one country can request that the other party cease activities in case of emergencies where there is a risk of loss to life, serious bodily injury or damage to the environment.33

Safety and Environmental Protection
Article 10 of the Agreement contains rather broad language concerning safety and environmental protection. It is somewhat insufficient, as it does not establish any specific environmental or safety regulations and instead provides general language about adopting common standards and requirements whose adequacy and compatibility is yet to be seen.34 As is recurrent in this Agreement, it leaves the development of specific procedures for the implementation of this Article to a later time.35

Termination
The Agreement states that it can be terminated either by mutual agreement or by either country at any time via written notice within a specified time period.36 Interestingly, in the event of termination the two countries must begin consultations to develop a new agreement addressing transboundary reservoirs.37

Conclusion
As is readily apparent from this brief article, offshore transboundary hydrocarbon exploitation triggers a broad range of legal and policy challenges. The Agreement, while a positive first step, is as notable for what it lacks as for what it contains. Clearly, both nations intended to leave some areas of ambiguity that could be later developed through negotiations or state practice. Nonetheless, legitimate questions exist as to whether Mexico's current constitutional and legal framework will allow this Agreement to be carried out in a successful manner.38 Similarly, the U.S. has never been a party to an international agreement to jointly develop hydrocarbon resources that extend across international boundaries.39 Consequently, it will have to develop a completely new regulatory structure capable of governing the unique set of issues common to international unitization agreements.

It is with these and other unanswered questions in mind that the Center for U.S. and Mexican Law undertakes its bi-national research project in phases over the next two to three years. The first phase will address the following topics: (1) background and sources of legal principles governing shared hydrocarbon resources, including an inventory of existing international unitization efforts; (2) economic, geologic and environmental reasons for cooperation; (3) challenges that the U.S. and Mexico will have to address before engaging in joint development activities; (4) possibilities for cooperation based on an analysis of the existing agreement; and (5) legal gaps and conflicts that need to be modified or improved in both nations to enhance a potential unitization agreement in the Gulf. This research report will serve as the foundation for a workshop that brings

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together U.S. and Mexican members of government, the legal profession, industry, nongovernmental organizations and academia to determine the most effective steps toward developing architecture for strengthened cooperation and effective management of shared hydrocarbon resources in the Gulf.

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Endnotes
3. In the past few months, Mexico began drilling its ultra-deep water wells Trion (with a drilling depth of 2,930 meters) and Supremus (with a drilling depth of 2,890 meters). Technological limitations within Pemex previously made it impossible to drill beyond 500 meters.
5. Constitución Política de los Estados Unidos Mexicanos (Mexican Constitution) art. 27, as amended, Diario Oficial de la Federación, 5 February 1917 (Mex).
7. Id. art. 22. The Mexican Senate ratified the treaty on April 12, 2012; however, the U.S. Senate has not yet ratified the Agreement as of the date of publication of this article.
8. Id. at art. 24.
9. Id. at Prelim. Unitization allows for the joint development of a common reservoir whose geological structure extends through the property of several mineral tract owners. Through collaboration rather than competition, the development of the unitized field is carried out by a single operator which allows for greater efficiency in the drilling and production of the reservoir.
10. Id.
11. Id. at art. 1.
12. Id.
13. Id. at art. 4.
14. Id. at art. 4(2)(c).
15. Id. at arts. 5(1), 4(2)(a), 4(2)(d).
16. Id. at art. 5(2).
17. Id. at art. 14(6).
18. Id., at art. 1(2)(b).
19. Id.
20. Id. at art. 7(3).
21. Id. at art. 7(5).
22. Id.
24. Agreement on Transboundary Reservoirs, supra note 6, at art. 12(4).
25. Id. at art. 12(3).
26. Id. at art. 14(3).
27. Id. at art. 15(2).
28. Id. at art. 17.
29. Id. at art. 17(4).
30. Id. at art. 1(7).
31. Id. at art. 16.
32. Id. at art. 16(9).
33. Id. at art. 18(2).
34. Id. at art. 18(3).
35. Id. at art. 18(7).
36. Id. at art. 19(2).
37. Id. at art. 23(1).
38. Id. at art. 23(3).