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### EXTENSION OF THE CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES: AN ASSET FOR FRANCE

Opinion of the Economic, Social and Environmental Council

on the report submitted by Mr. Gérard Grignon, Rapporteur

on behalf of the Delegation for Overseas Territories

Question referred to the Economic, Social and Environmental Council by a decision of its office dated 14 May 2013 applying Article 3 of the Ordinance Nor 58-1360 from 29 December 1958 amended, concerning the organic law relating to Economic, Social and Environmental Council. The office has charged the Delegation for Overseas Territories with the draft of an opinion and a report with the title Extension of the continental shelf beyond 200 nautical miles: an asset for France. Overseas delegation, chaired by Mr. Gérard Grignon, has appointed Mr. Gérard Grignon as a Rapporteur.

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## EXTENSION OF THE CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES: AN ASSET FOR FRANCE

### Summary of the Opinion<sup>1</sup>

The issue of the extension of the French continental shelf is totally strange to the public opinion, unknown in the political environment and generally absent in seminars and conferences on the offshore as well as in the debates on the maritime policy of our country. Except for some specialists and a very narrow sphere of personalities in charge of the execution of the national program for the Reasonable Extension of the Continental Shelf (EXTRAPLAC) aimed at the extension of the French continental shelf beyond 200 nautical miles, this issue has been ignored.

What is the Extended Continental shelf?

For France which already occupies the second maritime area in the world after the United States, with 11 millions of km<sup>2</sup> distributed among all the oceans, thanks to the Overseas territories this is the possibility:

- to expand its sovereign rights on the natural resources of the seabed and marine subsoil on nearly 2 millions of supplementary km<sup>2</sup>;
- to acquire sovereign rights for the exploration and exploitation of natural resources on these new areas;
- to increase its geostrategic power.

The access to potential wealth (hydrocarbons, hydrothermal sulphides, cobalt crusts, Polymetallic nodules, natural hydrogen, biological resources) may constitute a considerable asset for our country if this contributes to a new model of sustained development, especially in the overseas territories.

The Convention of Montego Bay of 1982, "true constitution of the oceans", and more precisely its article 76, gives the coastal states the possibility to extend the continental shelf beyond 200 marine miles. With this aim, France has implemented the program EXTRAPLAC.

In order to complete the conquest of the extended continental shelf and to implement a truly maritime policy in accordance with the responsibilities and obligations of France, the ESEC formulates the following recommendations:

### Completion of the programme EXTRAPLAC

Identify and secure funding for the completion of the programme EXTRAPLAC

The ESEC recommends the urgent execution of a budgetary expertise with regards to the completion of the programme EXTRAPLAC. As a result, the government

<sup>1</sup> **The entire draft opinion was adopted unanimously by public vote** (see the result of the vote in the annex).

shall take necessary budgetary decisions that will allow our country to focus on the proper role.

## File the claims which have been the object of the preliminary information

### The Council recommends:

- to file with the CLCS the claim concerning Saint-Pierre and Miquelon before the end of 2013, in accordance with the commitment made by the President of the Republic on July 24, 2013.
- to file with the CLCS the claim concerning the French Polynesia at the beginning of 2014. In addition, when currently geophysical studies have been performed for the Marquises alone, the ESEC recommends to perform scientific studies on the whole of the Polynesian archipelago, particularly in view of the positive results of the first campaigns that took place in the Marquises archipelago;
- to file with the CLCS the claim concerning the Clipperton.

## Resolve diplomatic problems preventing the process of the Caledonian case

Following an objection by the Vanuatu opposing the French sovereignty on the Matthew and Hunter islands, France had to ask the CLCS not to examine its claim for the south-east of New Caledonia.

The Council recommends that the Department of Foreign Affairs intensifies their negotiations with the Vanuatu in order to solve this dispute and to finally enable the Commission for the limits of the continental shelf to provide their recommendations on the claim in the south-east off the coast of New Caledonia.

### Publish the outer limits of the extended continental shelf

### The Council recommends:

To gradually fix an publish, within the shortest time periods as possible, the maritime limits based on the recommendations of the CLCS, in accordance with the provisions of article 84 of the Convention of the United Nations on the law of the sea to be effective against third countries and thus confirming the sovereign rights of France on the natural resources of the seabed and marine subsoil of its extended continental shelf. Hereto the ESEC recommends to intensify the diplomatic relations with the concerned countries in order to complete the whole of the delimitation agreements which are crucial for the definitive conclusion of the files.

#### This recommendation aims:

- for the Bay of Biscay, treaties to be concluded between France and Spain as well as with the United Kingdom and Ireland;
- for Guyana, treaties to be concluded between France, Brazil and Surinam;
- for the West Indies, the conclusion of an *addendum* to the 2009 agreement with Barbados

- for New Caledonia (south-west sector), the conclusion of an addendum to the 1982 agreement with Australia;
- for Kerguelen, the conclusion of an *addendum* to the 1982 agreement with Australia

The completion of these agreements is essential to the publication of the outer limits of the extended continental shelf. The ESEC recommends that the required human and financial resources are attributed to the SHOM

## Strengthen the means of the Commission on the Limits of the Continental Shelf

The Council, considering the waiting times as redhibitory, recommends that France pledges strongly before the States at the Convention and before the General Meeting of the United Nations to obtain a remarkable strengthening of the budgetary and human resources from the Commission of the limits of the continental shelf so that this Commission can respond in an efficient manner and within the delays that are acceptable for the files submitted to the same.

### An exemplary France with regards to a new maritime area

### The Council recommends:

- to protect and supervise the concerned areas by strengthening the French navy present on the oceans while providing means for permanent control and observation using new technologies and intensifying the regional cooperation actions.
- to insert into the Law the provisions regarding the objectives of the Convention on the biological diversity (CBD), notably of the Nagoya protocol, and underpin at international level to adequately consider a high protection level of the marine ecosystems in the different additional protocols to the UNCLOS.

## An obligation of knowing the marine resources and ecosystems

### The Council recommends:

- to initiate a national, multidisciplinary and ambitious programme with regards to the know-how, identification and quantification of the seabed and marine subsoil resources of the extended continental shelf. The implementation of this programme should go jointly with the recruitment of primarily young doctorates in order to secure the transmission of know-how;
- to carry out, jointly with the "Sea Programme", a scientific marine research programme aimed at knowing the environment of the ecosystems and habitats of the extended continental shelf;
- to strengthen the financing of the Agency for Marine Protected Areas. The creation of the Agency for Marine Protected Areas may lead to the mastering of privileged areas for the scientific research with regards to the sea environment above the extended continental shelf.

to inform the European Union and to associate the same to the different French maritime policy programmes related to the know-how of the resources of the extended continental shelf as well of those of the marine environment and its ecosystems. Certain projects of these programmes could be integrated into the eighth research and development framework Programme (PCRD – 2014 to 2020) of the European Union. The participation of the European Union could be inscribed within the framework of the Strategy UE 2020 aimed at the creation of "an intelligent, sustained and inclusive growth".

## A responsibility regarding the legal framework for the exploration and exploitation activities to be established

### The Council recommends:

- to initiate a specialized research programme for the technology of the methods, materials and engines for the exploration and exploitation of the deep seabed so that our country becomes a pilot country in this field, serving as an example with regards to the protection of the marine environment.
- To establish, within the shortest time periods as possible, a legal framework for the exploration and exploitation activities and scientific research on the extended continental shelf and more particularly, on the mining code reform for its adaptation to the specific situation of the extended continental shelf within the realm of the maritime areas. The mining code shall also integrate the exploration licenses of the provisions stated in technical specifications and establishing the commitments (social action, training, local provisioning costs, etc.) regarding the concerned authorities as well as the financial spin-offs originated by the eventual exploitations. These spin-offs must be shared between the State and the ultramarine authority according to the negotiated modalities.

An obligation to involve and integrate the ultramarine territories for the elaboration of the maritime policy of our country

### The Council recommends:

 To strengthen the regional cooperation of the ultramarine territories with regards to the management (know-how, preservation, surveillance and exploitation) of the resources of the sea with their neighbouring countries and to dispose of extended powers to do so<sup>2</sup>;

<sup>2</sup> We observe that New Caledonia claims the transfer of the State competence regarding the sovereignty on the extended continental shelf.

- To constantly inform and closely involve the executives of the different ultramarine authorities in all decisions and operations dealing with the policy of the sea<sup>3</sup>. The actors of the civil society should also be associated;
- To implement provisions to enable these territories to have access to new resources and to the creation of economic activities deriving from the same in order to compensate their structural disadvantages. To this effect, if necessary, the legislative and regulating provisions with regards to the competences of the ultramarine authorities shall be adapted and effectively applied;
- reflect on the establishment of an inventory of the trainings to the young people overseas in the future activities which might be generated by the exploration and exploitation of the resources of the extended continental shelf (including the research activities) and to mobilize the human and budgetary resources required for the implementation of these trainings;
- To anticipate a structural accommodation and equipment plan (particularly, harbour equipment and transport) with regards to the future activities generated by the resources of the extended continental shelf.

### The elaboration of a truly ambitious maritime policy

In its opinion with the title which means and which governance for a sustained management of the oceans?, the Council has already recommended:

- to "significantly reinforce and reform the role of SG Mer. The ecosystem collaborative and collective approach of the maritime issues, their strong Inter-ministerial and international dimension, the deployment of budgetary loans dedicated to the same, should indeed lead to a contemplated sea policy management by a High Commission, with the rank of Minister, based on the administration of a strengthened SG Mer, under the direct authority of the Prime Minister (...)."

### Concluding its reflection, the Council also recommends:

- To elaborate a great law on the oceans in order to collect the whole of legislations and regulations defining and accompanying the development of the maritime policy of our country;
- that due to the lack of implementing a unique "sea", budgetary mission, this being an option which is difficult to realize, every year a transversal policy document is drawn up by the government with the title "maritime policy of France", in order to better inform the Parliament on the necessary global vision of the situation in order to facilitate arbitration. The High Commissioner for the sea, under the direct authority of the Prime Minister, would be charged with the task to prepare this transversal policy document;
- To yearly organize a long debate in Parliament on the issue of the French maritime policy, on the basis of a transversal policy document. Indeed, it

<sup>3</sup> We observe that the majority of the guidelines have little or not at all been taken into account, and even been marginalised in the elaboration of the files with regards to the extension of the continental shelf, or yet, in the research performed on the resources of the marine environment (Wallis et Futuna), as illustrated by the great amount of interviews with the different persons in charge of the territorial collectivities.

- seems abnormal to the ESEC that such an extension of the sovereign rights on the natural resources of the seabed and marine subsoil would be at stake without the Parliament being informed and associated until the day of today;
- that the completion of the programme EXTRAPLAC would systemically be included on the agenda of the annual CIMER meeting<sup>4</sup>. Indeed, the Council has confirmed that no CIMER meeting has taken place between 2003 and 2009. In this period major difficulties have arisen requiring the taking of fundamental decisions with regards to the programme EXTRAPLAC, whereas France was obliged to imperatively submit the whole dossier with the files on May 13, 2009.

In its report and opinion with the title *Quels moyens et quelle gouvernance pour une gestion durable des océans?* submitted by Mrs. Catherine Chabaud on behalf of the environment department, the Council has recommended that the CIMER assembles at least once a year.

# Opinion

Extension of the Continental shelf beyond 200 nautical miles:

an asset for France

presented on behalf of the Delegation for Overseas Territories

by Mr. Gérard Grignor

### **Opinion**

### Introduction

As a result of the Truman Proclamation of 1945, the States signatories to the Geneva Convention of 1958 on the continental shelf, launched in the form on the energy resources, agree that the Coastal State exercises sovereign rights on the continental shelf for the exploration and exploitation of its natural resources. These resources are understood as mineral resources and other non-biological resources of the seabed and their subsoil, as well as the living organisms which belong to the sedentary species.

More ambitious than then previous convention of 1958, the United Nations Convention about the law of the Sea, <sup>5</sup> adopted in 1982, wanted, as its introduction states, institute a global process aiming to deal with "all troubles regarding the law of the sea (...) aware that the marine spaces issues are closely linked together and must be considered as a whole (...)". To this end, the Convention wanted to establish "a legal order for the seas and oceans facilitating the international communication and promoting the peaceful uses of the seas and oceans, the equitable and efficient utilisation of their resources, the conservation of their biological resources, and the study, the protection and preservation of the marine environment". Regulation of marine areas and activities that are carried out, therefore attempts to balance the rights and duties of States and includes consideration of economic, social and environmental concerns.

Indeed, article 76 of the UNCLOS completes the evolution of the coverage by the Coastal States, which was initiated in 1958, of the resources of the seabed and their subsoil beyond the territorial sea of 12 nautical miles (M)<sup>6</sup>. The continental shelf extends from now on to 200 nautical miles from the basis lines from which is measured the width of the territorial sea, under the water column of the Exclusive Economical Zone (EEZ). **For certain Coastal States, this shelf may also be extended beyond the same, under the deep sea, until the exterior edge of the continental margin, if the latter is situated beyond 200 nautical miles.** 

The extension of the continental shelf beyond 200 nautical miles until the exterior edge of the continental margin, the assets provided by the same to our country as well as the obligations and the liabilities deriving therefore within the framework of the respect for the marine environment and sustained development, are the object of this opinion.

Actually, this enables France to extends its jurisdiction and to acquire sovereign rights on the natural resources of the seabed and marine subsoil on a supplementary surface of nearly 2 million km<sup>2</sup>.

More precisely, in the first place, the international legal framework endorsing this conquest of sovereign rights on the natural resources of this new area on the seabed and marine subsoil beyond 200 nautical miles is to be considered, whereas a balance should be made of the steps taken by France in order to establish its rights off the coasts

<sup>5</sup> The United Nations Convention of 1982 on the Law of the Sea, which France ratified in 1996, is hereinafter referred to as UNCLOS and the Convention of Montego Bay.

<sup>6</sup> The nautical mile is a unit of measurement equal to 1852 meters and its usual abbreviation is M.

of its territories in the course of the past ten years. In the second place, certain legal and environmental aspects of the consequences of the extension of the continental shelf should be examined, emphasizing the emergence of obligations and responsibilities for France in terms of know-how, preservation, exploration and exploitation of its resources as well as the impacts on the development of the ultramarine territories and their implication on this fundamental issue.

Challenges related to the extension of the continental shelf beyond 200 nautical miles fall into three categories.

### This concerns firstly the establishment of the French jurisdiction on the area of the continental shelf and its sovereign rights on its natural resources.

This establishment of rights allows to provide precise and certain information and to challenge third parties with regards to the limits of the sovereign rights of the Coastal State on the continental shelf and its property rights on the resources of the seabed and their marine subsoil. This allows to underpin the French presence in the world. As a testimony of mastering the maritime areas, privileged support of all maritime power, this extension constitutes an instrument which cannot be dissociated.

### The preservation and know-how of the resources and the marine environment for a sustained development is then required.

For its management, know-how is required. The cartography of the seabed and the inventory of the resources, the ecosystem approach, the evaluation of the impacts of the activities are the prerequisites for the sustained management and exploitation of the extended continental shelf. The extension allows the coastal State to exercise police powers acknowledged by the CNUDM in order to ensure the struggle against pollution while respecting the necessities of the economical development. The coastal State shall likewise adopt the internal measures in order to control the polluting activities for the protection and preservation of the populations and the marine environment. The extension of the French jurisdiction beyond 200 nautical miles contributes to the reinforcement of the required protection of the marine environment.

### This involves the enhancement of the area of the continental shelf and the resources contained in the same for the benefit of the ultramarine authorities and populations.

Le Livre bleu Stratégie nationale pour la mer et les océans of December 2009 reminds that our country must "fully regain its maritime vocation" and specifically states that "the assets of France in the first place are for the ultramarines themselves: the biological, mineral and industrious resources in these areas must benefit in the first place the populations of the territorial authorities overseas and contribute to their economical and social development<sup>8</sup>."

<sup>7</sup> Livre bleu, Letter from the Prime Minister dated on 7 December 2009.

<sup>8</sup> Livre bleu, Stratégie nationale pour la mer et les océans, Prime Minister, December 2009, p. 49.

The extension of the continental shelf allows the exercise only by the coastal State of sovereign rights over the latter at the purpose of exploration and exploitation of its natural resources, by the granting of concessions and permits. This extension authorizes the coastal State, in association with the concerned territorial authorities to bring legal security for the exploration and exploitation of the natural mineral resources and other non-biological resources of the seabed of the continental shelf and its subsoil as well as of the sedentary species.

The sustainable exploitation of the seabed and seafloor in accordance with social regulation and preservation of the marine ecosystems must contribute to considerably reduce the structural disadvantages characterising these territories: geographic isolation, rarity of raw materials, narrowness of markets, etc

Beyond, these issues fundamentally take us to the marine challenge of France, which consists in dealing with our own French paradox: being the second marine area in the world thanks to the Overseas yet, not assessing ourselves as a true marine power. This opinion, through the challenges of the continental shelf extension aims to propose the responses to this paradox and fully endorses the economic, social and environmental Council in the debates on the maritime policy conduct and the required maritimisation of our country.

## The conquest of the continental shelf resources: Difficulties encountered

### International legal framework

Planet Earth has five oceans that cover 71% of its surface, which is 360 million km<sup>2</sup>. These legally complex areas are defined and ruled by the law of the sea which deals mainly with the navigation, the registration of vessels, security provisions, the exploitation of the resources and the preservation of the marine environment.

## UN Convention on the Law of the Sea from 1982: the outer limits of the continental shelf

Substantially of a customary origin, the Law of the Sea has undergone an important codification in the second half of the XX century, notably within the scope of the 1958 Geneva conventions and the convention of Montego Bay in 1982.

The third Conference on the Law of the Sea convened by the UN adopted on December 10, 1982 at Montego Bay, in Jamaica, the Convention of the United Nations on the Law of the Sea including 320 articles and 9 annexes. This Convention has been qualified as the "complete constitution for the oceans which would resist in time". It establishes the process of the different marine spaces based on the international custom and the States practise. It regulates the activities while considering the demands of the economical development, the liberty of sailing principle, the territorial claims of the coastal States and the protection

<sup>9»</sup>Remarks by Mr. Tommy T. B. Koh, President of the Third United Nations Conference on the Law of the Sea, final session of the Conference of Montego Bay, December 10, 1982.

of the environment. It assesses the control of the bordering States over the marine spaces, which are evidence, for instance, the creation of the exclusive economical zone. Its article 76 included the possibility to extend the jurisdiction of a State on the resources beyond 200 nautical miles on its extended legal continental shelf creating with this purpose a Commission on the Limits of the Continental Shelf (CLCS) charged with the examination of the extension claims in order to provide recommendations for the outer limits claimed<sup>10</sup>. This articles also establishes the principles and regulations ruling the seabed and oceans beyond the national limits, constituting the common patrimony of the humanity which is subject to the International Authority of Seabed (IASB).

UNCLOS enters into force on 16 November 1994. France ratifies it in 1996. To date 165 States, including the European Union (EU), are party to this convention.

### Definition of the continental shelf

For scientists, the continental shelf is just one of the parts of the seabed that form the continental margin. This last one is made of, first, the continental shelf which is the immersed physical prolongation of a continent and which expands from the shore to the top of the continental bank, then of the bank which constitutes the border of the continental shelf, and finally the glacis which is a zone of weak declivity between the beginning of the continental bank and the seabed.

**Legal experts do not define the continental shelf in the same manner as the scientists.** A definition of the legal continental shelf is given in Article 76 of UNCLOS: "1. The continental shelf of a coastal State comprises the seabed and their subsoil that extend beyond its territorial sea throughout the natural prolongation of the land territory of this State **to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines** from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. 2. The continental shelf shall not extend beyond the limits provided for in paragraphs 4 to 6.11."

The legal continental shelf has a minimum breadth of 200 nautical miles from the coasts. It is surrounded by several other maritime areas. From the coast, adjacent to the land territory, the sea territory, comprising the seabed and the waters above, extends on a breadth of 12 nautical miles. Beyond, over a distance of 200 nautical miles, the legal continental shelf and the exclusive economic Zone are juxtaposed. Further beyond, out to the sea, the legal extended continental shelf is situated, surmounted by the high seas. Finally, the seabed of the Zone under the jurisdiction of the International Authority of Seabed (IASB) is also covered by the high seas.

<sup>10</sup> See, in Annex 3, page 164, article 76 of the UNCLOS, paragraphs 1 and 2.

<sup>11»</sup>See, in Annex 3, page 164, paragraphs 4 and 6 of article 76 of the UNCLOS.

350 M of or 100 M of or 100 M from isobath from iso 2500 m 350 M or 100 M of isobath from ON 24 Normal baseline 2500 m (low tide) or Evelusive economic zone Art 57 Sea High seas Art. 86 High spas straight baseline Art. 5 and 7 Legal continental shelf Art.76.1 Legal continental shelf Art.76.1 Zone Extension Maximale: 350M ou 100M de l'isobathe des 2500 m 0 m Farth M = Nautical Miles

Fig. 1: The main maritime areas defined in UNCLOS

Source: M. Olivier Walter - DPO Architectes.

### Commission on the Limits of the Continental Shelf (CLCS)

The UNCLOS has provided a central role to the Commission on the Limits of the Continental Shelf in order to control the extensions of the States on the rights to the resources of the extended continental shelf. The same has also created the International Authority of Seabed (IASB), which is an organization by means of which the State parties organize and control the activities performed in the Zone. The same has finally established an International Court for the Law of the Sea (ICLS) charged with all disputes concerning the interpretation and application of the Convention.

As a result of the creation of the CLCS in 1997 and the issuing of its internal regulation and scientific and technical guidelines in 1999, the same became operational in 2000. Functions of the Commission are:

- to examine the data and other information submitted by the coastal States in order to define and provide evidence on the outer limits of their continental shelf, in areas where those limits extend beyond 200 nautical miles, and to submit recommendations in accordance with Article 7 and the Statement of Understanding adopted on 29 August 1980 by the Third Conference of the United Nations on the Law of the Sea;
- and, upon the request of the concerned coastal State, to issue scientific and technical opinions justifying the decision taken for establishing the outer limits of the extended continental shelf.

The recommendations of the Commission are written to the coastal State which submitted the application and also to the Secretary-General of the UN. In the case of disagreement by the coastal State with the recommendations of the Commission, the

coastal State, within a reasonable time, shall submit to the Commission a revised claim or a new claim.

It is important to observe that the CLCS does not intend to deal with the issues concerning the definition of the limits between States with adjacent or opposite coasts. Besides, in the case of a terrestrial or maritime dispute, the Commission does not examine the claim filed by a State party to this dispute and does not pronounce itself on such a claim.

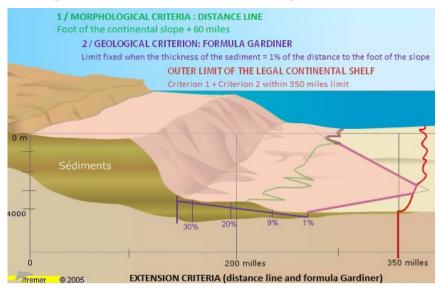
## The criteria for the extension of the continental shelf beyond 200 nautical miles

It is up to the coastal State to prove to the CLCS the outer limits of its extended continental shelf beyond 200 nautical miles according to the criteria established in paragraphs 4, 5, 6 and 7 of article 76 of the UNCLOS<sup>12</sup>. In this regard, the CLCS issued on May 13, 1999, the scientific and technical guidelines with which the coastal State is obliged to comply in order to establish the claimed outer limit of the continental shelf.

In summary, the delineation of the outer limit of the extended continental shelf relies on the combination of at least four reference lines established as follows:

- a first line, at a distance of 60 miles from the foot of the slope using the Hedberg formula (60 M from the foot of the slope) connects the fixed points thus determined;
- The second line, according to the Gardiner formula (1 % of the sediment thickness)
   connects the outer fixed points, at each of which the thickness of sedimentary
   rocks is at least 1 per cent of the distance from such point to the foot of the slope;
- a third line, at a distance of 350 miles from the baselines from which the breadth of the territorial sea is measured;
- finally, a fourth line, at a distance of 100 miles of the 2500 meter isobath.

Fig. 2: The criteria for the extension of the Legal continental shelf



Source: Website http://www.extraplac.fr/FR/juridique/criteres.php.

When the 100 nautical miles isobath <sup>13</sup> is situated at a distance of more than 250 nautical miles of the baselines, in other words, beyond 350 nautical miles, and the line deducted from the formulae (60 nautical miles from the foot of the slope and 1 % of the sediment thickness) also exceeds 350 nautical miles, the outer limit can be localized beyond 350 nautical miles on the line situated at 100 nautical miles from the 2500 meter isobath <sup>14</sup>.

## Implementation by France of the Programme for the extension of the continental shelf (EXTRAPLAC) and its results

At a national level, the extension of the continental shelf beyond 200 nautical miles must allow France to gain international acknowledgement of a conquest of sovereign rights over natural resources located mainly off the coast of its ultramarine territories.

The Inter-ministerial Committee for the Sea (CIMER) of April 1st, 1998 for the first time envisages the development of an overseas oceanographic exploration and research programme with regards to the delimitation of the continental shelf. Without any precision, this CIMER announces what would become the programme EXTRAPLAC.

<sup>13</sup> A Line connecting points of equal depth on the chart.

<sup>14</sup> Yvon Claude, «Géodésie et construction des limites extérieures», Institut du droit économique de la mer (INDEMER), Le plateau continental étendu aux termes de la Convention des Nations Unies sur le droit de la mer de 1982. Optimisation of the claim Éditions Pédone, 2004, pp. 66 and 67. See also in the report of fig. 2 «criteria for the extension of the legal continental shelf «, p. 18.

It is the CIMER of April 29, 2003 which manifest the government's wish to implement the provisions of the UNCLOS in its domestic law and adapt its regulation guaranteeing the protection of the marine environment and the concerted occupancy of the seabed in cohesion with the regulations established for the territorial sea and the public maritime domain. During the Inter-ministerial Council it has been affirmed that France could legally claim the extension of its continental shelf beyond 200 nautical miles. This claim, in accordance with the rules established by the CLCS, as stated above, would be based on a technical file and **formulated before May 13, 2009**, which is the deadline fixed by the United Nations. France which at the time could hope for the estimated extensions of 700,000 km², specifically with regards to the overseas, has established the programme EXTRAPLAC for the collection of the data with regard to the potential extension areas<sup>15</sup>. The CIMER has provided annual funds for 2,5 million Euros until 2009. **It has established the objective that it was necessary to revaluate the know-how of the resources of the seabed and the marine subsoil of the national continental shelf<sup>16</sup>.** 

Ten years upon the launching of the programme EXTRAPLAC, the ESEC concludes that the results are mixed and rather far from the ambitious goals established in 2003.

It can be summarized as follows: five claims have been filed which have been the object of the recommendations by the CLCS instead of the 9 which had initially be scheduled. Four requests were awaiting examination before the CLCS, one of which had just been submitted in December 2012 and two request registrations were announced for 2013 and beginning of 2014 following preliminary inquiry registered in May 2009, one preliminary inquiry had been filed then withdrawn, one file was subject to requests for reserved rights in the future, six files had not been registered. Therefore, the immediate verdict for the State is a considerable delay in the process of the files by the CLCS, which may take 25 to 30 years. France has not even established merely one of the outer limits of the extended continental shelf on the basis of 5 recommendations it received, although it has acquired sovereign rights on the natural resources of the continental shelf on a supplementary surface of 600,000 km². Furthermore, no programme for the knowledge of seabed resources had been created since this one had been planned in 2003.

## The filed claims have been the object of the recommendations by the CLCS

☐ A joint claim relating to the Bay of Biscay and the Celtic Sea<sup>17</sup>

This claim made by France, Ireland, Spain and the United Kingdom was filed on May 19, 2006. The CLCS recommendation has been issued on March 24, 2009, upon a 34 months

<sup>15</sup> See, page 73, a chart showing the extension of the French continental shelf.

<sup>16</sup> See the article by M. François Grosrichard, «La France tarde à faire valoir ses droits pour l'extension du plateau continental. Un territoire de 550,000 km² à prospecter. «, Le Monde of April 5, 2002, and the article by M. Hubert Levet, «La France délaisse son ' or bleu ' «, Le Figaro of April 5, 2002. This reflects Élie Jarmache's thoughts, who at the time was responsible for the international relations at the IFREMER, replying to the issue of knowing how far the file of the French extended continental shelf had progressed: «This is the most complete chaos. There is no real impulsion or identified financial line «.

<sup>17</sup> See, page 89, a chart relating to the joint claim made by France, Spain, Ireland and the United Kingdom.

instruction delay for a global extension of 84,00 km<sup>218</sup>. The publication of the outer limit before the United Nations and the IASB has still not taken place and seems to be confronted with the issue of the continental shelf delimitation allocated to France and that which is allocated to Spain.

### ☐ The claim relating to Guyana<sup>19</sup>

The French claim was filed on May 22, 2007. The CLCS has issued its recommendation on September 2, 2009, upon a 28 months instruction delay for a global extension of 72,000 km². The publication of the outer limit before the United Nations and the IASB has not taken place yet, whereas the delimitation agreements with Brazil and Surinam have not been terminated yet.

### ☐ The claim relating to New Caledonia<sup>20</sup>

This claim was filed on May 22, 2007. The recommendation issued on September 2, 2009 concerns only one part of the file: the extension to the south-west for a surface of 76,000 km². Upon the claim from France, the CLCS has not examined the file regarding the south-west, because of the dispute originated by the Vanuatu contesting the French sovereignty on the Matthew and Hunter islands. The publication of the outer limit before the United Nations and the IASB has not taken place yet, requiring an addendum to the 1982 agreement between France and Australia.

### ☐ The claim relating to West Indies<sup>21</sup>

This claim was filed on February 5, 2009. Upon a 38 months' instruction period the CLCS gave their recommendation for an extension of 8,00 km<sup>2</sup> on April 19, 2012. The publication of the outer limit before the United Nations and the IASB has not taken place yet. Hereto the prerequisite is to reach a complementary agreement on the delimitation with Barbados

### ☐ The claim relating to Kerguelen<sup>22</sup>

This claim was filed on February 5, 2009. Upon a 38 months' instruction period the CLCS gave their recommendation for a continental shelf extension of 423,000 km². The publication of the outer limit before the United Nations and the IASB has not taken place yet, as this requires an addendum to the 1982 agreement between France and Australia, also implied by the presence of the Heard and Mc Donald islands.

Simultaneously with the claim for Kerguelen, through a notification of February 5, 2009 from the permanent French mission before the United Nations, France has reserved the right to file a claim for the future for Adelie Land recalling the principles and objectives shared by the Antarctic Treaty and the UNCLOS. This notification has led to reactions from

<sup>18</sup> See, page 133, table of the extension areas of the continental shelf beyond 200 M.

<sup>19</sup> See, page 92, a chart relating to the claim made by France for Guyana.

<sup>20</sup> See, page 96, a chart relating to the claim made by France for New Caledonia.

<sup>21</sup> See, page 98, a chart relating to the partial claim made by France concerning French West Indies.

<sup>22</sup> See, page 101, a chart relating to the outer limits of the continental shelf off the coast of Kerquelen Islands.

the Netherlands and Japan, as no country could claim for any territorial sovereignty in the Antarctic according to the mentioned treaty.

### The claims to be examined before the CLCS

☐ Joint Claim for the Crozet Archipelago and the Prince Edward Islands<sup>23</sup>

This joint claim was filed by France and South Africa on May 6, 2009 for an extension of 541,288 km<sup>2</sup>. No delimitation agreement has been concluded yet between the two countries. The claim was presented at the session of the CLCS in July and August 2013. The CLCS would not have to examine the French-South-African file before 2018/2020.

☐ The claim relating to the Reunion<sup>24</sup>

This claim was filed on May 8, 2009 with the CLCS. It was presented at the session of the CLCS in July and August 2013. Bearing the number 40 in the order of submission of claims, the examination of this case should not be made before 2025/2030. This claim requests an extension of 63,798 km<sup>2</sup>.

☐ The claim relating to the islands of St. Paul and Amsterdam<sup>25</sup>

This claim was filed by France on May 8, 2009 with the CLCS. It was presented at the session of the CLCS in July and August 2013. Bearing also the number 40, the examination of this case should not be made before 2025/2030. This claim is asking for an extension of 341.852 km<sup>2</sup>.

☐ A joint claim relating to Wallis and Futuna<sup>26</sup>

This claim was filed with the CLCS on December 7, 2012 by France, Tuvalu and New Zealand on behalf of the non-autonomous territory of Tokelau for an area of 17,329 km<sup>2</sup>. It is bearing the number 62 and was presented at the session of the CLCS in July and August 2013. The examination of the claim should not start before 2030, whereas the three states should agree on a maritime delimitation agreement.

### Preliminary information filed

Due to the fact that the developing countries lack the sufficient means for drawing up to complete the dossiers, in 2008 the CLCS resolved to authorize the coastal States to file preliminary information, pending the elaboration of the definite dossier. France has taken

<sup>23</sup> See, page 104, a chart relating to the outer limits of the continental shelf off the coast of the Crozet Archipelago and the Prince Edward Islands.

<sup>24</sup> See, page 107, a chart relating to the outer limits of the continental shelf off the coast of Reunion.

<sup>25</sup> See, page 109, a chart relating to the outer limits of the continental shelf off the coast of the Islands of St. Paul and Amsterdam.

<sup>26</sup> See, page 111, a chart relating to the outer limits of the continental shelf off the coast of the Wallis and Futuna Islands.

this opportunity and filed preliminary claims with regards to Saint-Pierre and Miquelon, French Polynesia and Clipperton<sup>27</sup>.

### ☐ Preliminary information concerning Saint Pierre and Miguelon<sup>28</sup>

Preliminary information concerning the continental shelf of the archipelago was filed on May 8, 2009 for an extension of 43,135 km<sup>2</sup>, representing an increase of 350% of its continental shelf. The decision of France was the object of a firm protest by Canada. During the meeting of the EXTRAPLAC pilot commission in December 2012, the Overseas territories Department challenged the Department of Foreign Affairs with regards to the opportunity of filing the complete dossier with the CLCS. This is thus pending the governmental arbitration for its definite filing. On this subject it should be reminded that during this meeting with the parliamentarians of Saint-Pierre and Miquelon in July 2013, the President of the Republic reconfirmed that "France would defend the interests of the Archipelago with regards to the extension of the continental shelf off the coast of Saint-Pierre and Miquelon. He as well confirmed the intention of France for this purpose, of registering a file before the Commission of the limits of the continental shelf "29"

### Preliminary information concerning French Polynesia<sup>30</sup>

Preliminary information concerning an extension of 814,842 km² was filed by France on May 8, 2009. Due to the delay in the drawing up of this claim, this last file should be filed at the beginning of 2014. Only one study has been performed with regards to the outer margin of the Polynesian continental shelf in the Marquises islands. This dossier requires thus full completion, as according to the reports by IFREMER that 7 zones around Polynesia could lead to the extension. Delimitation agreements with neighbouring states of Kiribati and the Cook Islands will be completed upon filling of the application to cover the extension of the continental shelf.

### ☐ Preliminary information concerning Clipperton<sup>31</sup>

The preliminary information concerning the continental shelf of the Clipperton island above 200 nautical mile was filed on May 8, 2009 by France before the CLPC toward informing the Commission on the three points: the outer limits of the extended continental shelf claimed, a description of the progress status of the records and the anticipation of the submission date of the application. The extension of 25,000 km² is located in the eastern Pacific Ocean. The coasts of Mexico are located approximately 700 M to the north-east and

<sup>27</sup> Preliminary information concerning Wallis and Futuna has been transformed into a claim on December 7, 2012.

<sup>28</sup> See, page 119, a chart relating to the indicative outer limits of the extended continental shelf off the coast of Saint Pierre and Miquelon.

<sup>29</sup> Statement from the Presidency of the Republic of July 24, 2013 following the meeting of the President of the Republic with the two parliamentarians from Saint Pierre and Miquelon, July 24, 2013.

<sup>30</sup> See, page 122, a chart relating to the indicative outer limits of the extended continental shelf off the coast of French Polynesia.

<sup>31</sup> See, page 125, a chart relating to the indicative outer limits of the extended continental shelf off the coast of Clipperton Island.

therefore no overlapping Mexican and French claims. Nevertheless, it should be reminded that the French sovereignty on Clipperton is contested by Mexico, to which pretentions France can naturally not submit itself to. The Clipperton Island constitutes a particular case in the French extension applications because less than two days after the filing, France withdrew this preliminary information and this, without any obtains credible explanation provided to ESEC for this decision.

## The territories offshore for which no claim or preliminary information has been filed

The SHOM gave in 2003 to EXTRAPLAC a theoretical study dealing with the possibilities of extension of the French legal continental shelf beyond 200 M from the point of view of article 76 of the CNUDM. This study aimed to apply the hydrographical and geological data available, general and public in order to determine for each French territory the probability of existence of an extension and its approximate surface area. This assessment excludes certain territories for which no extended continental shelf is considered due to the presence of third States or even the non-existence of an outer edge of the continental margin. This is the case for example of Saint-Martin and Saint-Barthelemy.

For the ultramarine territories of the Indian Ocean of the Scattered islands and Mayotte, no claim for the extension of the continental shelf or preliminary information indicating the outer limits of the latter has been filed with the CLCS dated on 13 May, 2009, as it was considered that the conditions had not been met for an extension claim (no pass of membership test for Europe or claims from third States within the 200 miles for the other ones).

Nevertheless, the Council queries this decision, as the theoretical study conducted by the SHOM in 2003 indicated an eventual 10,000 km<sup>2</sup> extension in the mere South of Europe while Mozambique has filed a claim on July 7, 2010. This claim covers the continental shelf south of the 200 nautical mile of Europe, to which France has renounced, whereas IFREMER was officially mentioned for its contribution and assistance to Mozambique by participating in the collection and analysis of additional data.

### Managing the extension of the continental shelf

The possible acquisition of sovereign rights on the natural resources of an estimated area of nearly 2 million km² on the extended continental shelf thanks to the EXTRAPLAC programme would not have any significance at all if the same had only been limited to the sole satisfaction of acquiring an increase of the jurisdiction of our country on an area, whatever its vastness may be, of the seabed and marine subsoil. This acquired area and which is in its acquisition stage is thanks to the Overseas territories, quite a considerable one. It represents four times the surface of the Hexagon and its potential of natural resources and wealth is promising. Certainly, this new asset is an opportunity for France, but this also means a burden of responsibilities for our country.

This imperative requires from France to reinforce its State presence in the sea, as well as the most exhaustive know-how of the resources of its seabed and marine subsoil, a delimitation and protection of the conquered areas, a legal framework for the exploration and exploitation activities which might be performed in the region, the compliance with

social rules and adapted provisions for the protection of the environment, specifically on the biodiversity and marine ecosystems as well as the close involvement of the ultramarine authorities for the economic and social development of the concerned populations.

Any conquest of important territories on the continental shelf would be an effort in vain, should France not face these demands and responsibilities implied by such a conquest.

## Rights and resources defined by Montego Bay Convention

Today, with the foreseen and progressive exhaustion of the easily accessible natural resources of the land, the technological progress, the emergence and competition of specifically dynamic countries in the research of the sea environment (China, India, Korea), the Ocean is considered as a vast field for wealth, which although still unknown, is certainly a precious one. As it was concluded in the opinion from the ESEC with the title *Which means and which governance for a sustained management of the oceans?*<sup>32</sup>, the maritimisation of the world is underway. Today, a great number of human activities depend on the same, from the most ancient ones (transport, fishery, tourism...) to the most modern ones (fossil and renewable energy and, marine genetic resources, ores and rare earths). Nevertheless, the fragility of the seabed and numerous subsisting uncertainties regarding the risks implied, give rise to developing a prior know-how of the same... Many countries have already taken up positions for the research of this vast sea domain covering 71 % of the terrestrial surface, and of which 60 % is deeper than 2,000 meter.

**Article 77**<sup>33</sup> of the UNCLOS provides certain indications on the nature of these resources and grants to the States the sovereign rights on the continental shelf with the objective of the exploration and exploitation of its natural resources.

These are defined in paragraph 4 as follows: "The natural resources referred to in this part consist of the **mineral** and **other non-biological resources** of the seabed and marine subsoil together with the **living organisms belonging to sedentary species**, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the marine subsoil."

However, these resources are largely unknown. One of the main obligations imposed on our country is to acquire know-how of the extended continental shelf resources. For the current state of know-how and based on the scientific works <sup>34</sup> performed on the continental shelf beyond 200 nautical miles and in the Zone managed by the IASB, these resources would be the following:

<sup>32</sup> Chabaud Catherine, Which means and which governance for a sustained management of the oceans?, opinion and report from the ECEC, Editions of the Official Journals, n° 2013-15, July 2013.

<sup>33</sup> See, Annex 3, page 165, article 77 of the UNCLOS.

<sup>34</sup> Scientific missions to Wallis and Futuna, IFREMER study on the zones of Clarion Clipperton, Fouquet Yves and Lacroix Denis, Les ressources minérales marines profondes. Étude prospective à l'horizon 2030, IFREMER, Editions Quae, August 2012.

- hydrocarbon resources<sup>35</sup> (the extension claims have allowed for the identification
  of the most favourable French zones which are Guyana, New Caledonia, SaintPierre and Miguelon and Adelie Land<sup>36</sup>);
- hydrothermal sulphides (these are massive ores, hosting rich base metals, such as copper, zinc, silver and often gold, and which at certain Atlantic sites present high cobalt grades to which are often associated rare elements such as selenium, Molybdenum, barium, germanium... The missions of the IFREMER have allowed for the localization of hydrothermal sulphides in the potential 350 nautical mile east of Clipperton and also in the extended zones of the islands of Saint-Paul and Amsterdam);
- cobalt crusts (these crusts have a varying thickness from few centimetres to 25 cm and may cover several km² at depths of between 400 and 4,000 metres. Rich in iron oxide and manganese, cobalt and platinum, also associated with rare elements such as atrium, titanium, Lanthanum... It is in the Pacific, specifically in the French Polynesia, where these deposits have the highest cobalt and platinum potential):
- Polymetallic nodules (these dark balls with a diameter of 5 to 10 cm are found on the seabed of all oceans at depth of over 4,000 metres. These balls contain especially manganese hydroxides and frequently iron enriched in nickel, cobalt and copper);
- natural hydrogen;
- rare earths (selenium, tellurium, cadmium, barium, etc.. These elements are much sought-after because of their "chemical, electromagnetic properties which play a vital role in advanced technologies, semi-conductors, military industry, as well as in the telephone communication sector, but also for the renewable energies<sup>37</sup>." The technological innovations associated with the sustained development also implement these elements: neodymium in wind power stations, often 9 types of rare earths in the electric vehicle construction, atrium for LED screens and fluorescent light bulbs);
- biological resources<sup>38</sup> (on his hearing M. Bersani<sup>39</sup> has exposed on the "intense life" at a depth of 4,000 m. The study of IFREMER<sup>40</sup> highlights "an exuberant and extraordinary life" around the hydrothermal chimneys and the biological wealth of

<sup>35</sup> For the IFREMER, the *«other non-biological resources «* mentioned in paragraph 4 of article 77 of the Convention refer to hydrocarbons.

<sup>36</sup> Hearing of Mr. Roland Vially, project manager for the evaluation of resources and reserves within IFPEN, before members of the Overseas delegation, September 25, 2012.

<sup>37</sup> Poirier-Coutansais Cyrille, article «L'Eldorado maritime: entre prédation et gestion concertée « *in* revue *Études*, TOM 415/3 September 2011.

<sup>38</sup> the biological resources, although not cited in Article 77 of the CNUDM, was part of nonetheless living organisms of the expanded continental shelf.

<sup>39</sup> Hearing of Mr. Bersani in private interview with Mr. Grignon, rapporteur of the study, November 26, 2012.

<sup>40</sup> Study by IFREMER, Fouquet Yves and Lacroix Denis, «les ressources minérales profondes, étude prospective à l'horizon 2030 «, IFREMER, Editions Quae collection «Matière à débattre et décider «, August 2012.

the sedimentary environment of the abyssal plains". An American study carried out on the slope of the North West continental Atlantic located between 1,500 and 2,500 meters deep estimated that there exists close to 10 million living benthic species at this depth. The genetic resources of the great seabed have an enormous potential for a great variety of commercial applications, in the medical sector, specifically for cancer treatments and dermatology, in the cosmetic sector, in industrial processes and in bio-recovery<sup>41</sup>);

 living organisms belonging to sedentary species (no list of species referred to in article 77 has been established, but these species dwelling on the seabed include flatfish, crustacean, molluscs such as abalone shells, pearl-bearing oysters, scallops
 ... as well as vegetal species for exploitation such as algae and seaweed).

In conclusion, it emerged different people interviewed, and in particular the executives of scientific and technical organisms that despite the scientific missions committed (but covering still the areas too limited to be sufficiently exhaustive), the knowledge and identification of the resources of the extended continental shelf and more particularly of the extended continental shelf remaining very incomplete and demanding a more ambitious investment.

## A legal framework to be defined with regards to the exploration and exploitation activities (EEA) of the resources of the extended continental shelf

The Montego Bay Convention provides no indication with regards to the legal framework of exploration and exploitation activities (EEA) of the resources of the extended continental shelf<sup>42</sup>. Nevertheless its Part XII is devoted to the protection and preservation of the marine environment.

The coastal country is therefore free to establish by itself the conditions for exploration and exploitations agreements and to define the technical specifications referring to the obligations of the contractor with regards to the State and the concerned authority, the provisions establishing the respect and the protection of the environment, the social exploration and exploitation conditions, the taxes on the production.

Also here, France faces an imperative obligation to establish a legal framework for the exploration and exploitation activities of the extended continental shelf.

☐ The specific situation of the extended continental shelf within the maritime areas.

The circumstances in which the EEA will take place on the extended continental shelf are very different from these on the continental shelf beneath 200 nautical miles. Indeed, if beneath 200 nautical mile the continental shelf is overhung by a water column which belongs to the coastal state's EEZ (article 56 of the Convention of Montego Bay), the extended continental shelf is overhung by the open sea, international area of Liberty (article 87 of the Convention). This means that in the case of the continental shelf beyond

<sup>41</sup> Poirier-Coutansais Cyrille, article «L'Eldorado maritime: entre prédation et gestion concertée «, in revue Études, op. cit.

<sup>42</sup> Interview of Mrs. Virginie Tassin, Doctor of Law, with Mr. Grignon, rapporteur, October 8, 2012.

200 nautical mile, the legal regime for the exploration and exploitation activities applicable to the continental shelf **exclusively falls within the responsibility of the coastal State**. Therefore, usage conflicts are resolved by the coastal State thanks to the legislations implemented by the same. With regards to the extended continental shelf, the exploration and exploitation activities necessarily lead to disturbances of the marine subsoil and the water column dominated by the same which may **therefore impede and disturb the activities** (navigation, fishery, etc.) which are freely performed offshore by the other countries), and would even limit the regime of freedom characteristic for the status of the offshore, resulting in usage conflicts.

For these reasons, the legal framework with regards to the EEA on the extended continental shelf cannot be *stricto sensu* the extension of the applicable legislation beyond 200 nautical mile, as it should consider the customary practices for the free area which is the offshore dominated by the same.

The other characteristic of the extended continental shelf is its location, beyond its outer margin, at the frontier of the Zone managed by the international Authority of the seabed (IASB). It should be underpinned that the activities concerning the mineral resources of the Zone are regulated by part XI of the UNCLOS and annexe III on the "base provisions for the prospection, exploration and exploitation".

☐ The necessary adaptation of the Mining Code to the Extended Continental shelf and to the statutory peculiarities of each ultramarine authority

At present, the licenses that could be agreed on the extended continental shelf off the coast of the Metropolis and the Overseas departments are ruled by the legislation in force on the continental shelf, in other words, the mining code of which the so called Auberger amendment, adopted in the finance laws of 1993, has led to the suppression of tax regulations oriented at the offshore hydrocarbon exploitations. As it is admitted obsolete, it is currently being reformed. For the Overseas territories, it should be reminded that the statutory organic laws with regards to the ultramarine territorial authorities confer the same with the competence for the granting of mining rights, the implementation of which is often very difficult and most frequently inoperative. Among the Overseas authorities, only New Caledonia fully exercises this competence and has established its own mining regulations<sup>43</sup>.

According to the current legislation, exploration permits are delivered nearly free of charge by France to enquiring oil companies, without any restrictive engagement regarding economic, social or environmental actions towards the regions concerned. These exploitation permits grant the rights of exploitation with no licence-fee to the licensor State in case of a discovery. With the adoption of the Auberger amendment, France, among the important maritime countries, introduces a legislation much more favourable with regards to the oil companies operating offshore.

<sup>43</sup> Thus, the draft organic law project referring to the updating of law n° 99-209 of March 19, 1999, with regards to New Caledonia, extends the New Caledonia's regulating competence in mining regulations «to rare earths « maintaining the competence of the Provinces for the application of the regulations, especifically concerning the granting of research and exploitation concession rights. In his letter of July 2013 addressed to the rapporteur of the preliminary draft opinion, the president of the Gouvernment of New Caledonia informs that «New Caledonia has requested from the State to exercise the competence regarding the management of the continental shelf situated in the EEZ extension «, within the framework of the abovestated draft.

The recently growing awareness on the hydrocarbon potential of certain French regions, more specifically in the Overseas territories, should be a further stimulus for the State for a rapid and exhaustive reform of the mining code without going halfway through the taking of urgent measures, as is shown by the recent example. Indeed, without a preliminary study and in order to respond specifically in an unsatisfying manner to the preoccupations of the elected ultramarines, an amendment proposed by the government establishing maximum royalties of 12 % on the production value has been adopted by the rectifying finance law of 2011 and would take effect on January 1<sup>st</sup>, 2014. Apart from this fiscal disposition linked with the exploitation of off-shore hydrocarbons, the only other existing disposition is the possibility for the Territorial Council of Saint-Pierre and Miquelon to lift a license-fee of which the basis and the rate are established by the local Assembly to the advantage of the archipelago.<sup>44</sup>

It is urgent for our country to review its mining legislation, more particularly in the off shore EEA areas by taking on board the current elements: new spaces, new resources, new needs, new technologies, new environmental demands and practical social law<sup>45</sup>. The public powers seem to wish to go in this direction. As a witness of the mission entrusted by the government to Mr. Tuot, State Counsel, for the setting up of a work group on the mining code reform in order to draw up a draft for the mining code reform and the recent communication by the Council of Ministers dated on 7 February 2013 on this subject. This communication sets the principle of the "maintenance and further development of a mining code adapted to the overseas characteristics, especially regarding the distribution of competences." But regarding the current status of the available information, there are significant queries with regards to the actual awareness of ultramarine characteristics in the future mining code draft.

In addition, these necessary reforms must be in line with the evolutions of the European legal framework and the case law of the community aimed at creating new safety rules with regards to the oil and gas activities offshore.

### The State facing its environmental responsibility

The exploration and exploitation activities on the continental shelf shall necessarily imply significant disturbances in the marine environment, whether this is on the seabed, marine subsoil or water column. The unreasoned exploitation of marine resources could result in a re-colonisation process, extremely lengthy stock restoration, which would take years, and even decades.

Now, the French Overseas territories contain biodiversity treasures, a multitude of living species and rare micro-organisms, particularly at a great depth. Due to the current lack of know-how regarding these ecosystems the State is called to demonstrate its responsibility and awareness of the environmental challenges to be dealt with within a legal framework.

The article 192 of the Convention of Montego Bay states that "the States have the obligation to protect and preserve the marine environment". Basically the UNCLOS, within the framework of the convention, refers the coastal States to the different international and regional conventions on the environment (convention on the biological diversity of

<sup>44</sup> Grignon amendment adopted by the National Assembly during the review of the Finance Bill 1998.

<sup>45</sup> See Communication by Council of Ministers on February 7, 2013 regarding *«the main principles of the mining code reform»*.

1992, the MARPOL convention, OSPAR convention, etc.) stimulating the States to adopt an ecosystem policy approach <sup>46</sup> for the EEA.

Likewise, the opinion of the 1st of February 2011 of the Chamber of Arbitration for the settlement of disputes of the International Tribunal for the Law of the Sea invites the coastal States to base themselves on the regulations regarding the EEA as established by the IASB.

\* \*

The provisions of article 76 of the UNCLOS allow France to expand its sovereign rights on the natural resources of the seabed and marine subsoil on a supplementary surface of nearly 2km². Within this framework, the EXTRAPLAC programme, for which the results have just been established, has already allowed for the acquisition of 660,000 km². Besides, these results have also spotted the weaknesses of the State with regards to this file, illustrating the lack of means and ambition of our country to provide itself with a truly integrated maritime policy, entirely associating the Overseas territories and its difficulty to manage and defend their interests in the short and long term.

Regarding the latter, the ESEC's mere conclusion, especially in their interviews with a great number of parliamentarians from the Overseas territories and local responsible executives, was the lack of information and association of the ultramarine authorities with regards to the thoughts and decisions taken by the State, specifically in the EXTRAPLAC programme, concerning the mining code reform and the action of the State offshore.

These analysis elements have led to a formulation by the ESEC of a specific number of recommendations for completing the conquest of the extended continental shelf and implementing a maritime policy corresponding to the responsibility and obligations of the State deriving therefore.

### Recommendations

The ESEC considers it as a priority that all necessary provisions are taken for the completion of the EXTRAPLAC programme in order to obtain our rights on the new maritime areas and their resources. Hereafter, before this new richly promising maritime area, France must show an exemplary conduct with regards to the conservation, protection, exploration and exploitation of the maritime resources.

### Completion of the programme EXTRAPLAC

The report drawn up by the Delegation for Overseas Territories of ESEC demonstrates significant difficulties in the results of the EXTRAPLAC programme. **These difficulties can** 

<sup>46</sup> The ecosystem approach is defined as "the integrated and complete administration of human activities, based on the best available scientific knowledge of the ecosystem and its dynamic, in order to identify and act on the pressures which are detrimental to the health of marine ecosystems, producing the sustainable use of resources and services of the ecosystems and the maintenance of the integrity of the ecosystem ", internet website of the OSPAR Convention."

### be classified in three categories: financial, technical and diplomatic which additionally may have played a role regarding one and the same claim<sup>47</sup>.

These difficulties persist with regards to the claims currently in examination and to those which shall be filed in 2013 and at the beginning of 2014 as a result of the preliminary information. In order to resolve and complete the EXTRAPLAC programme, the Council issues the following recommendations.

## Identify and secure funding for the completion of the programme EXTRAPLAC

Over the period 2003/2009, the programme EXTRAPLAC was allocated € 2.5 million per year. When adding the contribution of the scientific bodies which have participated for the implementation of the same. Thus, the consolidated annual budget amounted to approximately 3.5 million Euros, whereas the total budget amounted to about twenty million Euros for the 2003/2009 period. The ESEC remarks that Canada, comparatively, would have dedicated 100 million Euros to its programme for the extension of its continental shelf and Denmark, 40 million Euros. The weak financing for EXTRAPLAC is one of the reasons that France has been hindered to file all claims before the deadline agreed upon by the UNCLOS on May 13, 2009, to publish the territorial limits within the framework of the recommendations issued by the CLCS, to implement resources evaluation and identification programmes as established by the CIMER in 2003.

The ESEC recommends the urgent execution of a budgetary expertise with regards to the completion of the programme EXTRAPLAC. As a result, the government shall take necessary budgetary decisions that will allow our country to focus on the proper role.

## File the claims which have been the object of the preliminary information

This preliminary information concerns Saint-Pierre and Miquelon, French Polynesia and Clipperton.

#### The Council recommends:

- to file with the CLCS the claim concerning Saint-Pierre and Miquelon before the end of 2013, in accordance with the commitment made by the President of the Republic on July 24, 2013. This filing expresses the French policy that it wishes to preserve its sovereign rights in North-America and to finally push Canada, which is opposing the same, to negotiate with our country the delimitation of the common continental shelf for both countries, whereas the CLCS does not have the mandate to deal with the extension claims which are in dispute;
- to file with the CLCS the claim concerning the French Polynesia at the beginning of 2014. In addition, when currently geophysical studies have been performed for the Marquises alone, the ESEC recommends to perform scientific studies on the whole of the Polynesian archipelago, particularly

<sup>47</sup> See particularly, the report of the Delegation for Overseas Territories of ESEC, pp. 79 to 85 and p. 132 and 133.

- in view of the positive results of the first campaigns that took place in the Marquises archipelago;
- to file with the CLCS the claim concerning the Clipperton. The filing of a claim for the continental shelf off the coast of the Clipperton Island is justified by the required confirmation of the French sovereignty on the whole of this territory, which is contested by Mexico. This place is fully contradicting the fishery agreement signed by this country with France in 2007 on the EEZ off the coast of Clipperton, which establishes the French sovereignty de facto. The ESEC regrets that the Clipperton case is not desired by the State for reopening this file. This lack of commitment seems an unacceptable abandoning of the sovereignty of France over its legitimate pretentions.

### Resolve diplomatic problems preventing a process of the Caledonian case

As a result of an objection of Vanuatu contesting the French sovereignty on the Matthew and Hunter islands, France has had to request from the CPCS not to examine its claim at the south-east <sup>48</sup> of New Caledonia.

The Council recommends that the Department of Foreign Affairs intensifies their negotiations with the Vanuatu in order to solve this dispute and to finally enable the Commission for the limits of the continental shelf to provide their recommendations on the claim in the south-east off the coast of New Caledonia.

### Publish the outer limits of the extended continental shelf

Article 76, Paragraph 8, of the CNUDM entrusts the attachment of the exterior limit of the continental shelf to the only coastal state. It establishes that: "The limits established by a coastal State on the basis of recommendations [by CLCS] shall be final and binding". It is implied by this provision that the coastal country, in accordance with the recommendation of the CLCS upon its claim, provides the desired publicity for the charts or geographical coordinate lists, filing a copy of the same with the General Secretary of the United Nations and with the General Secretary of the IASB, in accordance with article 84 of the Convention.

With regards to this fundamental issue, the former General Secretary for the sea, Jean-François Tallec, during his dissertation at the Academy of the Navy in October 2011, expressed the following "what's the use of congratulating ourselves on our 11 millions of km² if these areas are being contested and can therefore not be exploited. Why would they be contested? And are they actually being contested in many different places? Because if the territorial water limits and EEZ limits are outlined on our maps, the precise delimitation of baselines and these other two limits had often not been carried out. Even worse, the orders and decrees officialising these limits in the domestic law have not been adopted or have been established on obsolete grounds, which mean that these are older than Montego Bay. Even worse, the notification before the United Nations is often incomplete and therefore unenforceable. And so, our Inter-ministerial

<sup>48</sup> Letter of the Prime Minister of Vanuatu M. Ham Lini Vanuarorora, addressed to the President of the French Republic reminding that the Vanatue considers the Matthew and Hunter islands as part of its territory, which was notified to the CLCS by the Minister of Foreign Affairs and Commerce of Vanuatu on July 11, 2007.

Committee of the Sea has decided to restore the order to all this in the two coming years, to gather all pertinent texts by creating a code for the maritime areas, and to create an Internet website so that our economic players have this information easily at their disposal.<sup>49</sup> The ESEC notes with regret that none of these measures has been implemented.

No publication has occurred regarding the fixation of the outer limits of the extended continental shelf of any French territory, nor by filing its coordinates, nor by the filing of the maritime charts before the United Nations and the IASB, while the recommendations for certain French claims were issued nearly 4 years ago.

#### The Council recommends:

To gradually fix an publish, within the shortest time periods as possible, the maritime limits based on the recommendations of the CLCS, in accordance with the provisions of article 84 of the Convention of the United Nations on the law of the sea to be effective against third countries and thus confirming the sovereign rights of France on the natural resources of the seabed and marine subsoil of its extended continental shelf. Hereto the ESEC recommends to intensify the diplomatic relations with the concerned countries in order to complete the whole of the delimitation agreements which are crucial for the definitive conclusion of the files.

### This recommendation aims:

- for the Bay of Biscay, treaties to be concluded between France and Spain as well as with the United Kingdom and Ireland;
- for Guyana, treaties to be concluded between France, Brazil and Surinam;
- for the West Indies, the conclusion of an addendum to the 2009 agreement with Barbados
- for New Caledonia (south-west sector), the conclusion of an addendum to the 1982 agreement with Australia;
- for Kerguelen, the conclusion of an addendum to the 1982 agreement with Australia

The completion of these agreements is essential to the publication of the outer limits of the extended continental shelf.

The Council thus refers to the decision of the Interdepartmental committee for the sea of 2011 which has entrusted the Navy's hydrographical and oceanographic service (SHOM) with the task to participate in a national maritime delimitation programme<sup>50</sup>.

Hereto, the ESEC recommends that the required human and financial means are allocated to the SHOM.

<sup>49</sup> Communications and memories of the Academy of the Navy, n°1 (October-December 2011). Closing remarks by the Prefect Jean-François Tallec, Secretary General of the Sea, p.69.

<sup>50</sup> Hearing in private interview of M. Bruno Frachon, CEO of SHOM, November 12, 2012.

## Strengthen the means of the Commission on the Limits of the Continental Shelf

The claims of France which have not been filed before May 2009, but for which a preliminary claim was made, shall not been examined by the CLCS before filing the complete dossier in accordance with the provisions in article 76 of the Convention. The earlier assessment has evidenced a delay in the examination of each future claim of about 15 to 20 years, at the current work rate of the CLCS challenged by a heavy work burden.

The Council, considering the waiting times as redhibitory, recommends that France pledges strongly before the States at the Convention and before the General Meeting of the United Nations to obtain a remarkable strengthening of the budgetary and human resources from the Commission of the limits of the continental shelf so that this Commission can respond in an efficient manner and within the delays that are acceptable for the files submitted to the same.

## An exemplary France with regards to a new maritime area

The Council has queried on the way our country would profit of its opportunity to have obtained or being on the way to obtain sovereign rights on the resources of the seabed and marine subsoil with regards to a surface of nearly two million km². This two million km² extension requires from France an exemplary conduct, positioning it face to face with an obligation of protecting and surveying the acquired areas or areas on the way to be acquired, and mastering the know-how of the marine environment and its ecosystems, within the framework of exploration and exploitation activities. This exemplary conduct and responsibility requirement for the State with regards to the ultramarine territories, which are for 99 % contained in the extension of the French continental shelf, should lead it to inform and involve these authorities in order to fully integrate the same in the elaboration of an ambitious maritime policy, in accordance with the competences characteristic for each territory.

More generally, the former chief of staff for the armed forces, Admiral Guillault, reminded<sup>51</sup> that the Livre Blanc on the defence and national security of 2008 had not sufficiently taken into account three major files: **Africa, Overseas territories and the maritime areas**. The ESEC concludes that the Livre Blanc of 2013, although it reminds of the necessity for our country to "underpin its sovereignty and to defend its interest in the overseas territories", it does not provide any supplementary solutions which are essential for a State being truly present offshore, while there is a major geostrategic challenge the importance of which has well been grasped by the big powers. Besides, the ESEC can merely regret the total lack of anticipation on the means to be implemented within the framework of the extended continental shelf.

#### The Council recommends:

- to protect and supervise the concerned areas by strengthening the French navy present on the oceans while providing means for permanent control and observation using new technologies and intensifying the regional cooperation actions.
- to insert into the Law the provisions regarding the objectives of the Convention on the biological diversity (CBD), notably of the Nagoya protocol, and underpin at international level to adequately consider a high protection level of the marine ecosystems in the different additional protocols to the UNCLOS.

# The obligation of knowing the resources and marine ecosystems

From the different hearings with the personalities responsible for the EXTRAPLAC file, leaders of scientific and technical bodies (IFRMER, IFPEN, TECHNIP, Eramet...) it becomes evident that in spite of the scientific missions that have been undertaken, but which still cover areas too limited for being sufficiently exhaustive, the know-how and identification of the resources of the continental shelf, and more particularly, of the extended continental shelf are still incomplete and require a more ambitious investment. No programme on the know-how of the resources of the extended continental shelf has been initiated, although this was established by CIMER in 2003. In July 2013, the General Commission for Strategy and Planning published a work document and an analytical note with the title: Approvisionnement en métaux critiques: un enjeu pour la compétitivité des industries française et européenne? and recommends in its analytical note to "develop the research on the submarine mining resources.<sup>52"</sup>

Generally speaking the scientists acknowledge the ampleness and incertitude as a number of benthic and deep sea species could be found in the oceans. Indeed it is estimated that currently 5% of the oceans have systematically been explored. Furthermore, the association with these different missions of private interests, surely the only private initiative, carry a certain confidentiality as the publicity of the information on these resources acquired whereas diverse mission and scientific work clearly leave to emerge the hope that elicits the wealth of the ground and underground marine floor.

If the State is not intended to give way to the interests of private research, it shall be responsible, particularly thanks to its first class operators <sup>53</sup>, to increase its know-how on the resources of its seabed and marine subsoil, of the ecosystems surrounding the same and the impacts and incidences associated with human activities.

<sup>52</sup> Barreau Blandine, Hossie Gaëlle, Lutfalla Suzanne, Approvisionnement en métaux critiques: un enjeu pour la compétitivité des industries française et européenne? Working document of the General Commission for Strategy and Planning (GCSP), No. 04, July 2013 and Analytical note of the GCSPApprovisionnement en métaux critiques: un enjeu pour la compétitivité des industries française et européenne?, N° 03, July 2013, p. 10.

<sup>53</sup> IFREMER, SHOM, Agency for Marine Protected Areas, IRD, CNRS, universities, BRGM, ONEMA, water agencies, Météo-France, IGN, CNES, MNHN, IFPEN, CEA, CEMAGREF, IPEV, CEDRE.

#### The Council recommends:

- to initiate a national, multidisciplinary and ambitious programme with regards to the know-how, identification and quantification of the seabed and marine subsoil resources of the extended continental shelf. The implementation of this programme should go jointly with the recruitment of primarily young doctorates in order to secure the transmission of know-how;
- to carry out, jointly with the "Sea Programme", a scientific marine research programme aimed at knowing the environment of the ecosystems and habitats of the extended continental shelf;
- to strengthen the financing of the Agency for Marine Protected Areas. The creation of the Agency for Marine Protected Areas may lead to the mastering of privileged areas for the scientific research with regards to the sea environment above the extended continental shelf.
- to inform the European Union and to associate the same to the different French maritime policy programmes related to the know-how of the resources of the extended continental shelf as well of those of the marine environment and its ecosystems. Certain projects of these programmes could be integrated into the eighth research and development framework Programme (PCRD – 2014 to 2020) of the European Union. The participation of the European Union could be inscribed within the framework of the Strategy UE 2020 aimed at the creation of "an intelligent, sustained and inclusive growth".

# A responsibility regarding the legal framework for the exploration and exploitation activities to be established

In July 2000, the IASB has adopted a first regulation with regards to the prospection and exploitation of Polymetallic nodules. A second regulation concerning hydrothermal sulphides was adopted in May 2010. The regulation regarding cobalt-rich crusts is still in elaboration. These regulations are based on the important directives of the international regime establishing the principle of the common patrimony of mankind in article 136 of the UNCLOS. Indeed, the IASB establishes a true international mining code which strongly stimulates the coastal countries to base themselves on their own regulations, which is implied by the opinion of February 1st, 2011 of the Chamber for settling the disputes of the International Tribunal for the Law of the Sea.

Thus, although the coastal country is sovereign with regards to the exploration and exploitation of its natural resources, the common ownership of its continental shelf with the Zone may not result in ignoring the international regulations, but on the contrary, it should be inspired by the same and even take these into account for establishing its own regulations.

By taking this approach, our country would give proof as an example. This duty of the coastal State to legally frame the EEA on the extended continental shelf must also take consideration of the requirements regarding marine biodiversity and the stakes of the environment of the seafloor.

#### The Council recommends:

 to initiate a specialized research programme for the technology of the methods, materials and engines for the exploration and exploitation of the

- deep seabed so that our country becomes a pilot country in this field, serving as an example with regards to the protection of the marine environment. Some major countries, including China, are investing heavily in this sector and are way ahead. France, which has leading operators<sup>54</sup>, must preserve its assets;
- To establish, within the shortest time periods as possible, a legal framework for the exploration and exploitation activities and scientific research on the extended continental shelf and more particularly, on the mining code reform for its adaptation to the specific situation of the extended continental shelf within the realm of the maritime areas. The mining code shall also integrate the exploration licenses of the provisions stated in technical specifications and establishing the commitments (social action, training, local provisioning costs, etc.) regarding the concerned authorities as well as the financial spin-offs originated by the eventual exploitations. These spin-offs must be shared between the State and the ultramarine authority according to the negotiated modalities.

# An obligation to involve and integrate the ultramarine territories for the elaboration of the maritime policy of our country

The ultramarine authorities, due to their geographic localization, gather the majority of the naval stakes. These territories which allow our country to possess immense maritime zones worldwide and to the European Union to have active frontiers in zones with a great potential growth must be fully associated to the elaboration of a maritime policy of our nation and participate in the realization of the defined goals. The advantages and challenges of these huge marine zones are first and foremost for ultramarine populations which must benefit from resources of the continental shelf. In the case of these resources it is a fact that the different currently applicable legislations deprive our country and its ultramarine authorities from the significant spin-offs that they are entitled to expect.

These territories are confronted with major challenges in terms of economic and social development. High rates of unemployment, particularly for the young people, attaining unbearable levels, and the sluggishness of the economy characterized by the weak private investments must lead the national and local public powers to fully grasp the importance of this potential making available the human, legal and financial resources to all the actors for the elaboration of sustained development projects.

The caution in this area of expertise is appropriate and makes Mr. Jean-Yves Perrot state, during his interview, that it would be illusory to imagine that the only quantitative extension of our sovereignty area would trigger an extension of the possibilities of development both in the mineral resources area and the living resources. Indeed, even if interesting perspective exist, without any series of support measures, the only extension of our jurisdiction would not answer, in a precise time-related horizon, to the expectations provoked by this "marine Eldorado".

<sup>54</sup> Like, for example, TECHNIP.

#### The Council recommends:

- To strengthen the regional cooperation of the ultramarine territories with regards to the management (know-how, preservation, surveillance and exploitation) of the resources of the sea with their neighbouring countries and to dispose of extended powers to do so <sup>55</sup>;
- To constantly inform and closely involve the executives of the different ultramarine authorities in all decisions and operations dealing with the policy of the sea<sup>56</sup>. The actors of the civil society should also be associated;
- To implement provisions to enable these territories to have access to new resources and to the creation of economic activities deriving from the same in order to compensate their structural disadvantages. To this effect, if necessary, the legislative and regulating provisions with regards to the competences of the ultramarine authorities shall be adapted and effectively applied;
- reflect on the establishment of an inventory of the trainings to the young people overseas in the future activities which might be generated by the exploration and exploitation of the resources of the extended continental shelf (including the research activities) and to mobilize the human and budgetary resources required for the implementation of these trainings;
- To anticipate a structural accommodation and equipment plan (particularly, harbour equipment and transport) with regards to the future activities generated by the resources of the extended continental shelf.

#### The elaboration of a truly ambitious maritime policy

The ESEC has observed certain differences in the realm of the State addressing which might have endangered the culmination of the files concerning certain claims for the extension of the continental shelf, while the mission of the General Secretariat for the Sea, created in 1995, was to coordinate the action of the different departments involved. The ESEC considers that SG Mer does not constitute, as it stands, an authentic decisive authority, nor even an arbitration authority. The lack of human and budgetary means reflected by this body shows very clearly the difference between the demonstrated political and the means implemented for its realization. It considers that there should be a close and permanent coordination between the concerned departments for the files regarding the continental shelf extension. The ESEC also considers that, due to the lack of financing oriented at the mission of the sea, the budget of the maritime policy today is insufficient and deployed between the different budgetary programmes of the ministerial missions participating in the same. This complex situation is strongly in detriment of the readability of a maritime policy conducted by our country. The issue regards the "repair of an historical omission. France

<sup>55</sup> We observe that New Caledonia claims the transfer of the State competence regarding the sovereignty on the extended continental shelf.

<sup>56</sup> We observe that the majority of the guidelines have little or not at all been taken into account, and even been marginalised in the elaboration of the files with regards to the extension of the continental shelf, or yet, in the research performed on the resources of the marine environment (Wallis et Futuna), as illustrated by the great amount of interviews with the different persons in charge of the territorial collectivities.

has swept its maritime vocation under the carpet for a too long period (...) and stop ignoring the spectacular maritime destiny which might be his<sup>57</sup>".

In its opinion with the title which means and which governance for a sustained management of the oceans?, the Council has already recommended:

- to "significantly reinforce and reform the role of SG Mer. The ecosystem collaborative and collective approach of the maritime issues, their strong Inter-ministerial and international dimension, the deployment of budgetary loans dedicated to the same, should indeed lead to a contemplated sea policy management by a **High Commissioner**, with the rank of Minister, based on the administration of a strengthened SG Mer, under the direct authority of the Prime Minister (...).<sup>58</sup>"

#### Concluding its reflection, the Council also recommends:

- To elaborate a great law on the oceans in order to collect the whole of legislations and regulations defining and accompanying the development of the maritime policy of our country;
- that due to the lack of implementing a unique "sea", budgetary mission, this being an option which is difficult to realize, every year a transversal policy document is drawn up by the government with the title "maritime policy of France", in order to better inform the Parliament on the necessary global vision of the situation in order to facilitate arbitration. The High Commissioner for the sea, under the direct authority of the Prime Minister, would be charged with the task to prepare this transversal policy document;
- To yearly organize a long debate in Parliament on the issue of the French maritime policy, on the basis of a transversal policy document. Indeed, it seems abnormal to the ESEC that such an extension of the sovereign rights on the natural resources of the seabed and marine subsoil would be at stake without the Parliament being informed and associated until the day of today;
- that the completion of the programme EXTRAPLAC would systemically be included on the agenda of the annual CIMER meeting<sup>59</sup>. Indeed, the Council has confirmed that no CIMER meeting has taken place between 2003 and 2009. In this period major difficulties have arisen requiring the taking of fundamental decisions with regards to the programme EXTRAPLAC, whereas France was obliged to imperatively submit the whole dossier with the files on May 13, 2009.

<sup>57</sup> Dissertation of the President of the Republic, July 16, 2009, in Le Havre.

<sup>58</sup> Quels moyens et quelle gouvernance pour une gestion durable des océans?, report and opinion of the ESEC, presented by Catherine Chabaud on behalf of the Environment Section, adopted July 9, 2013, p. 28.

<sup>59</sup> In its report and opinion with the title *Quels moyens et quelle gouvernance pour une gestion durable des océans?* submitted by Mrs. Catherine Chabaud on behalf of the environment department, the Council has recommended that the CIMER assembles at least once a year.

#### Conclusion

The issue of the extension of the French continental shelf is totally strange to the public opinion, unknown in the political environment and generally absent in seminars and conferences on the offshore as well as in the debates on the maritime policy of our country. Except for some specialists and a very narrow circle of personalities entrusted with the execution of the national EXTRAPLAC programme aimed at the extension of the French continental shelf beyond 200 nautical miles, this issue is ignored.

Now, the ESEC considers that the extension of the French continental shelf is an opportunity, an asset for France.

An asset because this provision of article 76 of the Convention of the United Nations on the law of the sea in 1982 enables our country to extends its sovereign rights on the natural resources of the marine soil and seabed of its extended continental shelf on a surface of over 2 million km<sup>2</sup>.

An asset, thanks to the Overseas territories, the French presence in all oceans offers France and Europe active geopolitical foundations in strategic key sectors worldwide.

Surely, an asset for France, although the ESEC also considers that the extension of the French continental shelf implies responsibilities and obligations for our country:

- the responsibility and the obligation to elaborate a truly integrated maritime policy, fully associating our Overseas territories, for a country which occupies the second maritime area in the world after the United States and ahead of Australia, which means 11 million km² of which 10.6 covers ultramarine territories distributed over all the oceans. This policy should be integrated into a maritime framework of the European Union;
- the responsibility and the obligation to publish the limits of its maritime areas as well as the outer limits of the extended continental shelf;
- the responsibility and the obligation to guarantee the presence of the State in the sea for surveying, controlling, protecting and remediating the existence of the zones not regulated by the law on the oceans;
- the responsibility and the obligation to launch scientific programmes for the know-how with regards to the maritime environment and ecosystems at great depths and the identification of the natural resources of the marine soil and seabed. The ESEC considers that it surely constitutes a growth engine for the future, particularly for our ultramarine authorities, the inclusion of which in a sustained development model is mandatory;
- the responsibility and the obligation to elaborate a consistent legislation in order to regulate the exploration and exploitation activities of the natural resources, safeguarding the respect for the fragile and sensitive marine environment.

In the context of the current economic world crisis, which country would not grasp the opportunity when it has access to the sovereign rights on the natural resources of a supplementary surface of 2 million km<sup>2</sup> beyond its current continental shelf?

Countries such as China, India, South-Korea, Japan or Canada have understood the importance of these challenges and are already implementing leading technologies for the exploration and exploitation of the natural resources of seabed, and particularly of these "rare earths" crucial for the development of new technologies.

Having scientific and technical leader with particular performance in the domain of the great oceanic depths, can France allow itself to neglect this inestimable asset offered to the same by article 76 of the Montego Bay Convention?

Therefore the ESEC wishes to anticipate and contribute with its thoughts on this issue in a report and this opinion.

## **Declarations by the Groups**

#### **Agriculture Group**

The group has much appreciated the excellent work on this unknown and complex issue. It is surprising that the continental shelf is pronounced so rarely, and it is very satisfactory that the ESEC has taken the opportunity to divulge the know-how on this issue and, above all to raise awareness with regards to the significant challenges related to the same.

Increase the French territory and extend the access to new resources is essential for our country. The agriculture group wishes that this opinion be largely divulged in order to alert the decision-makers and attract the attention of the concerned populations, particularly in the Overseas territories.

We agree with the recommendation by the rapporteur, and specifically the one regarding the necessary legal framework prior to the explorations which might be performed on the extended territory. Effectively these issues should be anticipated in order to avoid any difficulty in the future.

We also support the proposal to better integrate the Overseas territories into the issues of the continental shelf extension. The ultramarine regional cooperation is crucial. It is an essential condition for a good result of this project and above all its dynamics shall only have a positive effect on all the other domains too.

Finally it is desired that this issue is integrated into to the framework of an ambitious maritime policy which would support the practice of a better coordination and a greater cohesion of all action conducted in the maritime area.

The group of agriculture voted in favour of the opinion.

#### **Associations Group**

France has the second place among the marine powers in the world with 11 million km² distributed over all the oceans, thanks to its Overseas territories. The extension of the continental shelf beyond 200 nautical miles off the coast (exclusive economic zone) until the outer continental margin, enables France to extend its rights on the marine soil and seabed on a supplementary surface of nearly 2 million km². Naturally it can be contemplated not to take profit of acquiring the sovereign rights for the exploration and exploitation of the natural resources on these areas.

The Convention of the United Nations on the law of the sea (in Montego Bay in 1982) has created a Commission for the limits of the continental shelf (CLCS). This commission is entrusted with the task to examine the claims for the extension and to issue recommendation on their demands.

In order to be eligible for this extension, a coastal State must publish the data on the outer limits of its continental shelf. These are situated at a maximum of 350 miles from the coast but do not always reach this number in accordance with the established criteria. France has not estimated yet the exact limits for each of its islands. The deadline for the filing of the dossiers was fixed in the month of May 2009 but our country has been able to benefit from a statutory derogation. Therefore, guaranteeing the financing of a reasoned national

Extension programme for the continental shelf, (EXTRAPLAC) is an absolutely necessary and urgent condition.

For the culmination of the filing of the dossiers, the technical recommendations of EXTRAPLAC are not sufficient. The CLCS can only emit an opinion based on purely technical criteria. The disputes with certain of our neighbouring countries are supposed to be settled.

The appropriation of new areas requires at first the know-how of resources and ecosystems. Then a detailed circumscription of the exploration and exploitation activities is mandatory. The rules must be strictly established for authorizing any society to intervene. The technical specifications should guarantee the preservation of the environment on the one hand, as well as the safety of the people and the respect for their social rights on the other hand.

The Overseas territories are an opportunity for France and France is also an opportunity for the Overseas territories thanks to its scientific, technical and technological capacities and its diplomatic power. However, this approach shall only be efficient and equitable if the Overseas territories are integrated into the maritime policy.

Finally, it is natural to ascertain that this opinion is happily annexed to the opinion *Quels moyens et quelle governance pour une gestion durable des océans* which we have recently adopted in July. The harmony of both opinions supports our confirmation that we must provide ourselves with a true maritime policy supported by a "great" law.

The group of associations insists on the crucial and urgent interest in the process of this subject, certainly from a technical view, but also in the political, and rather geopolitical domain, and an enormous economic importance (many other countries have been more reactive!). Congratulating the rapporteur and approving the recommendations, this group voted for the opinion.

#### **CFDT Trade Union Group**

The delegation for the Overseas territories has revealed a very useful issue which is still very much unknown and which concerns both the national sovereignty and the delimitation of the contour of the European Union and the future of the maritime territorial authorities.

In the domain of international law, ratify the conventions and have the same applied under surveillance constitutes one of the ways of a better world governance. The regulation of the delimitations by the agreement between the waterfront states, based on the law of the sea, broadly justifies the recommendations in the opinion. The existing claims for the delimitation of the shelf extension should be continued and underpinned and those files which are object of disputes should be newly examined.

For the CFDT this should also encourage the European Union, leading a dynamic policy in favour of the outermost regions in order to participate in the enhancement of the know-how on the marine ecosystems and to start exploring the resources of the shelf, with the support of co-financing.

The opinion invites the State and the territorial authorities to assume their obligations with regards to a potential development source for current and future generations. It insists on France's responsibilities in the management of these new areas in order to transform this essential potential maritime into a reality for the provision of wealth and employment. For the CFDT the private sector also could assume risks and obligations in this domain.

The extension of the maritime area also confronts France with the obligation to survey the acquired areas or those areas which are in the process of their delimitation in order to guarantee the protection of the marine environment and its ecosystems within a framework of exploration activities and the respect for sustained development principles for all the future exploitation. Particularly regarding the people working in these different activities, the CFDT insists on the necessity that the social law of the coastal State be taken into account.

These ambitions for research, preservation and exploitation can only be considered within the framework of a maritime policy integrating the regional cooperation, the sharing of competences with the local authorities and the participation of the civil societies for the future with regards to these new acknowledged and delimited areas.

The CFDT Group voted in favour of this opinion.

#### **CFE-CGC Trade Union Group**

Several reports of the economic, social and environmental Council have demonstrated the wealth, both economic and ecological of the marine territories and particularly, the overseas territories for France.

The extension of the continental shelf is a complex file involving the legal, diplomatic, geophysical domains, as well as that of the know-how of the marine environment and many other domains.

These complex factors do not justify the lack of activity, which in the case of the French state is an euphemism.

How to explain that certain dossiers have not been filed with the Commission for the continental shelf limits?

How to explain that the publication of the outer limit takes such a long time?

The current economic interest and tomorrow even more, also the maritime subsoil and seabed has been demonstrated for many years.

But, as the rapporteur emphasizes, the exploitation of the same is subject to a prerequisite and a condition.

As a prerequisite, the scientific know-how. To know its economic interest but above all to know the wealth and the fragility of the natural environment. Besides, this research shall be a supporting element for growth and a call for the young people and employees in the ultramarine territories.

Unfortunately, there are too many examples in which the human activity has led to ecological catastrophes. Therefore, the exploitation of the seabed should comply with sustained development principles.

France should give an example in this area in order to transmit this wealth to its future generations. already

For the CFE-CGC this model shall only make sense by accelerating the steps taken to acknowledge the rights of France. Actually, the fear may exist that the race against time has already started, like during the gold rush, based on the first come, first served principle.

Experts differ on the natural resources depletion dates, but this depletion is inevitable if we do not change significantly our economic attitude. Certain private interests and certain countries have already taken up positions for the exploitation of marine subsoil and seabed.

It is up to our country not to be surpassed, or even deprived, while it is the second maritime area in the world.

The scientific research and exploitation of the continental shelf make only sense, if the population of the ultramarine territories is not excluded from the expected spin-offs, in terms of employment but also regarding the wealth derived from the same. For the CFE-CGC the extension of the continental shelf may be an opportunity for the economic development of the ultramarine territories and their population, a chance which should not be missed.

Therefore, it supports the recommendations of the opinion on this point.

The CFDT Group voted in favour of this opinion.

#### **CGT Trade Union Group**

The opinion is part of the ESEC's ambition to contribute to the construction of a truly integrated maritime policy for our country. Hence, this policy is built up with the actors, including the employees from the different industries and the populations, which is an ambition shared by the CGT.

Within the framework of the desired maritime policy, during the plenary meeting of today the delegation for the Overseas territories today presents an opinion on the extension of the continental shelf beyond 200 nautical miles. For the diversity of the Overseas territories this contains indeed enormous challenges: challenges of know-how and preservation of the ecosystems and biodiversity, and the sustained development of the resources of the marine soil and seabed.

Beyond the legal issues which are duly highlighted in the report and opinion and are far from being resolved, the opinion sets out the recommendations in order to reinforce the presence of the French navy on the oceans. This particularly implies the sustaining and strengthening of the observation and control means and the establishing of a legal framework for the exploration and exploitation activities integrating the environmental and social requirements and economic and financial benefits for the impacted territories and populations.

The opinion particularly proposes to closely and permanently involve the executives of the authorities in all operations and decisions regarding the maritime policy and to associate the actors of the civil society. It suggests to anticipate in a maritime area planning scheme, the equipment to be build or install, whether these are ports or transport infrastructures and not to forget the trainings and competences which should be deployed for increasing the know-how of the environment and the ecosystems as well as the exploration and the exploitation of the resources of the extended continental shelf.

The convention of Montego Bay actually leaves the coastal country the freedom to establish the conditions according to which the exploration and exploitation licenses are agreed upon and to define the obligation of the contractor with regards to the State and the concerned authority through technical specifications, whereby the provisions establish the respect and protection of the environment, the social exploration and exploitation conditions, taxes on the production.

This latitude must lead France to guarantee a high level of environmental protection with employees which are involved in maritime activities, as proposed in the opinion.

The CGT voted in favour of this opinion.

#### **CGT-FO Trade Union Group**

The opportunity of the extension of the continental shelf for a country as France which represents the second maritime area in the world thanks to the Overseas territories is of major interest. Indeed, the increasing economic importance of the maritime areas in the globalization converts the offshore into a political challenge, especially in the international scene. The economical, social, environmental and diplomatic challenges alone justify that the ESEC pronounces itself on this issue.

It is thus really important to ascertain that France adequately implements the EXTRAPLAC programme because the extension of the continental shelf is an opportunity for the ultramarine authorities, and particularly helps to reduce the structural disadvantages featuring these territories. The acquisition of the sovereign rights for the exploration and exploitation of the natural resources of these areas should be included into the economical development plan of the Overseas territories and thus create employment.

For the FO group the reinforcement of the regional cooperation of the ultramarine territories with regards to the management of the resources of the sea with their neighbour countries, which is no doubt necessary, should not be interpreted or justified as a disengagement of the State in terms of responsibilities and means.

The extension of the maritime patrimony of France and the exploitation of its seabed and marine subsoil should not be performed in prejudice of the protection of the environment. Actually it is fundamental to use this opportunity in order to enhance the know-how and the protection of these zones and their biodiversity. FO wishes to underline the devastations caused by the chlordecone on the maritime species in Martinique and Guadeloupe. The efforts undertaken with regards to the analysis and detection of pesticide in the flesh of these species should be continued.

The diplomatic challenges are also important, because in this stage of redefining the maritime frontiers, there is a natural growth of competition between the States for the maximization of the extension of their maritime area which could be a source of tension, such as the case of for example, Saint-Pierre and Miguelon and Canada.

Finally the FO group wishes to welcome the considerable work of the rapporteur and its numerous explanations given on this issue which is often ignored and it shares the great majority of the recommendations in the opinion, and has also voted for the same.

#### **Cooperation Group**

France possesses territories in each ocean, which provides it a strategic place in the control of the seas and their resources, ranking second after the United States. Nevertheless, France is not the maritime power that it could and should be. To attain this status, the first condition would be the acquiring of political awareness of this potential and this opinion, according to the said report of some weeks ago by Catherine Chabaud, which fully contributes to the same.

The globalization implies a profound mutation of the oceans: explosion of the commercial maritime traffic, multiplication of the private and public economic actors, new threats whether ecological, linked to piracy or to illicit trafficking activities. These areas play a growing geopolitical role because these States exercise their sovereignty on the wealth of

the seas, seabed and marine subsoil. Countries like China are fully aware that the domination of the oceans is closely linked to the increasing needs of the States with regards to the raw materials and energetic resources..

Within this context the extension of the continental shelf would enable the constitution of a major area for our country in the strategic and environmental domains. The valorisation of the marine activities can of course not be dissociated from the need to protect the environment in order to reduce the pollution and to preserve the biodiversity. The opinion rightly emphasises the importance to identify and quantify the resources of the seabed and marine subsoil of the extended continental shelf and to develop research programmes on the concerned maritime areas.

There are important strategic, economical and environmental challenges, linked to the claim for the extension of the continental shelf and the cooperation group shares the ambition and volunteering of the opinion. We have particularly appreciated the equilibrium in the recommendations between the economic dimension, the awareness of the expectations of the populations of the Overseas territories as well as the environmental preoccupations.

The Cooperation Group voted in favour of this opinion.

#### **Enterprise Group**

Now that the access and the use of the raw materials are mainly strategic, it is deplorable to see that the issue of the extension of the continental shelf is not sufficiently represented in the public debate, nor do all stakeholders pay sufficient attention to it.

Nevertheless, France would benefit greatly of this because we possess the second greatest maritime surface in the world. This would give us the opportunity to acquire rights on these new maritime areas and the natural resources of the seabed and marine subsoil on a supplementary surface of nearly two million square kilometres.

In the context of the world of today, France cannot neglect this opportunity and the eventual supplementary resources deriving from the same. This would also be an opportunity for the development of certain French ultramarine territories.

The opinion which is submitted to us today has a great interest in reviving this issue, while insisting on the obstacles which could occur and which we should overcome.

These difficulties are in the diplomatic, administrative and technical domain, and also, according to the rapporteur, of financial nature. It particularly recommends increasing the means oriented at the completion of the EXTRAPLAC programme, at the Navy's hydrographical and oceanographic service (SHOM) or at the Commission on the limits of the continental shelf. While aware of the necessity to get capital information to justify the demands of extension, Enterprise group reminds that it is necessary to be attentive to the raise of public expenses and that it is opportune to favour the re-allowance of the endowments instead of their growth.

Different legal questions are raised regarding the exploration and the exploitation of the extended continental shelf. It is, among other things, necessary to adapt the mining code to the specificities of this zone and to plan the commitments toward the concerned local authorities.

The regulations must however be adapted to some companies are encouraged to explore and exploit these zones, which is complex and costly to implement. In return, the stakeholders will have to take in account the notions of sustainable development in all their aspects, but the French companies already have understood this dimension.

It is therefore necessary to combine the different economical, ecological and social interests.

Thus, while studies are made to try to identify new deposits of raw materials, it would be a pity to go without new potential resources located in the seabed.

Enterprise group therefore supports the whole of the propositions that would lead to the extension of the French territorial marine zone, while recalling the aforementioned reserves expressed on the propositions of the opinion.

Enterprise Group voted in favour of this opinion.

#### Environment and nature Group, Mutual Societies Group and Student Bodies and Youth Movements

The questions related to the continental shelf and its extension are *a priori*,, a matter of specialists, geologists, legal experts and diplomats, but, in a few years, that might concern us all, because of the stakes related to seas and oceans.

As underlined in the recent opinion, *sustainable management of the oceans*, reported by Catherine Chabaud, the future of the ground might be the sea. The fast extinction of some natural terrestrial resources forces us to consider the bottom of the oceans as the only solution to provide ourselves with rare soil and other strategic metals. However, the extreme fragility of these new spaces and the human tendency to destroy its own environment encourage us to be highly cautious. The open sea is a part of our common heritage as humans, our responsibility is therefore heavy.

The opinion fits into this vision of a sustainable administration of the marine spaces and seafloor still unexplored which present an important potential in terms of ecological services. For all that, before considering any form of exploitation, it is necessary to acquire the "sovereign" rights on natural resources located in the extended continental shelf, according to the positioning of the Convention of the United Nations for the Law of the Sea. This conquest needs a strong and determined political will, as the decision-making process is very long.

Environment and nature Group, Mutual Societies Group and Student Bodies and Youth Movements wish to highlight some key points of the opinion:

Owing to the Overseas and the "hot spot of biodiversity in these regions, France must legally base the definition of its marine spaces and thus take its place as a front line of marine nation. This long and complex approach requires a long-term diplomatic and technical undertaking, under negotiation with the neighbouring countries.

Financial and human means up to the stakes must be called up, and mostly, to be strengthen at the highest level of the State, in order to see through the EXTRAPLAC programme. The goal is also to reinforce our naval presence in order to secure its spaces and take on our rights and duties in terms of protection of the environment and sustainable administration of the resources.

A few other subjects, which seem capital to us, and on which our three groups would like to insist:

The consideration of these new spaces in the law, particularly regarding the currently under review mining code;

The crucial role of research in the process: it is necessary not only to establish an initial picture and understand the operating of notable seabed ecosystems, but also to evidence the favour they do. It is about, among other things, identifying the whole natural resources, mapping the seabed, and also estimating the impact of future exploitation activities and potential remediation. The opinion brings up indeed a duty of knowledge, a strong responsibility.

The extended continental shelf concerns above all our overseas territories. It outlines chances of future development for these territories, in terms of research, employment and training, economical repercussion and therefore, social integration. Associating the ultramarine authorities at all levels of decision-making is a necessity.

For all that, considering the stakes of the necessary ecological transition and GIEC report, which climatic forecast worsened, these developments only seem possible and desirable at one condition: France is an exemplary, both in the coming international negotiations and the sustainable administration and protection of the marine ecosystems.

We would like to thank the rapporteur for enlightening us on such a complex subject and given the integration of most of our amendments, Environment and nature Group, *Mutual Societies Group* and Student Bodies and Youth Movements voted the opinion.

#### **Overseas Group**

The opinion is the third since the beginning of the term of office dedicated to the Overseas carried by a member of the group. This one can only be pleased by the awareness from the assembly of the ultramarine realities and the stakes of development of the ultramarine territories thanks to in-depth works of high quality, often talking about problematic not dealt with elsewhere.

The quality of the offered work, product of rich exchanges between delegations, and the strong participation of the rapporteur confirms, once again, the legitimacy of the Overseas delegation, created during the current term of office and the Decision of the Office to turn the study into a report and an opinion. Furthermore, the presence in the auditorium of ultramarine elected members, high executives of administration and also scientific and specialists of the subject, shows that the latter is a source of interest for the public powers. The group regrets even more the absence of the minister of the Overseas, of which agenda suddenly did not allow him to make time.

Beyond the legal and technical aspects largely detailed by the rapporteur, the extension of the continental shelf must allow France to open up the scope of possibilities regarding the promotion of considerable oceanic resources.

By helping to secure the supply of provisions, by opening new markets and new perspectives in terms of employment and creation of added value, these hydrocarbons, rare soils and other mineral and biological resources constitute a strategic stake for companies competitive and productive machinery of powers in the Overseas. *In fine*, it is about a potential of growth which must contribute to considerably reduce the structural disadvantages specific to the ultramarine territories (geographic isolation, rarity of raw materials, narrowness of the markets etc...).

According to the Overseas group, one of the goals of this opinion was to highlight, through the question of the extension of the continental shelf, this extraordinary potential for the Nation made possible thanks to the exceptional heritage of the Overseas authorities spread between the four oceans. This objective being fully achieved, the group voted this opinion.

#### **Qualified Individuals Group**

**Mrs. Ricard**: "First, let me congratulate you for this study which became a project of opinion.

With these works, you enlighten us on the geophysical, institutional and administrative complexity of our marine spaces. And, like you, deplore the fact the France is slow to assert all its rights, and I regret it for several reasons.

First, as the second marine power of the world. France can and must be exemplary in matter of governance, and use of the oceans.

To the notion of extension of the continental shelf, I would like to add the idea of extension of our minds and our environmental responsibility.

This will not surprise you, I will essentially speak about this exemplary role that France must have a new marine space, as you correctly suggested.

First of our economical conscience.

Is this addition of seafloor and rich material going to accelerate an economical model which struggles, goes wrong, widen the gap of disparities and modifies our climate while wasting resources?

The gigantism of ship liners with more than 7,500 passengers parading in Indian line through the Grand Canal in Venice; the launching of the biggest container ship in the world "Jules Verne", longer than the Eiffel Tower and higher than a twenty stories building; the even bigger oil tankers, and the more and more sophisticated platforms.

No, men, trapped within the enthusiasm and the bolting of their activities, do not approach the sea with caution and wisdom.

The applications of naval constructions highly increase, the arctic roads open, the sea in a new El Dorado and all want more.

As our social conscience.

How not to think about Lampedusa and its half thousand passengers on a burning skiff? More than 4,000 people died in the waters of this island in the last 4 years.

At sea, poverty is not only unbearable, it is mostly deadly.

Safety at sea and respect of social and environmental rules of ships are not a priority in a lot of countries.

Let me tell you what happened off the coast of Kerguelen Islands a few weeks ago: The Marion Dufresnes rerouted in order to help a South-African fishing boat without engine, electricity and rudder, in the freezing waters of the Southern Ocean.

After a 48-hour rescue, the boat, fixed somehow, managed to move on, with makeshift reparation, and without mechanic, not to its port, but to its fishing zone, in violent waters.

No regulation would have allowed the Marion Dufresnes to interpose.

Finally, our environmental awareness.

Climate changes, oceans acidify, and cyclones and hurricanes are more and more common.

Are the fossil resources promised by this new continental shelf going to help or hurt us?

Will marine biodiversity and marine ecosystems be protected or weakened by this new context?

What governance and what reason can we bring to all this? We should maybe create the "resonance".

**Nietzsche said** "men build too many walls and not enough bridges". Nowadays, we draw lines and ships to cross them. Let's hope their holds will be reasonably full and their bridges benevolent. I will vote for this opinion.

**Mrs. Chabaud**: "When I entered the Economical, social and environmental Council almost three years ago, I expressed, dear President, my ambition to see the sea in this enclosure.

Today, I can assure we have reached our goal.

It all started by the link we created between the Tara galley and our plenary of January 2012, and the plankton entered the CESE.

Then in 2013, we followed on with the International Conference for the governance of the open sea, the opinion of our assembly about the extension of the continental shelf, and today this project of opinion about the extension of the continental shelf, and also this beautiful exhibition of IFREMER's photos.

You will allow me to affirm that year 2013 in CESE was the year of the oceans, since the marine stakes also met several other works of the sections, recently again with the opinion of result about biodiversity.

This could not have happen without a strong contribution from the Overseas, without which France would not be the marine nation it is.

Your project of opinion efficiently completes the works we have led and I am pleased about it. Beyond the question of the extension of the continental shelf, it takes us to have a look around in our marine spaces and make more tangible the geostrategic, economical, social and environmental stakes. I predict it will also allow the ultramarine populations to turn towards the sea.

I will then speak about 4 points:

First point:

The year 2013 will also be the one of the next Interdepartmental Committee of the sea, in the beginning of December. Through your report and your project of opinion, it is well determined that the French marine policy about the continental shelf, and also the marine question in general, stagnates or progresses at the pace of the CIMER or the absence of

CIMER. This is why, as you recall, we had advised a yearly meeting. So, first message to the politics: use the tangible suggestions made by the civil society gathered here to feed the CIMER and schedule now (it may be already done) a CIMER in 2014! And join our suggestion of a High Commissioner with the classification of a minister to strengthen the national governance of the sea.

The second point deals with a subject linked directly with your project of opinion: it is about the collective expertise currently led by the IFREMER and the CNRS, about the environmental consequences of the exploitation of the deep marine mineral resources. The minister of Ecology gathered the stakeholders yesterday to review the situation of the works, meeting some of us attended.

These works aim to establish the picture of:

- deep mineral resources,
- exploration and exploitation activities,
- concerned ecosystems,
- Risks incurred and measures of handle of the consequences.

You advise in your project of opinion to "create a research programme about the materials and devices of exploration and exploitation, so our country becomes a leader in this area, and exemplary in matter of marine environment protection", and I can only go along with this suggestion.

Third point: Future agency of biodiversity.

It is absolutely necessary to give plenty of room to the sea and to support the actions of the protected marine areas agency within this agency, in order to go on with protected marine areas programme of development, but also to provide the means for the administration.

Finally, my last point deals with the open sea, and I want to read or re-read the conclusion from the register of the open sea:

"The open sea is not only a matter of specialists and professionals; it is in the centre of the survival of humanity and concerns each and every one of us. We believe it is the obvious place of a pacific and exemplary co-construction of the States, which have to offer the next generations an innovative "blue economy", based on the respect of ecosystems and human rights. Restructuring the relation of men with the open sea is essential to contribute to human development, and also to the resiliency of the planet and its climate. It is an intense and urgent ambitious.

A life comes from the ocean, it is a living ocean that we want to be queath to our children".

#### **Liberal Professions Group**

France has the second place among the marine powers in the world with 11 million km², of which 97% are the ultramarine territories. Our country being present on the three oceans of the planet, the extension of its jurisdiction beyond its exclusive zone, allowed by the Convention of the United Nations about the law of the Sea, is a considerable advantage. It can therefore practise a sovereign right on more important space. But this will also imply new duties in terms of protection of the environment and potential aspect of mineral and fishing resources.

The strategic stake is both economical and environmental. It does not only focus on the research of new natural resources among which new offshore oil deposits, but also on the protection of the seafloor, by controlling the exploitation. The Overseas territories constitute, indeed, a haven of marine biodiversity of exceptional wealth. Its protection is a major concern.

The opinion claims an ambitious programme dealing with the knowledge, identification and quantification of the seafloor resources. The collaboration of all the actors (communities, ministries, operators...) must allow the search of a good balance between the exploration, exploitation and protection of the ecosystems. Securing the zone and the raw materials that it holds is a real matter of strategy and means.

The techniques of great depth exploitation are more and more sophisticated but they may not prevent from the existence of important environmental risks. It is necessary to start, as the opinion advises, a programme of research specialised in technology of methods, materials and devices of exploration of the seabed. It is also necessary to establish a legal framework of these activities and make sure the reform of the mining code integrates this new context.

A political stake also, when the extension of the French jurisdiction allows the National Marine to protect and watch the concerned spaces, to extend its action against illegal fishing or secure more the French interests. The extension of the Exclusive Economical Zone cannot be granted by the Commission of the UN except if an agreement is reached between two adjacent countries. A peaceful collaboration must be searched in order to define precisely the limits of neighbouring continental shelves.

These territories, getting to new resources and creation of new economical activities, will be able to partly counterbalance the structural disadvantages. French has a duty of involving the ultramarine elected members to the implementation of its marine policy, as the opinion recalls.

By publishing, as soon as possible, the external limits of the extended continental shelf as opposability to the third party countries, we assure the sovereign rights of France on its seafloor. The opinion makes us sensitive to a subject offering real economical, social and environmental potential, especially for France and the Overseas Territories.

Liberal Professions Group voted in favour of this opinion.

#### **UNAF Group**

With the current opinion, the ESEC fully plays its part to highlight subjects unknown to general public but carriers of strong possibilities in matter of development, research and also employment: as is the case of EXTRAPLAC programme.

The UNAF group wants to highlight a few points, which drew their attention. First, the opinion reminds that the ultramarines spaces are essential for our country. The opinion highlights usefully the duty of involving and integrating the ultramarine territories to the elaboration of the French marine policy. It is therefore necessary to organise in the Parliament a large debate so all the parliamentarians are informed about this engagement.

The opinion of the ESEC from last July *Quels moyens et quelle governance pour une gestion durable des océans?* was the occasion to underline that France leads exemplary policies to protect ecosystems and watch the resources in matter of fishing. It therefore has

the expertise to speak internationally. The current opinion is a tangible illustration of this expertise and involves responsibilities and duties. Now, the will must follow the ambition.

The knowledge of resources and ecosystems is essential. The research sector on the marine environment must be encouraged. France has a part to play on this crucial point, especially as it has front line operators such as TECHNIP.

To sum up, if the EXTRPLAC programme is no family subject, its pursuing, its implementation, and its success are flourishing of potential employs, resources, preservation of spaces and biodiversity, many essential areas for families and future generations.

The UNAF Group voted for this opinion.

#### **UNSA Group**

The UNSA learned with a lot on interest about projects of reports and opinions dealing with *The extension of the continental shelf beyond 200 nautical miles: an asset for France.* In introduction, the UNSA wants to congratulate the Overseas delegation of the ESEC for all the work done. The discussed thematic is complex and a strong stake of development for the whole national territory, especially for the Overseas Territories. The report presents clearly the current situation, from the global level to the level of each of the ultramarine entities. It allows to bring the suggestions to the inconsistencies of the policies led to this day. It is true that the vision and response given from the different governments regarding the marine strategy of France never were up to the existing potential. Likewise, it is unfortunate that the different ultramarine territories are so little associated to the reflexions and existing organisations of national importance.

The opinion draws a certain number of suggestions approved by the UNSA. It wished that the accent would have been made on the necessary knowledge of the resources of the different continental shelves. This will have a huge impact on trainings to implement for the future: as the latter must take in consider all the potential of the jobs in the marine area that could be offered to the young ultramarine.

According to the UNSA, the sectors linked to these exploitation need and innovating approach; in this way, the actors must be able to benefit fully from the innovation-aimed financing.

It fully shares the decision taken to redistribute wealth toward the concerned territories. They must not be to the only benefit from multinational companies, either foreigner or national, and, at the cost of these territories, their companies and their populations.

Besides, it considers that all regulation texts regarding the Overseas Territories, yet to adopt and/or published (especially those linked to the LOOM) must be as soon as possible in order to allow the concerned territories to enter into this new area of development.

Finally, the UNSA recalls, as underlined in the report that the marine policy depends for the most part in European decisions. This is why it wants a great watchfulness to be appropriate: too often ultramarine territories are treated like continental Europe, which should not be the case.

The UNISA Group voted in favour of this opinion.

## **Voting**

## Vote on the entire draft opinion presented by Mr. Gérard Grignon, rapporteur

Number of votes 180

Votes in favour 180

The ESEC adopted the opinion.

Votes in favour: 180

Agriculture Group	Mr. Bastian, Mrs. Beliard, Bernard, Bocquet, Mr. Cochonneau, Mrs Dutoit, Mr. Giroud, Gremillet, Lefebvre, Pelhate, Mrs. Serres, Sinay, Mr. Vasseur.
Craft Industry Group	Mrs. Amoros, Mr. Bressy, Crouzet, Mrs. Gaultier, Mr. Griset, Le Lann, Liébus, Martin.
Associations Group	Mr. Allier, Mrs. Arnoult-Brill, Mr. Charhon, Mrs. Gratacos, Mr. Leclercq, Mrs. Prado, Mr. Roirant.
CFDT TRADE UNION GROUP	Mr. Blanc, Mrs. Boutrand, Briand, Mr. Duchemin, Mrs. Hénon, Mr. Honoré, Mrs. Houbairi, Mr. Jamme, Le Clézio, Malterre, Mrs. Nathan, Mr. Nau, Mrs. Nicolle, Pichenot, Prévost, Mr. Quarez.
CFE-CGC TRADE UNION GROUP	Mr. Artero, Mrs. Couvert, Mr. Dos Santos, Lamy, Mrs. Weber.
CFTC TRADE UNION GROUP	Mr. Coquillion, Mrs. Courtoux, Mr. Ibal, Louis, Mrs. Parle, Simon.
CGT TRADE UNION GROUP	Mrs. Crosemarie, Cru-Montblanc, Mr. Delmas, Mrs. Doneddu, Dumas, Mr. Durand, Mrs. Farache, Geng, Hacquemand, Mr. Mansouri- Guilani, Marie, Michel, Prada, Rabhi, Teskouk.
CGT-FO TRADE UNION GROUP	Mr. Bellanca, Bernus, Mrs. Fauvel, Mr. Hotte, Lardy, Mrs. Millan, Mr. Nedzynski, Mrs. Nicoletta, Mr. Porte, Veyrier.
Cooperation group	Mr. Argueyrolles, Mrs. de L'Estoile, Mr. Lenancker, Verdier.
Enterprise Group	Mr. Bailly, Mrs. Bel, Castera, Dubrac, Duhamel, Duprez, Frisch, Mr. Gailly, Jamet, Lebrun, Lejeune, Marcon, Mariotti, Mongereau, Placet, Pottier, Mrs. Prévot-Madère, Mr. Ridoret, Roger-Vasselin, Mrs. Roy, Mr. Schilansky, Mrs. Tissot-Colle, Vilain.

Environment and nature Group	Mr. Beall, Bonduelle, Bougrain Dubourg, Mrs. de Bethencourt, Denier-Pasquier, Ducroux, Mr. Genest, Genty, Guerin, Mrs. de Thiersant, Laplante, Mesquida, Vincent- Sweet, Mr. Virlouvet.
Mutual Societies Group	Mr. Davant, Mrs. Vion.
Student Bodies and Youth Movements Group	Mr. Djebara, Dulin, Mrs. Guichet.
Overseas Group	Mr. Arnell, Galenon, Grignon, Omarjee, Osénat, Mrs. Romouli Zouhair, Tjibaou.
Qualified Individuals Group	Mr. Aschieri, Bailly, Baudin, Mrs. Brishoual, Brunet, Cayet, Chabaud, Mr. Corne, Mrs. Dussaussois, El Okki, Fontenoy, Gibault, Grard, Graz, Mr. Hochart, Jouzel, Mrs. de Kerviler, Mr. Khalfa, Kirsch, Le Bris, Mrs. Levaux, Mr. Lucas, Mrs. de Menthon, Meyer, Mr. Obadia, Mrs. d'Ormesson, Ricard, Mr. Richard, Mrs. du Roscoät, Mr. Soubie, Terzian, Urieta.
Liberal Professions Group	Mr. Capdeville, Gordon-Krief, Noël, Mrs. Riquier-Sauvage.
UNAF GROUP	Mrs. Basset, Mr. Damien, Farriol, Fondard, Joyeux, Mrs. Koné, L'Hour, Therry, Mr. de Viguerie.
UNSA Group	Mrs. Dupuis, Mr. Grosset-Brauer.

# Report

Extension of the Continental shelf beyond 200 nautical miles: an asset for France

presented on behalf of the Delegation for Overseas Territories

by Mr. Gérard Grignor

### Report

#### Introduction

Following the Truman announcement in 1945, the signatory States of the Geneva Convention of 1958 about the continental shelf, threw in the course of the energy resources about to extinct on the terrestrial territory, agree that the coastal State can exercise sovereign rights on the continental shelf at the purpose of its exploration and the exploitation of its natural resources as mineral resources and other non-biological resources from the seabed and the seafloor, and also the living organisms belonging to the sedentary species.

More ambitious than then previous convention of 1958, the United Nations Convention about the law of the Sea<sup>60</sup>, adopted in 1982, wanted, as its introduction states, institute a global process aiming to deal with "all troubles regarding the law of the sea (...) aware that the marine spaces issues are closely linked together and must be considered as a whole (...)". To this end, the Convention wanted to establish "a legal order for the seas and oceans facilitating the international communication and promoting the peaceful uses of the seas and oceans, the equitable and efficient utilisation of their resources, the conservation of their biological resources, and the study, the protection and preservation of the marine environment". Regulation of marine areas and activities that are carried out, therefore attempts to balance the rights and duties of States and includes consideration of economic, social and environmental concerns. This new law of the sea provides a framework for finding solutions to different aspects of use and resources of the sea, questions characterised by their interdependence. The Convention forces a progressive development of this law of the sea which conditions the reinforcement of peace, safety and social and economic progress of all.

Article 76 of the United Nations Convention about the law of the Sea finishes the evolution, started in 1958, the control of coastal States on the resources of the seabed and the seafloor beyond 12 nautical miles (M) in the territorial sea. The continental shelf extends from now on to 200 nautical miles from the basis lines from which is measured the width of the territorial sea, under the water column of the Exclusive Economical Zone (EEZ). To some coastal States, it can also extend beyond, under the open sea, until the external edge of continental margin, if the latter is beyond 200 nautical miles. It is this extension of the continental shelf beyond the 200 nautical miles to the external edge of continental margin that is the subject of this study. A conventional disposition allows the coastal States to file a permit of extension of their continental shelf to the Commission of the limits of the continental shelf (CLPC). After examination, it gives a recommendation. The coastal State sets alone the external limits of its extended continental shelf on the basis of the commission. Then the set limits with the Zone under the International Authority of the seabed<sup>61</sup> are final and mandatory.

<sup>60</sup> The United Nations Convention of 1982 on the Law of the Sea, which France ratified in 1996, is hereinafter referred to as UNCLOS and the Convention of Montego Bay or UNCLOS.

<sup>61</sup> The international Authority of the seabed, called the AIFM, is an organisation through which the States organise and control the activities conducted in the Zone by the seabed and the seafloor beyond the limits of national juridiction.

Mainland France and the Overseas Territories have a coastal projection allowing them to ask for the extension of their continental shelf beyond 200 nautical miles for the exploitation of natural resources on a surface area being set around 2 million km<sup>2</sup>. It adds to the 11 million km<sup>2</sup> of surface area covered in the 200 M by the continental shelf and the Exclusive Economical Zone.

The extension of the continental shelf beyond 200 nautical miles has to go through the elaboration of a technical file based on geomorphologic and geophysical of the seafloor off the metropolitan and ultramarine coasts. France had a delay expiring in May 2009 to present all its applications of extension to the CLPC for the examination. From 2002, France started to carry out this ambition for economical development and future well-being of ultramarine populations by implementing a specific programme: the programme of reasoned extension of the continental shelf (EXTRAPLAC).

Ten years later, the Overseas delegation to the economical, social and environmental (ESEC) Council chose to present a track record of the extension of the continental shelf of the French Republic. Some could wonder why the ESEC looked into such a study where the technical and scientific dimension is important. The answer is within the mission of this consultative mission in charge of the preparation of opinions and studies than in the preoccupations of its Overseas Territories delegation considering the perspective of economical, social and environmental development of the ultramarine territories of the Republic - originally of almost 99% of the French marine space - and geostrategic progress which might result in the extension of exclusive rights on the underwater natural resources.

Nine applications were presented off the French coasts. The CLCS has already studies five of them and gave recommendations. It is about these in relation to the Bay of Biscay on March 24, 2009, at Guyana and New Caledonia on September 2, 2009 and at West Indies and Kerguelen Islands, on April 19, 2012. Three other applications are still pending or close to be examined in the Indian ocean: Crozet Islands, Reunion and Saint-Paul and Amsterdam Islands, and also a fourth one is the Pacific ocean: Wallis And Futuna.

France prepared other applications that it has not filed yet, but which should be submitting preliminaries information by 2013 and 2014 about French Polynesia and Saint-Pierre and Miquelon. In 2009, there was no follow up given to the preliminary information filed for the Clipperton Island and other files prepared for Mayotte and the Scattered Islands. An application for Adelie Land was formally saved.

The report has the ambition to highlight that the extension of the continental shelf is an element that can only favour the coastal State which conquered it with the knowledge of the International Community of the States. This contribution probably confirms the "maritimisation" approach illustrated by the Senate in a recent report<sup>62</sup>. The senators, for who "the globalisation is a maritimisation<sup>63</sup>", believe "that the economical, diplomatic, ecological

<sup>62</sup> Lorgeoux Jeanny, André Tillard, senators, co-presidents, Beaumont René, Boutant Michel, Gerriau Joël and Paul Philippe, senators, *Information report on behalf of the Committee on Foreign Affairs, Defence and Armed Forces on behalf of the Working Group on maritimisation*, n° 674, Senate, July 17, 2012.

<sup>63</sup> Ibid, p. 14. For the Livre bleu, Stratégie nationale pour la mer et les océans: «XXI<sup>st</sup> century will be irreversible 'maritimisation' of the world. Cette évolution s'inscrit dans le contexte d'une économie mondialisée, où le transport maritime est à la base des échanges internationaux et où les normes se définissent et s'appliquent à l'échelle mondiale. «, 2009, p. 40.

increasing importance of the marine spaces in the process of globalisation makes of the sea a more than ever political stake thanks to which a State can spread and assess its power on the international stage". They add that "a marine area (...), it is a chance, an opportunity, a strategic and political advantage. Undoubtedly, however we must know the proportion of this territory we know well, an unquestioned legal delimitation, or even just a command? What percent of this territory really is a strategic advantage? Where are precisely located the hydrocarbon and ore resources likely to be exploited in the next twenty years?<sup>64</sup>" The report from the Overseas delegation of the ESEC tends however to go farther by stating the advantage to the ultramarine authorities the extension of the continental shelf could offer. It puts in light the role these communities could play by recommending their involvement in the administration of these new resources to the benefit of these populations. The report describes in a first chapter the international and national legal framework in which it is fit into this conquest of sovereign rights over the natural resources of this area of seabed, draws up the inventory of the steps made by France to assess its rights off the coasts of both Mainland France and Overseas territories and reports on the actions led during the last 10 years. In a second chapter, this report defines the main resources of the extended continental shelf. It also analyses some legal and environmental aspects of the consequences of the extension of the continental shelf and underlines the emergence of responsibilities in terms of knowledge, preservation, exploration and exploitation of its resources.

\* \*

#### Issues

#### Assuring the French jurisdiction on the continental shelf and its sovereign rights on its natural resources.

This establishment of rights allows to provide precise and certain information and to challenge third parties with regards to the limits of the sovereign rights of the Coastal State on the continental shelf and its property rights on the resources of the seabed and their marine subsoil thus preventing the occurrence of incidents and disputes. Any extension of the continental shelf leads to a spreading of the national jurisdiction and a reinforcement of the sovereignty of the coastal State in the concerned area and in the world. It allows to secure, at an international level, the area of the French jurisdiction thanks to the gaining of a recommendation from CLCS. This allows to underpin the French presence. As a testimony of mastering the maritime areas, privileged support of all maritime power, this extension constitutes an instrument which cannot be dissociated.

#### Knowing and preserving the resources and the marine environment for a sustainable development.

To manage, it is necessary to know. The stake of knowledge, this is the exercise of sovereignty over any marine space in the responsibility of the coastal State. The mapping of the seabed and the inventory of recourses, the ecosystem approach, the evaluation of the

<sup>64</sup> *Ibid*, p. 10.

consequences of activities is preliminary priorities to the management and the sustainable exploitation of the extended continental shelf. The extension allows the coastal State to exercise police powers acknowledged by the CNUDM in order to ensure the struggle against pollution<sup>65</sup> while respecting the necessities of the economical development. The coastal State shall likewise adopt the internal measures in order to control the polluting activities for the protection and preservation of the marine environment. The protection of the marine environment can be made thanks to the extension of the French jurisdiction beyond the 200 marine miles.

#### Highlighting the continental shelf space And the resources it holds to benefit the ultramarine authorities and populations.

Following France's decision taken in the Livre bleu "Stratégie nationale pour la mer et les océans of December 2009 to fully find again its marine vocation 66", the marine political stake of France is to ensure the control of all marine spaces in order to exploit resources while respecting the marine ecosystem which is vital for humanity. Furthermore, "the advantages for France are first for the ultramarine themselves: biological, mineral and energy resources in these areas must first and foremost benefit to the populations of territorial authorities of the Overseas and contribute to the economical and social development 67"."

The extension of the continental shelf allows the exercise only by the coastal State of sovereign rights over the latter at the purpose of exploration and exploitation of its natural resources, by the granting of concessions and permits. The extension zones may hold important resources which "are generally not valuable in the short term as they are located in quite great depths little or no attainable to current technologies. They can be however in the medium or long term" 1888. It allows the coastal State to provide legal safety for the exploration and exploitation of natural mineral resources and other non biological resources of the seabed of the continental shelf and its seafloor and also its sedentary species.

The sustainable exploitation of the seabed and seafloor in accordance with social regulation and preservation of the marine ecosystems must contribute to considerably reduce the structural disadvantages characterising these territories: geographic isolation, rarity of raw materials, narrowness of markets, etc

Beyond, these issues fundamentally take us to the marine challenge of France, which consists in dealing with our own French paradox: being the second marine area in the world thanks to the Overseas yet, not assessing ourselves as a true marine power. This report, through the issue of the extension of the continental shelf, is intended to provide answers to this paradox and fully record the Economical, Social and Environmental Council in the debate on the conduct of maritime policy and the need for maritimisation our country.

<sup>65</sup> The ultramarine collectivities have to face some pollutions such as, for instance, the ones due to the use of kepone in West Indies.

<sup>66</sup> Livre bleu, Letter from the Prime Minister on December 7, 2009.

<sup>67</sup> Livre bleu, Stratégie nationale pour la mer et les océans, Prime Minister, December 2009, p. 49.

<sup>68</sup> Statement by IFREMER in the journal Mines N° 148-2008, p. 11

#### The conquest of the continental shelf resources

This chapter will deal with the conquest phase of the sovereign rights of the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

#### International legal framework

Planet Earth has five oceans<sup>69</sup> that cover 71% of its surface, that is 360 million km<sup>2</sup>. These legally complex spaces are defined and ruled by the law of the sea which notably deals with navigation, exploitation of resources and preservation of the marine environment.

## Various Conventions on the Law of the Sea and the continental shelf

Substantially of a customary origin, the Law of the Sea has undergone an important codification in the second half of the XX century, notably within the scope of the 1958 Geneva conventions and the convention of Montego Bay in 1982.

#### ☐ The 1958 Geneva Convention on the Continental Shelf: a definition of resources

Initiated in 1956, the first United Nation Conference about the law of the Sea ended in 1958 with four international distinct agreements dealing with the territorial sea and the adjacent zone, the open sea, the continental shelf and the fishing activity and the preservation of the biological resources of the sea<sup>70</sup>. The main preoccupation at that time was to secure the fishing resources and the potential mineral resources of the seabed for national exploitation. The Convention about the continental shelf defines the natural resources which fall under this area, but does not precisely indicate its area.

#### ☐ UN Convention on the Law of the Sea from 1982: the outer limits of the continental shelf

The third Conference about the law of the sea is called by the UN<sup>71</sup> at the initiative of emerging countries. Indeed, these States newly independent contested the law of the sea that came from conventions adopted in 1958 and feared especially that they would

<sup>69</sup> The five oceans are the Pacific, Atlantic, Indian, Arctic and Antarctic Oceans (or Austral). Each of these oceans includes several seas.

<sup>70</sup> Convention on the Territorial Sea and the Contiguous Zone, Geneva, 29 April 1958, entered into force September 10, 1964, 516, Treaty of the United Nations (UNTS), 205; Convention on the High Seas, Geneva, 29 April 1958 entered into force September 30, 1962, 450 UNTS 82; Convention on the Continental Shelf, Geneva, 29 April 1958, entered into force 10 June 1964, 499 UNTS 311, and the Convention on fishing and Conservation of living resources of the high seas, Geneva, 29 April 1958, entered into force 20 March 1966, 599 UNTS 285.

<sup>71</sup> The begining of this step of codification is the resolution 2340 adopted by the general Assembly of United Nations, on December 1967. The Assembly created a special Committee, composed of 36 member States, in charge of studying the peaceful uses of the seabed in oceans beyond the limits of national jurisdiction and to establish this use on the scientific, technical, economical, legal and other aspects.

not be able to benefit from resources (oil, Polymetallic nodules, and fishing resources) that technical progress, only available to industrialised countries, would allow to exploit<sup>72</sup>.

This conference, bringing together 160 States, held 11 sessions from 1973 to 1982. On 10 December 1982, the Conference adopted at Montego Bay, Jamaica, the United Nations Convention on the Law of the Sea comprising 320 articles and nine annexes. This Convention has been qualified as the "complete constitution for the oceans which would resist in time"73. It establishes the process of the different marine spaces based on the international custom and the States practise. It regulates the activities while considering the demands of the economical development, the liberty of sailing principle, the territorial claims of the coastal States and the protection of the environment. It assesses the control of the bordering States over the marine spaces, which are evidence, for instance, the creation of the exclusive economical zone. It adds the possibility to extend the jurisdiction of a State over the resources beyond 200 nautical miles on its extended legal continental shelf, and therefore creates a Commission of the limits of the continental shelf in charge of reviewing the applications for extension, and give recommendations on the claimed external limits. This articles also establishes the principles and regulations ruling the seabed and oceans beyond the national limits, constituting the common patrimony of the humanity which is subject to the International Authority of Seabed (IASB).

UNCLOS enter into force on 16 November 1994. France ratified it in 1996. To date 165 States, including the European Union (EU), are party to this convention.

Following the implementation of the CLCS in 1997 and the circulation of its internal regulation and technical and scientific orders in 1999, it became working fully in 2000. Since this date, the coastal States part of the Convention has the possibility to extend their continental shelf beyond the 200 nautical miles limit when the external edge of the continental margin expands beyond.

# The place of the extended continental shelf in the main marine spaces defined in the CNUDM

The goal of the Convention is to contribute to promote the maintainance of peace and international safety by replacing a variety of discordant demands from the coastal States by a universally accepted definition of the marine spaces<sup>74</sup>. The dividing of these different zones allow the better understanding on which space the extension of the French jurisdiction beyond the 200 nautical miles takes place.

<sup>72</sup> Report n° 3994 made in the name of the foreign affairs commission about the project of law, adopted by the Senate, allowing the bond to the protocole of the privileges and immunities of the international Authority of the seabed by Mr. Jean Glavany, Novembre 22, 2011.

<sup>73</sup> Remarks by Mr. Tommy T. B. Koh, President of the Third United Nations Conference on the Law of the Sea, final session of the Conference of Montego Bay, December 10, 1982.

<sup>74</sup> Remarks by Mr. Tommy T. B. Koh, President of the Third United Nations Conference on the Law of the Sea, final session of the Conference of Montego Bay, December 10, 1982.

Normal baseline (low tide) or straight baseline
Art. 5 and 7

Legal continental shelf Art.76.1

Extension Maximale: 350M or 100 M of isobath from 2500 m

Extension Maximale: 350M ou 100M de l'isobathe des 2500 m

Extension Maximale: 350M ou 100M de l'isobathe des 2500 m

Fig. 1: The main maritime areas defined in UNCLOS

Source: M. Olivier Walter - DPO Architectes.

The extended continental shelf is surrounded by different other marine spaces. From the coast, neighbouring the terrestrial territory, the territorial sea including the seabed and the over-hanging waters on a width of 12 marine miles. Beyond, on a 200 nautical miles distance, the legal continental shelf and the exclusive economical zone are on top of each other. Even beyond, near the open sea, is the extended legal continental shelf which is sat on top by the open sea. Finally, the seabed of the Zone under the jurisdiction of AIFM is also covered by the open sea.

#### ☐ Territorial waters

Article 2 of the Convention states that "1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea. 2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil". The article 3 specifies that "Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention". The article 17 indicates that "Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea".

#### ☐ Exclusive economic zone (EEZ)

Based upon article 55 of the Convention, "The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention".

#### Article 56 specifies that:

- "1. In the EEZ, the coastal State has:
  - a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters above the sea-bed, and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
  - b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
    - i) the establishment and use of artificial islands, installations and structures;
    - ii) marine scientific research;
    - iii) the protection and preservation of the marine environment;
  - c) other rights and duties provided for in this Convention.
- **2.** In exercising its rights and performing its duties under this Convention in the EEZ, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
- **3**. The rights set out in this Article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI [Continental shelf]".

The article 57 indicates that "The EEZ shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured". Article 58 deals with the rights and duties of the other States in the EEZ and notably precise that they "benefit from (...) the liberty of sailing and flying over and the liberty of implementing submarine cables and pipelines (...)".

#### Continental shelf

For scientists, the continental shelf is just one of the parts of the seabed that form the continental margin. This last one is made of, first, the continental shelf which is the immersed physical prolongation of a continent and which expands from the shore to the top of the continental bank, then of the bank which constitutes the border of the continental shelf, and finally the glacis which is a zone of weak declivity between the beginning of the continental bank and the seabed.

**Legal bodies do not define the continental shelf in the same manner.** Indeed, legal bodies approach it as the whole scientific continental margin and believe it is not only limited to the scientific continental shelf. The article 76 of the UNCLOS provides: "3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof."

A definition of the legal continental shelf is given in the article 76: "1. The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. 2. The continental shelf shall not extend beyond the limits provided for in paragraph 4 to 6."

The legal continental shelf has a minimum breadth of 200 nautical miles from the coasts. It is reminded that the extension of the shelf beyond 200 nautical miles until the external edge of the continental margin is the subject of the report.

#### ☐ International waters

Article 86 of the Convention states that the open sea is made of "all parts of the sea which are not included neither in the exclusive economical zone, the territorial sea, nor in the archipelagic waters of an archipelago State".

#### ☐ The International Seabed Area (Zone)

The acknowledging of the great seabed as "common heritage of humanity" was defended since the end of 1960s by emerging countries and accepted since 1970 by Resolution 2749 (XXV) of the general Assembly of the UN (Declaration of the principle related to the seabed and the seafloor, beyond the limits of national jurisdiction). It was supposed to equally share the potential benefits from potential wealth of the seabed. Indeed, metallic concretions or "nodules" cover the great oceanic seabed and contain ore (manganese, nickel, copper, cobalt...) and hydrocarbons which provoked, when their exploitation was technically considered, adversary desires<sup>75</sup>.

First Article of the Convention means by "Zone" the seabed and the seafloor beyond the limits of national jurisdiction". The rights over the mineral resources in situ, including the Polymetallic nodules in it, are the responsibility of the international Authority of the seabed. "The Zone and its resources are the common heritage of humanity" (article 136), which implies the non-claiming and the non-appropriation by the States of any part of this space and its resources (article 137.1) and that the activities led are in the interest of the whole humanity (article 140.1).

#### The international authorities and seabed

The UNCLOS has provided a central role to the Commission on the Limits of the Continental Shelf in order to control the extensions of the States on the rights to the resources of the extended continental shelf. It also created the AIFM, organisation through which the member States organise and control the activities led in the Zone. The same has finally established an International Court for the Law of the Sea charged with all disputes concerning the interpretation and application of the Convention.

#### ☐ Commission on the Limits of the Continental Shelf (CLCS)

Annexe II of the Convention defines the role and the mission of the Commission of the limits of the continental shelf, only competent organisation to review the applications of extension of the continental shelf beyond 200 marine miles.

#### Composition of the CLCS

The Commission consists of 21 members, experts in geology, geophysics or hydrography. These experts are elected by the member States to the Convention among

<sup>75</sup> Glavany Jean, deputy, Rapport n° 3994 report on behalf of the Committee on Foreign Affairs the bill passed by the Senate, authorizing accession to the Protocol on the Privileges and Immunities of the International Seabed Authority, Assemblée nationale, XIIIème législature, 22 novembre 2011., National Assembly XIII thParliament, November 22, 2011.

their citizens given the necessity to ensure a fair geographic representation. They practise their job individually. They are elected for a five years mandate and can be re-elected. The Commission is beforehand an assembly of experts named by the coastal States, paid and defrayed by the latter.

#### ── Functions of the CLCS

#### Functions of the Commission are:

- to consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with Article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea;
- And produce, at the demand of the concerned coastal State, scientific and technical opinions in order to establish data aimed at the previous letter.

The Commission now works through four sub-commissions composed of seven members designated in a fair way given the specific elements of each application filed by a coastal State. The sub-commission shall submit its recommendations to the Commission. Approval by the Commission of the recommendations shall be by a majority of two thirds of Commission members present and voting. The recommendations of the Commission are written to the coastal State which submitted the application and also to the Secretary-General of the UN. In the case of disagreement by the coastal State with the recommendation of the Commission, the coastal State shall, within a reasonable time, make a revised or new submission to the Commission.

CLCS is not intended to address matters relating to delimitation of boundaries between States with opposite or adjacent coasts. Paragraph 8 of article 76 precise that the establishment of external borders do not anticipates the question of the delimitation of the continental shelf. This precaution is repeated in article 9 of annexe II creating the CLCS according to which the actions of the Commission do not presuppose the questions related to the establishment of the borders between states. This led the latter to put in its internal Regulation an article 46 which stipulates that, in case of conflict, the applications are reviewed in compliance with annexe I. The latter acknowledges that the competence regarding the questions related to the setting of the external borders of the continental shelf goes to the States and that in case of a marine or terrestrial conflict, the Commission does not review the application submitted by a State apart of this different and do not come to a decision regarding this application.

#### ☐ The International Seabed Authority (ISA)

The international Authority of the seabed aims to manage the common heritage of humanity that is the international zone of the seabed beyond national jurisdictions. This entity organises and controls the activities led in the Zone, especially to the purpose of the administration of its resources <sup>76</sup>. The Authority is also in charge of promoting and encouraging the scientific research in the Zone and spreading the results.

<sup>76</sup> Website of The International Seabed Authority: http://www.isa.org.jm/fr/home.

Part XV of the Convention defines a global system for the regulation of conflicts which might lead to its interpretation and application. This system requires the member States solve their conflicts with peaceful means, as states the United Nations Charter. The mechanism plans four means to choose: The international court of the law of the sea which statute is established by annexe VI of the CNUDM, the international Court of Justice, the arbitration in accordance with the dispositions of annexe VII of the Convention, or the special arbitration as part of annexe VIII of the Convention.

The international Court of the law of the sea, located in Hamburg, Germany, is composed of 21 independent member, named on geographic criteria among people having acknowledge skills in the area of the law of the sea. Its statute creates a Chamber for the regulation of conflicts related to the seabed composed of 11 members. It is open to party States to the Authority, to the Initiative <sup>78</sup> and to moral or physical persons leading activities allowed in the Zone. It is competent to solve some categories of conflicts regarding activities led in the Zone. "[it] has the exclusive task to read into part XI of the Convention and relevant annexes and regulations which constitute the legal basis of the organisation and the administration of the activities led in the Zone<sup>479</sup>.

The Chamber gives opinions of consultation at the request of the Assembly or the Council of Authority. At the request of the latter, it pronounced on February 1, 2011 an opinion of consultation about the *Responsibilities and duties of States which lead people and entities in as part of activities led in the Zone*. At this occasion, it determined, among other things, the signification of activities of exploration and exploitation led in the Zone, the content of the obligation for the States to adopt appropriate measures in the internal legal frame in order to the activities to be led with accordance of the Convention, the obligation to adopt an approach of precaution, the obligation to implement the best ecological means, the obligation to proceed to a review of the consequences on the environment of the activities led in the Zone. It therefore indicates a certain number of legislative, regulatory and administrative measures, which might inspire any internal legislation applicable to the activities led on the extended continental shelf.

# The procedure of the extension of the continental shelf beyond 200 nautical miles

It is up to the coastal State to prove to the CLCS the outer limits of its extended continental shelf beyond 200 nautical miles according to the criteria established in paragraphs 4, 5, 6 and 7 of article 76. To do so, the coastal State is helped by the scientific and technical Directives made by the CLPC on May 13, 1999. "They aim to precise the parameters and the level of detail

<sup>77</sup> Website of *The International Tribunal for the Law of the Sea,* ITLOS: <a href="http://www.itlos.org/index.php?id=2&L=1">http://www.itlos.org/index.php?id=2&L=1</a>.

<sup>78 «</sup>The CNUDM creates the Entreprise, organ of the Authority, which can lead activities of exploration and exploitation and activities of shipping, process and trading of minerals issued from the Zone»

<sup>79</sup> Opinion of consultation about the *Responsibilities and duties of States which lead people and entities in as part of activities led in the Zone,* TIDM, n° 25,February 1 2012, p. 15.

of the admissible elements of scientific and technical proof that the Commission requires when it reviews applications in order to make recommendations "80".

Paragraph 4 of Article 76 reads as follows:

- "a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:
  - (i) a line delineated in accordance with paragraph 7<sup>81</sup> by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 % of the shortest distance from such point to the foot of the continental slope; or
  - (ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.
- b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base".

Section 5 specifies the maximum width of the legal continental shelf: "The fixed points comprising the line of the outer limits of the continental shelf on the sea-bed, drawn in accordance with paragraph 4(a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2 500 metre isobath, which is a line connecting the depth of 2 500 metres."

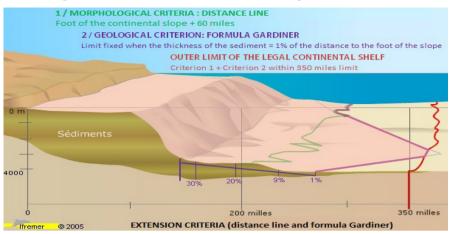
In summary, the delineation of the outer limits of the extended continental shelf relies on the combination of at least four reference lines established as follows:

- a first line, at a distance of 60 miles from the foot of the slope using the Hedberg formula (60 M from the foot of the slope) and connects the fixed points thus determined (a formula row);
- a second line, as per Gardner formula (1% of sediment thickness). It is linking outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 % of the shortest distance from such point to the foot of the continental slope (a formula row);
- a third line, at a distance of 350 miles from the baselines from which the breadth of the territorial sea is measured (constraint line);
- finally, a fourth line, at a distance of 100 miles of the 2500 meters isobath (constraint line).

<sup>80</sup> CLCS/11, CLCS/11/Corr. 1, CLCS/11/Add. 1. See also Manuel de formation à l'établissement du tracé des limites extérieures du plateau continental au-delà des 200 mille marins et à la formulation des demandes adressées à la Commission des limites du plateau continental, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations (UN) March 2006.

<sup>81</sup> Paragraph of the article 76 of the Montego Bay Convention: *«The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.»* 

Fig. 2: The criteria for the extension of the Legal continental shelf



Source: Website http://www.extraplac.fr/FR/juridique/criteres.php.

When the 100 nautical miles isobath is situated at a distance of more than 250 nautical miles of the baselines, in other words, beyond 350 nautical miles, and the line deducted from the formulae (60 nautical miles from the foot of the slope and 1 % of the sediment thickness) also exceeds 350 nautical miles, the outer limit can be localized beyond 350 nautical miles on the line situated at 100 nautical miles from the 2500 meter isobath<sup>82</sup>.

# The national framework for the extension of the continental shelf beyond 200 nautical miles

At a national level, the extension of the continental shelf beyond 200 nautical miles must allow France to gain international acknowledgement of a conquest of sovereign rights over natural resources located mainly off the coast of its ultramarine territories.

<sup>82</sup> Yvon Claude, «Géodésie et construction des limites extérieures «, Institut du droit économique de la mer (INDEMER), Le plateau continental étendu aux termes de la Convention des Nations Unies sur le droit de la mer de 1982. Optimisation of the application Éditions Pédone, 2004, pp. 66 and 67.

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Map 1: The extension of the French Continental shelf83

Source: M. Olivier Walter - DPO Architectes.

<sup>83</sup> Applications with recommendations: maps  $N^{\circ}$  1, 6, 7, 8 and 12; applications pending, or awaiting review: maps  $N^{\circ}$  1, 2, 10, 11 et 13; reserved applications: map  $N^{\circ}$  14; preliminary information: maps  $N^{\circ}$  3, 4 and 5 and extension not considered: map  $N^{\circ}$  9.

The map obviously shows that French territories spread in the world can constitute an advantage for France as the potential of extended continental shelf that they create is claimed. France keeps its rights to later file an application of extension of the continental shelf for Adelie Land reminding the principles and goals shared by the Antarctic agreement and the CNUDM.

## Legal framework

☐ Laws of 1968 and 1977 related to the exploitation of the continental shelf and 1976 about the economical zone.

The evolution of the legal internal process of the continental shelf followed, with hesitation, the evolution of international law.

France had a performance qualified as "cautious towards the apparition of the notion of continental shelf as this one will be the origin of an extension of the rights of the bordering States over the open sea (...) as such an extension directly harms the liberty of sailing and the liberty of fishing which are the two imperatives of its external policy in the marine area" The ratification of the Geneva Convention about the continental shelf of 1958 will only intervene in 1965 so that exploitation and definition of the continental shelf have legal basis, and with reluctance, since one of them rules out crustaceans of sedentary resources.

Article 1 of the Law of December 30, 1968 on the exploitation of the continental shelf provides: "The French Republic has, in accordance with the Geneva Convention about the continental shelf of April 29, 1958, (...), sovereign rights with the purpose of the exploration of the continental shelf adjacent to its territory and of the exploitation of its natural resources" France was cautious on the criteria of depth and exploitable of the 1958 Convention, but the law of 1968 inherently adopted them(article 1).

From 1971, within the seabed committee, France supported "the extension to 200 miles of the zones reserved for the exploitation of the coastal State" while reproaching the notion of economical zone "the harm of the liberty of fishing, and maybe to the liberty of sailing" <sup>85</sup>.

France was listening to the demands of the third world, while being aware of the interests presented by the Overseas regarding the extension of its jurisdiction over marine spaces. As soon as the notion of economical zone was ordered during the Third Conference about the law of the sea, France was one of the first country to legislate about this subject on July 16,1976 <sup>86</sup>. With this law voted six years before the signature of the CNUDM, "The Republic has, in the economical zone spreading from the limit of territorial waters to 188 nautical miles beyond this limit, sovereign rights regarding the exploration and exploitation of natural resources, biological and non-biological, of the seabed, the seafloor and the over-hanging waters".

<sup>84</sup> Reynaud André, Le plateau continental de la France, Librairie générale de droit et de jurisprudence (LGDJ), 1984, pp. 24-25.

<sup>85</sup> Reynaud André, Le plateau continental de la France, LGDJ, 1984, p. 31.

<sup>86</sup> Law No. 76-655 of 16 July 1976 on the economic zone and the ecological protection zone off the coast of the territory of the Republic. Decrees from the State Council create economical zones off the coast of different territories. Are published in the United Nations these of February 11, 1997: from the Belgium border to the Spanish border, of February 3, 1978: Adelie Land, Scattered, Clipperton and Reunion islands. Law No. 2012-1148 of October 12 2012 regarding the EEZ off the coast of the territory of the Republic in the Mediterranean.

The law of May 11, 1977 regarding the continental shelf planned to upgrade the law of 1968 to compliance with community law and adapt it to the disposition of the convention of London of 1973 about the prevention of pollution made by ships. It does not create a new definition of the continental shelf which keeps the criteria of depth and exploitable of the convention of 1958 whereas the law of 1976 about the economical zone adopts the criteria of distance of 188 nautical mile beyond the 12 nautical mile of the territorial sea. Indeed, its article 2 which declares as applicable in the economical zone the law of 1968 about the continental shelf excludes expressly the article 1 of the latter which contains the reference to the Geneva convention.

While leaving unchanged its legislation about the continental shelf <sup>87</sup>, during the Third Convention of the United Nations about the law of the sea, France will support the Irish theory about the extension of the continental shelf beyond 200 nautical mile "which brings a geographic and geological justification to the extension of the continental shelf to the external edge of the continental margin while introducing criteria destined to avoid a vague and excessive extension" and the unique text of negotiation of May 7, 1975 which planned that the shelf would include "the seabed and the seafloor of underwater zones (...) to the external border of the continental margin or at a distance of 200 miles (...) when the border of the continental margin does not expand to this distance".

The signature of the CNUDM in 1982 allows France to claim a continental shelf spreading beyond 200 nautical mile to the external border of the continental margin, without changing its legislation.

#### ☐ The application of community law to the extended continental shelf

The European Union signed CNUDM on December 7,1984 with the deposit of a declaration and filed on April 1, 1998 a formal confirmation with a declaration. In its declaration of 1984, the EU indicates the matters ruled by the Convention with the consideration for which the competence was transferred to the organisation by its member States. "The Community indicates that its member States transferred competences regarding the conservation and administration of the resources of the marine fishing". It adds the transfer "regarding the regulations linked to protection and preservation of the marine environment, competences as expressed in the dispositions adopted by the Community, and also as reflected by its collaboration to some agreements". Finally, regarding the Zone "the Community has competences in matter of commercial policy including the control of unfair economical practices

<sup>87</sup> Following the hearing of Mr. Claude Girault from DéGéOM on November 27, 2012, general representative to the Oversea, precises that the legal framework applicable to mineral substances held in the French seafloor is mainly constituted by law loi n° 68-1181 of December 30. 1968 regarding the exploration of the continental shelf and the exploitatiopn of its resources, and its decree of application n° 71-360 of May 6, 1971 (severally modified by the law n° 77-485 of May 11,1977 and its decree n° 85-1289 of December 3, 1985, with the decree n° 71-361 of May 6, 1971 - penal dispositions - and decree ° 71-362 of May 6, 1971, - authorisations of preliminary prospecting -), by the decree n° 2 006-798 of July 6, 2006 regarding prospecting, research and exploitation of mineral of fossil substances held in the public seabed and the metropolitain continental shelf (marine aggregates) and by the mining code. The application of these norms in the Overseas depends on the legislative process (identity or speciality) applicable in each ultramarine authority.

<sup>88</sup> Reynaud André, Le plateau continental de la France, LGDJ, 1984, p. 31, footnote n° 87.

<sup>89</sup> A/CONF. 62/WP. 8/Part. II, a t. 62.

In its declaration of 1998, it is stipulated that in matter of transfer of competences regarding the conservation and the administration of the marine fishing resources, "this competence applies to waters under national jurisdiction and in open sea" and adds that it "considers that the Convention does not acknowledge the right and the jurisdiction of the coastal State reaarding the exploitation, conservation and administration of fishing resources other than sedentary species beyond its exclusive economical zone". This declaration also contains as an annexe a list of community actions referring to subjects dealt with by the Convention and the agreement on part XI (the Zone) in the sector of marine safety and prevention of pollution, in the sector of protection and preservation of the marine environment (part XII), in the sector of research and scientific and technological collaboration about the marine environment, and the conventions of which the Community is a stakeholder. Therefore, the European regulation regarding the conservation and administration of marine fishing resources in open sea applies to the water column beyond the extended continental shelf on the one hand, and, on the other hand, the community actions regarding the marine safety, prevention and pollution, protection and preservation of the marine environment, scientific research in the marine environment are applicable to the territories of the member States; but, in the only measure where the agreement stating the European community applies to these territories.

There was the question of the application of community law to the French continental shelf given the incompatibility of article 2 of the law of 1968 with the Treaty, application of which France was against until its modification by the law of 1977. In a "Memorandum regarding the applicability of the treaty of the EEC to the continental shelf" of September 18, 1970, the European Community assessed that "the continental shelf can be assimilated, as for the applicability of the treaty, to the territories of the signatory States over which they have sovereign rights" and that "the actions taken by the Community for the application of the Treaty are ipso facto applicable to the continental shelf". It adds that if "the individual exercise of sovereign powers by a member State (...) must be submitted to the Treaty of Rome as it directly concerns the practise of the economical activity covered by the Treaty" Thus, the activities led on the continental shelf come under the Treaty as any other activity <sup>90</sup>. As for the question of the binding of the external limits of the continental shelf, it depends on the exclusive competence of the member States.

## The main authorities

The government entrusted the EXTRAPLAC programme with design and creation of the extension of the continental shelf, to several organisations.

#### ☐ General Secretariat of the Sea (SG MER)

Near the Prime minister, the SG Mer was created by decree on November 22, 1995. It sets the orientation of the governmental action in all the areas of the marine activity. The coordination of the extension of the continental shelf was given to the SG Mer which assures

<sup>90</sup> See judgment of the Court of Justice (EJCE), Great Room, January 17, 2012, Case C\_347/10 Salemik: «As soon as an adjacent continental shelf to a member States is under its sovereignity, fonctional and limited (...), a work accomplished on set or floating installations located on the continental shelf, as part of activities of exploration and/or exploitation of natural resources, must be considered, for the application of the Union law, as accomplished in the territory of the concerned State... «.

its mission through a steering committee. The latter associates the ministries in charge of foreign affairs of the Overseas, the research, the industry, the sea and the budget.

General Secretariat of the Sea established a budget for the EXTRAPLAC programme. An insufficient estimation of the budget necessary for the preparation of the requests for 14 territories, 13 of which are ultramarine territories, was perceived very quickly upon the revelation of the budgets set by other States. Set to  $\in$  2.5 million per year, Steering Committee had to compensate this sum using its proper resources, of nearly  $\in$  1 million per year, the organisms  $^{91}$  associated to the realisation of the programme. Even this extension had been insufficient to enable the complete and satisfying the preparation of several applications in good time  $^{92}$ . This under estimation probably led to the non-realisation of the mission handed over in 2003 to the SG Mer to update the knowledge of the resources of the continental shelf and, at the same time, lead the EXTRAPLAC programme $^{93}$ .

By delegation of the General Secretary of the sea, the IFREMER, industrial and commercial public undertaking (EPIC) was entrusted with the executive secretarial department of the preliminary documents to the extension of the continental shelf with the CLCS as it was inevitably necessary to add a scientific and technical expertise for the realisation of the EXTRAPLAC programme.

The filed request of extension has to fill the requirements of article 76 of the CNUDM and the scientific and technical Directives which the CNUDM promulgated in 1999 for the establishment of the delimitation of the external limits of the continental shelf beyond 200 nautical miles. The process instituted for the delimitation of the external limits combining legal and scientific concepts involves an interpretation that might be tricky for both the legal expert and the scientific expert. The CLCS then clarified the direction to be given at the end of article 76, which had not been defined in 1982, and proposed in the coastal States, as far as possible, the follow-up of a unique practice as for the requirements of article 76 by proposing methodologies relative to geodesy, to the hydrography (determination of the isobaths of 2 500 meters), in geomorphology, in the determination of the base of the bank, in the oceanic and submarine ridges, in the sandbanks, in the geophysics (thickness of sediments), and in the external limits.

The data collection and scientific information necessary for the establishment of the files of extension, services of expertise (geology, geophysics, hydrography, geodesy) and the gathering of means (fleet of ships, measuring instruments such as multi-beam sonar, seismic survey reflection, magnetometers, gravimeters etc., equip) do not seem to have been able to be completely assured within the framework of the programme EXTRAPLAC and the credit note so prevented the establishment of a complete file If the current difficulties cannot be established during this step because of the absence of disclosure of information by the stakeholders, they can be revealed during the review of the applications by the CLCS.

<sup>91</sup> Notably the SHOM, IFREMER, IPEV, IFPEN and other organisations of research under the administrative supervision of the ministry of Research.

<sup>92</sup> Hearing of Mr. Jean-Yves Perrot, before members of the Overseas delegation, September 25, 2012, he declared: «EXTRAPLAC the programme is coming to an end. It was financed somehow but allowed France to deposit in good time, at the risk of asking for extension of delays, legal and necessary instruments to the extension of its continental shelf». Underlined by us.

<sup>93</sup> Hearing of Mr. Walter Roest before members of the Overseas delegation, June 26, 2012.

## ☐ French Ministry of Foreign Affairs (MAE)

Within the Ministry of Foreign Affairs, the legal and marine questions are handled in the legal department by the division of the marine law, of the river law and of the poles. This division has the particular role to watch the respect for the marine law such as it is established by the Convention) of Montego Bay as well as by the jurisprudence of the International Court of Justice and the international Court of the maritime law.

Under the reserve of the arbitration of the Prime Minister, MAE in a central role in the decision to judge the opportunity of the signing of acts of foreign policy committing France (for instance: a marine delimitation) like that is specified by the circular of May 30, 1997 of the Prime Minister relative to the elaboration and to the conclusion of the international agreements and the Legislative Guide of June 6, 2005.

The realisation of the EXTRAPLAC programme required the recourse to the MAE and to its expertise regarding international relations. The competence for the questions relative to the conflicts which can result in the binding of the external limit of the continental shelf is the responsibility of the States. **States submitting a request have to inform the CLCS of any conflict regarding the delimitation of the continental shelf between States of which the coasts are neighbouring or face each other, or in case of other not solved ground or maritime conflicts..** They have to give as well to the CLCS the insurance that the request will be handled without prejudice with questions relative to the binding of the limits between States.

The preparation and the deposit of every French application, - Except for Saint-Paul Islands and Amsterdam Islands and the Clipperton Island for which the French claims in the demand of underwater territories were not astride those of another State - implied for the MAE the respect of these two prescriptions.

To ensure the satisfaction of the claiming of an extended continental shelf, that is the prevention of any refusal of examination of the request and the pronouncement of recommendations by the CLCS, MAE, by means of preliminary contacts with the neighbouring States, had to reach preliminary agreements of delimitation, or to complete those existing, in order to cover all of the continental shelf and its extension.

If not, France could either submit joint requests or single ones by asking for the recommendations composition either by not taking account of the existing limits betweens those States or by specifying in what way the request is presented without damaging the questions about the limit fastening with another state or agree on temporary agreements of deposit of the request without prejudice questions relative to the binding of the limits with another State, is finally, in the presence of a ground or marine conflict, to ask the review of the application by presenting the preliminary agreement to all the States involved in this conflict.

The deposit of the application tends to preserve the rights of the concerned territory while the diplomatic climate gets suitable to solve the conflict. It finally allows the review of the application in question and the one of the foreigner State without the claiming State to lose its rank in the order of review of the applications which are reviewed in the order of which they were filed and as soon as the conflicts which prevent the review are lift. The non-deposit of an application during a conflict is not considered by the Internal Regulation of the CLCS since every coastal State must deposit its application as soon as possible to let the third parties know the external limits of its claim, including the AIFM.

# The programme of Reasonable extension of the Continental shelf (EXTRAPLAC)94

The Interdepartmental Committee of the sea (CIMER), on April 1, 1998 shows the importance that France gives to the marine fact and the stake of a marine policy which constitutes the position of France in the Overseas of which resources need to be protected. It considers the development of a programme of exploration and oceanographic research in the Overseas in matter of delimitation of the continental shelf. Without any precision, this CIMER announces, what would become the programme EXTRAPLAC.

It is the CIMER of April 29, 2003 which manifest the government's wish to implement the provisions of the UNCLOS in its domestic law and adapt its regulation guaranteeing the protection of the marine environment and the concerted occupancy of the seabed in cohesion with the regulations established for the territorial sea and the public maritime domain. This meeting notes that France can legitimately claim the extension of its continental shelf beyond 200 nautical mile. This claim must be based on a technical file and be formulated before May 13, 2009, deadline set by the United Nations. France, which can, at this time, expect extensions equal as 700,000 km², especially because of the Overseas, implemented the EXTRAPLAC programme to gather data related to the potential zones of extension. Reassuring the importance of this programme, the CIMER endowed it until 2009 of an annual financing of € 205 million. It indicates the necessity to re-evaluate the knowledge of these resources and to update the inventory of the resources of the seafloor of the national continental shelf. 95.

The SHOM gave in 2003 to EXTRAPLAC a theoretical study dealing with the possibilities of extension of the French legal continental shelf beyond 200 M from the point of view of article 76 of the CNUDM. This study aimed to apply the hydrographical and geological data available, general and public in order to determine for each French territory the probability of existence of an extension and its approximate surface area. The results were supposed to contribute to define the complimentary measures to realise as part of EXTRPLAC and other priorities. It quantified then the extended continental shelf to more than 1.1 million of km². This assessment excludes certain territories for which no extended continental shelf is considered due to the presence of third States or even the non-existence of an outer edge of the continental margin. This is the case for example of Saint-Martin and Saint-Barthelemy.

In October 2004, EXTRAPLAC shows the "Works of mapping of the legal continental shelf as part of article 76 of CNUDM" One can read that the "Budget [is] 16 M $\in$  (2003-2009) to compare with Canada (40 M $\in$ ) and Denmark (18 M $\in$ )".

<sup>94</sup> Website dedicated to the programme EXTRAPLAC: <a href="http://www.extraplac.fr/FR/programme/projet.php">http://www.extraplac.fr/FR/programme/projet.php</a>.

<sup>95</sup> See the article by M. François Grosrichard, «La France tarde à faire valoir ses droits pour l'extension du plateau continental. Un territoire de 550.000 km² à prospecter. «, Le Monde from April 5 2002, and the article by M. Hubert Levet, «La France délaisse son ' or bleu ' «, Le Figaro from April 5 2002. The notes of Elie Jarmache are noticeable, as he was head of international relations in IFREMER, in answer to the question of the knowledge of the file of extension of the French continental shelf: «This is the most complete chaos. There is no real impulsion or identified financial line «.

<sup>96</sup> Presentation by Mr. Walter Roest, Benoît Louvrieu, from IFREMER, Sami Youssef, from SHOM, Roland Vially, from IFP Énergies nouvelles and a workgroup EXTRAPLAC, October 22, 2004.

As the EXTRAPLAC programme mainly aims to prepare the files for all the potential extension zones, it could not draw an inventory, for lack of time and money, of the natural resources present in unknown <sup>97</sup>. It worked in order to submit simple and partial requests and joint requests with other coastal States sharing the same continental shelf and prepared according to the methodology planned by article 76 of the Convention. The Steering Committee meets twice a year to define its objectives and priorities, approve programs and budgets, and validate strategic options.

Under the authority of the Steering Committee, a project group assures the project management of the program with the definition and the conduct of the studies and necessary operations for the establishment of application files. For its part, the MAE is in charge of taking all of the diplomatic initiatives that can permit the registration of the application while making sure that the neighbouring states do not oppose to it, in which case the latter would not be examined by the CLCS. The project group is composed of the IFREMER who leads it, the Minister of Industry, the Naval Hydrographical and Oceanographic Service (SHOM), and the French Institute of Petroleum and New Energies (IFPEN). It can take on the services of all the necessary specialists, such as the French Polar Institute Paul-Émile Victor (IPEV). The financing is provided by the Minister of Industry.

Because of the lack of the programmed budget, the participation of other State organizations have permitted the increase of the initial endowment. Mr. Élie Jarmache promoted that by adding to the contributions of scientific organizations that have participated in the implementation (time spent using boats, work time of the engineers and scientists, etc.)<sup>98</sup>, the consolidated annual budget would instead be in the range of 3.5 million Euro and the total program budget in the range of twenty million Euros for the years 2003-2009. The Overseas delegation notes that, in comparison, Canada would have dedicated 100 million Euros overall to its program of the Extension of the Continental Shelf. Denmark would have spent 40 million.

In 2008, Australia obtained the possibility to extend its continental shelf by 2.5 million km² following the recommendations of the CLCS, and while the deadline for the registration of French requests was on May 13, 2009, it will be noted between 2004 and 2009, that not even CIMER looked into the question of the continental shelf. And yet, "time is of the essence" IFREMER reminds in August 2008<sup>99</sup>. Indeed, it seemed that the time had passed to complete the EXTRAPLAC program before the deadline of May 2009. Five years to make campaigns in the 14 geographic zones dispersed over all the oceans was a challenge nearly impossible to stand up to¹00.

By the deadline of May 13, 2009, only 5 requests will have been filed instead of the 9 expected requests. This perfectly illustrates the Secretary General of the Sea's

<sup>97</sup> Hearing of Mr. Walter Roest, responsible for the «Geosciences and deep ecosystems « sector and head of EXTRAPLAC programme at IFREMER, before members of the Overseas delegation, June 26, 2012. In July 2012, Mr. Roest became superintendent of the CLCS.

<sup>98</sup> Hearing of Mr. Élie Jarmache, legal officer in charge of the Mission «Law of the Sea» with the General Secretariat of the Sea, before members of the Overseas delegation, June 26, 2012.

<sup>99</sup> Davesne Solène, «Domaine maritime. Bataille diplomatique en eaux profondes «, L'Usine nouvelle, July 17 - August 27, 2008.

<sup>100</sup> Mr. Roest's response to the reporter's questions, December 3rd, 2012.

declaration on October 19th, 2011: "In the beginning of 2009, first the bitter acknowledgement of 5 years without the Inter-ministerial Committee of the Sea, acknowledgement of our country's disinterest in its naval destiny (...). "101"

The program had to be followed as it was not ended. Examination of eight requests remained in progress by the CLCS since only one recommendation had been issued in May 2009, meetings in New York with the CLCS had to take place again, the responses prepared to the posed questions and three preliminary inquiries had to be changed into requests again before mid-2013, with their preparation implying the campaigns on the seas. Mr. Élie Jarmache points out that the prolongation of the budget had been granted by Matignon at the end of 2009/2010<sup>102</sup>. A new budget had been established in January 2010 that had to cover the period going up until 2018, in the order of 4.2 million Euros<sup>103</sup>. Concerning the preliminary inquiries, this budgetary extension permitted the accomplishment of a campaign off the shores of Wallis and Futuna and will permit the holding of a campaign lasting about ten days off the shores of The Marguesas Islands. A campaign of three days is foreseen for St. Paul and Amsterdam<sup>104</sup>. In his speech at Havre, on July 16, 2009, the President of France declares: "I came today to Havre to repair a historical oblivion. The overly long forgetfulness that France had of its maritime vocation. How could we have forgotten that our country had the second largest oceanic territory in the world? (...) How is it possible that we have neglected up until now the incomparable diversity and wealth of our maritime areas overseas? How can we neglect any longer our strategic presence on the three oceans on the planet, in the two hemispheres and as far as the South Pole, on the Antarctic continent? I came to tell you that France must stop ignoring the formidable maritime fate that could be its own." Speaking, without mentioning the continental shelf, and this will be moreover the only reference to this maritime area in the speech, the president of France adds: "You understand, I hope that we always act for a reasoned and ecologically responsible exploitation of marine resources, including raw mineral material. The sea can conceal considerable deposits of raw material that are a wealth that our country cannot neglect in an era of rarity. But the prospecting and exploitation of these oceanic mineral resources should always be a part of the framework of lasting development, or it never will".

It will be necessary to expect the CIMER on December 8, 2009 so that the government adopts the Blue Book that determines the national strategic counselling for the sea and coastline. It reaffirms the place on the international level at which France presents on all the oceans. "With this Blue Book, France concretely translates its maritime ambition and its will to combine economic developments and environmental preservation. It is decided to take on an action working towards understanding and the surveillance of maritime areas, while drafting the cartography of the endangered areas of the continental shelf destined to fill the current gaps of our knowledge about this indispensable aspect to the development of our national strategy.

<sup>101</sup> Communications and memories of the Naval Academy, N° 1 (October-December 2011), closing remarks of the Prefect Jean-François Tallec, Secretary General of the Sea, p. 63.

<sup>102</sup>Hearing of Mr. Élie Jarmache before members of the Overseas delegation, June 26, 2012.

<sup>103</sup>Elements of information provided by Mr. Élie Jarmache on January 18, 2013, in reply to written question of the rapporteur.

<sup>104</sup>Hearing of Mr. Élie Jarmache before members of the Overseas delegation, June 26, 2012.

An inventory study of the endangered areas of the continental shelf will be carried out in the late end of 2010 to arrive at a collection program proposition for 2011-2015".

At the end of 2009, CIMER implicitly reminded that the CIMER of 2003 had already decided to update the resources at the bottom of the oceans, which had not been able to be carried out due to a lack of funds devoted to EXTRAPLAC who had used its available resources for the preparation of extension requests.

The Blue Book, while striking that "The credibility of French maritime politics is based on above all the ability of the French state to exercise its responsibilities at sea"<sup>105</sup>, also gives a new momentum to "the action of the state at sea". This notion "recovers the missions of public interest that the state exercises at sea, with the exclusion of missions of defence, [resulting in] concretely by the exercise of prerogatives of public power for police missions or to maintain public order, and by the conduct of public service actions such as salvage or the struggle against pollution"<sup>106</sup>. The Blue Book considers that the protection of national interest brings "The navy [assures] the security of French areas while carrying out general supervision of the nautical surroundings and watching over the effective application of the regulation by the nationals and foreigners [among other places] on the continental shelf". For the management of public marine resources, it envisages that "on the occasion of these naval surveillance missions, the navy watches over the conservation of the marine energy and mineral resources (...) [and] also controls the scientific naval research missions in the areas placed under French jurisdiction"<sup>107</sup>.

The action of the state at sea devised in 1978 developed timidly in comparison to the EXTRAPLAC program 2002-2009, then was reinvigorated in 2009, in its pursuit. If it has not accompanied the period of the extension conquest by authorizing the collection of data and information necessary for the establishment of the request of CLCS, notably in the areas of demand overlap, such as St. Pierre and Miquelon and Clipperton, since 2010 it is no longer unfamiliar to the EXTRAPLAC program insofar as it is invested, among other objectives, to preserve the security of maritime areas. The Blue Book notes: "France has thus created areas around its territories where its jurisdiction applies; however, their boundaries are not complete. On the other hand, the sovereignty and jurisdiction of France on its maritime areas is not always assured: it is even contested for certain areas by third-party states. This situation limits the possibilities of effectively protecting these areas but also developing their resources. It is not satisfactory that as far as the responsible state is not clearly defined, the areas without boundaries make up the potential 'lawless' areas" roes if the name of the marine area is not indicated, one can easily identify it as including the continental shelf as well. In the face of "greed" that

<sup>105</sup>Livre bleu, Stratégie nationale pour la mer et les océans, December 8, 2009, p. 73.

<sup>106</sup>Adam Patricia and Vitel Philippe, deputies, information report N° 4327 L'action de l'État en mer, February 7, 2012, Assemblée nationale, p. 3. This report is dedicated to the continental shelf of 200 M, p. 4.

<sup>107</sup>Adam Patricia and Vitel Philippe, deputies, information report N° 4327 L'action de l'État en mer, February 7, 2012, Assemblée nationale, p. 8 and 9.

<sup>108</sup>Livre bleu, Stratégie nationale pour la mer et les océans, December 8, 2009, p. 58.

gives rise to the maritime areas around Clipperton, Matthew and Hunter, and others, "military presence is vital to exercising sovereignty" reminds the deputies Adam and Vitel<sup>109</sup>.

It will be the CIMER of 2011 who will decide "to develop a national strategy for mineral resources deep in the sea". This means "finding new deposits of raw, non-energetic materials, preferably accessible to European interests…)". It seems however that the envisaged application in the framework of the action plan's definition for strategic metals in the waters under the national jurisdiction and in the Zone is currently limited to only 200 nautical miles inside the continental shelf.

It will only be after the publication of the exterior limits of the continental shelf extension that this new space will come out of the potential "lawless" zone in which it stays confined. The action of the state at sea will allow it to exercise its power there more efficiently; which is not the case today due to the fault of political impulsion and means. The state will have to manage these areas under its jurisdiction by providing police and monitoring positions in order to promote the lasting development of natural resources. The report of the National Assembly on the action of the state at sea from February 2012 considers that the affirmation of the place of France in international context implies "for it the responsibilities that it must take on, which supposes notably a more precise delimitation of areas placed under its jurisdiction and to place in these zones of the legal methods and techniques that permits guaranteed police missions"<sup>110</sup>. Finally, during its last communication related to maritime politics, the government reminded that France has a major playing card in this domain. But this communication does not deal with the conditions for the completion of the EXTRAPLAC program and the consequences of giving it to them<sup>111</sup>.

## Publication of the outer limits of the extended continental shelf

Article 76, Paragraph 8, of the CNUDM entrusts the attachment of the exterior limit of the continental shelf to the only coastal state. It establishes that: "The limits established by a coastal State on the basis of recommendations [by CLCS] shall be final and binding". This implies that the opposability to the exterior continental shelf extension limit only increases in a coastal state, that must, to do this, give the required publicity on cards or lists of geographic coordinates and register a copy to the General Secretary of the United Nations and to the General Secretary of the AIFM, in accordance with Article 84 of the Convention. This latitude authorizes the coastal state to file a revised request insofar as it would assess not being satisfied by the recommendation of the CLCS. France could thusly, to the degree deemed necessary, file a revised request in an attempt to extend the exterior limits kept by the CLCS. It is justifiable by the production of new obtained data, for example following a new oceanographic campaign.

<sup>109</sup>Adam Patricia and Vitel Philippe, deputies, information report N° 4327 L'action de l'État en mer, February 7, 2012, Assemblée nationale, p. 5. Hearing of Mr. Cyrille Poirier-Coutansais before members of the Overseas delegation, October 23, 2012.

<sup>110</sup>Adam Patricia and Vitel Philippe, deputies, information report N° 4327 L'action de l'État en mer, February 7, 2012, Assemblée nationale, p. 7. See also chapter 2 of that study.

<sup>111</sup>Communication of the Council of Ministers of November 21, 2012.

The EXTRAPLAC program 2003-2009, it seems, did not envisage the question of the publications of the exterior limits of the continental shelf extension. It will only be much later, during the CIMER of 2011, that France will begin to preoccupy itself with the task of envisaging the instalment of a national program for maritime delimitation and promulgation of external limits of its state-controlled abilities, France shows an enormous delay as far as the filing of decrees for the delimitation of maritime zones <sup>112</sup>. The decision would not even have been taken by the minister in charge of keeping the publications of maritime limit decrees<sup>113</sup>.

Likewise, following the CIMER of 2003 that had decided to transpose the CNUDM arrangements into internal law, the CIMER of June 2011, in relation with the EXTRAPLAC programme and in the domain of the application of the Montego Bay Convention, declares "without established boundaries, our maritime domain under national jurisdiction is not enforceable to third-party countries. Acts of protection and exploitation in these areas could be found to be weakened in the framework of deep mineral resource exploitation, and of the continental shelf extension process (...)". CIMER added that it decided "in order to affirm our country's sovereign rights in regards to maritime areas and natural resources of (...) their ground and underground" to launch and entrust SHOM with a national programme to "delimit maritime areas" which gives the "responsibility (...) of guaranteeing collection, modernization, and the use of all maritime boundaries of areas under French jurisdiction".

The same CIMER of 2011 charged SHOM with participating in a national programme of maritime delimitations defined thusly:

#### "2. The delismitation of the maritime areas

In order to give more coherence, visibility and solidity to the affirmation of laws and French jurisdiction over maritime areas and natural resources of their ground and underground, CIMER reserves the following actions:

- To achieve in the optimal time limit, the determination of baselines for the group of departments and communities overseas;
- To prepare a bill relative to the group of maritime areas;
- To prepare a decree to set the baselines, and territorial water limits, of the economic zone and the ecological protection zone as well as the extension limits of the continental shelf;
- To officially communicate to the Secretary of the United Nations and to the International Seabed Agency this decree upon its publication;
- and to start the definition of a national 'Maritime area delimitation' programme".

The General Secretary of the Sea has made the reasons behind this programme as follows: "Securing our maritime areas. Why be pleased about our 11 million km² if these areas are disputed and therefore cannot be exploited. Why would they be disputed, when in reality they are disputed in so many places? Because if the territorial water limits and EEZ limits are outlined on our maps, the precise delimitation of baselines and these other two limits had often not been carried out. Even worse, the orders and decrees officialising these limits in the domestic law have not been adopted or have been established on obsolete grounds, which mean that

<sup>112</sup>Hearing of Mr. Élie Jarmache before members of the Overseas delegation, June 26, 2012.

<sup>113</sup> Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

these are older than Montego Bay. Even worse the notification before the United Nations is often incomplete and therefore non-binding.

And so, our Inter-ministerial Committee of the Sea has decided to restore the order to all this in the two coming years, to gather all pertinent texts by creating a code for the maritime areas, and to create an Internet website so that our economic players have this information easily at their disposal<sup>114</sup>".

During his hearing, Mr. Frachon reminded that SHOM guarantees national expertise in terms of maritime delimitations with respect to international law<sup>115</sup>. He then carried out the official publication of sea charts, documents disputable to third-party states in the matter of maritime delimitations. He also supplied technical support to the Minister of Foreign Affairs for negotiations with the 32 countries that share an oceanic border with France.

No publication has occurred regarding the fixation of the outer limits of the extended continental shelf of any French territory, nor by filing its coordinates, nor by the filing of the maritime charts before the United Nations and the IASB<sup>116</sup>. This is due to the same previously studied difficulties: the publication was still not financed, SHOM was still not equipped to assure this new increase in work and MAE did not regulate the unresolved problems with delimitation although for the latter, the lack of agreement was not an obstacle to the publication<sup>117</sup>.

It will then be up to SHOM, MAE, and the Overseas minister, to set all exterior limits of the continental shelf on the basis of CLCS's recommendations to conform to Paragraph 9 Article 76 of the Convention of Montego Bay according to which, after the coastal state has set the exterior limit based on the recommendation, it "delivers pertinent maps and information to the General Secretary of the United Nations, including geodesic data, which indicates in this permanent way the exterior limits of its continental shelf. The Secretary-General shall give due publicity thereto". To this day, three states have assured this publicity: Ireland, Mexico, and Philippines. France has not yet filled this obligation, because it has not yet set exterior limits on its borders, which will certainly rise in 2009.

## The results of the EXTRAPLAC action at the beginning of 2013

Ten years after the commencement of the EXTRAPLAC programme, the results can be summarized as follows: five requests were filed and were made the subject of CLCS recommendations. Four requests were awaiting examination before the CLCS, one of which had just been submitted in December 2012 and two request registrations were announced

<sup>114</sup>Communications et mémoires de l'Académie de Marine, N° 1 (October-December 2011), closing remarks of the Prefect Jean-François Tallec, Secretary General of the Sea, p. 69. The CLCS must know the two drawn lines from the baselines: the limits of 200 nautical mile and 350 nautical mile. But the CLCS has no power to assess the validity of these two limits provided by the coastal state.

<sup>115</sup>Hearing of Mr. Bersani in private interview with Mr. Grignon, CEO of SHOM, on Monday, November 12, 2012. Mr. Frachon was accompanied by Mrs. Dominique Carval and Mrs. Catherine Leidinger.

<sup>116</sup>Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

<sup>117</sup> Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

for 2013 following preliminary inquiry registered in May 2009, one preliminary inquiry had been filed then withdrawn, one file was subject to requests for reserved rights in the future, six files had not been registered. France has not even established merely one of the outer limits of the extended continental shelf on the basis of 5 recommendations it received. Furthermore, no programme for the knowledge of seabed resources had been created since this one had been planned in 2003.

All of the requests and preliminary inquiries submitted by France to the CLCS had been submitted in accordance to Article 76, Paragraph 8 of the CNUDM. None had been filed on the basis of Annex II of the final Act of the Convention carrying "Declaration of interpretation concerning a determined method of application to set the outer edges of the continental margin" known as the "Bengal Clause" which the whole coastal state can invoke, if applicable. This then allows the liberation of the two constraining lines that limit the extension of the continental shelf, either at 350 nautical mile from the coast or at 100 nautical mile from the 2,500 nautical mile of isobath. All of the French requests remained in the limit of 350 nautical mile from the coasts, except those of the Kerguelen Islands and Amsterdam Island which combined the two limits.

# The filed claims have been the object of the recommendations by the CLCS

The requests for extension relative to the Bay of Biscay, French Guiana, New Caledonia, West Indies, and Kerguelen had been submitted to CLCS and the recommendations had been transmitted by the CLCS. France has not yet set the exterior limits of the expanded continental shelf based on the basis of the recommendations.

#### ☐ A joint application relating to the Bay of Biscay and the Celtic Sea

The joint request between France, Ireland, Spain, and United Kingdom was submitted on May 19, 2006 to the CLCS with the aim of determining, by these four coastal states, the exterior limit of their continental shelf in the Bay of Biscay and the Celtic Sea<sup>118</sup>. After an order of 34 months, the recommendations had been issued on March 24, 2009 after the occurrence of a problem that the CLCS had overcome by reminding that the surface area of the extension jointly proposed by the four states could not be larger than the sum of the individual surface areas, which each state could obtain with a separate request. The recommended exterior limit grants a slightly smaller surface area than what States have considered. Four years after the recommendation, the publication of the exterior limits of the continental shelf extension of metropolitan France had still not been carried out due to the non-agreement of a boundary pact with Spain.

#### → Data Collection: the BREOGHAM Campaign

The theoretical study of SHOM establishes that the continental margin of the 4 states extends beyond 200 nautical mile of each state. Data on the sediment thickness was collected to prove that the extension could reach the limit of 350 nautical mile. The sharing of the continental margin was to be seen between the 4 concerned states.

<sup>118</sup>Summary of the joint application to the Commission of Continental Shelf Limits concerning the areas of the Celtic Sea and the Bay of Biscay – CLCS Website.

The BREOGHAM campaign established by the EXTRAPLAC program took place in October 2005 on the Spanish ship ESPERIDES in order to collect data and interpretations necessary for the request. This mission was carried out in quadripartite collaboration between Spain, France, Ireland, and United Kingdom. These four countries saw their coastal projection converging toward the centre of the Bay of Biscay. Their claims on the extension of the continental shelf thus concerned the same maritime region. These four European countries decided to do the BREOGHAM campaign together, instead of carrying out four separate oceanic missions. The mission proceeded in the wake of another mission concerning the extension of the Spanish continental shelf off the shores of the Bank of Galicia (west of Cape Finisterre). The principle information researched was the following: sediment thickness in the Union Basin area (centre of the Bay of Biscay) and the determination of the base of the continental slope in the southeast area of the Goban Spur (region of Menez Braz).

### → The filing of the application with CLCS

Joint application was filed May 19, 2006. The application covers an area of about 80,000 km² of expanded continent. It clarifies that the four coastal states had been helped by Mr. Peter F. Croker, member of the CLCS, for the preparation of this application. It also informs the Commission that the claimed area of the continental shelf was subject to no difference between the requesting states and all others. Finally, it indicates that in order to set the exterior limit of the continental shelf, the lines concluded from two formulas (those of Hedberg in relation to the base of the slope and Gardiner in relation to the sediment thickness) had been used, and were inside the limit of 350 nautical miles.

### → The examination of the application and the recommendations of the CLCS

The first examination of the request took place during the eighteenth session of the CLCS, on August 22, 2006, and concluded by the creation of a subcommittee in charge of examining and submitting the conclusions in a later session<sup>119</sup>. Over the course of its operation, the subcommittee proposed that the requesting states revise the exterior limit of the continental shelf that they had envisaged while taking account of the observations that they had taken. The requesting states accepted this proposition "without prejudice to the current request nor to any other request that might present itself in the future".

During the twenty-third session of the CLCS, from March 2 to April 9, 2009, the subcommittee presented its recommendations to the commission, and met with delegations from the four coastal States <sup>120</sup>. Over the course of this meeting, Mr. Wilson, the consultant of the states, reminded "that the four coastal states would have been able to separately submit the requests that would have risked overlapping. They had judged in preference of presenting a joint request given that once the commission's recommendations were given, they would be in time to establish the exterior limit of their continental shelf of the region before delimiting each of the remaining parts". The consultant returned to the issue of the encountered difficulty (to use the combined number for the 350 nautical mile baseline or not) and had driven the states to propose a revised line, indicating "in order to favour a speedy conclusion to the joint request examination, the four states (...) have proposed a revised exterior limit, which [the subcommittee] has accepted".

<sup>119</sup>Minutes of the eighteenth session of the CLCS, CLCS/52 point 8, page 6 - Website of the CLCS.

<sup>120</sup>Minutes of the twenty-third session of the CLCS, CLCS/642 point 4, page 3 - Website of the CLCS.

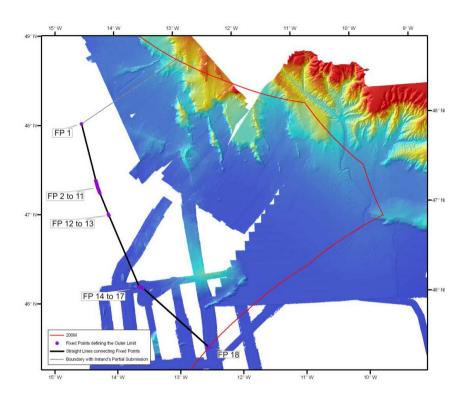
For Mr. Walter Roest, the question was knowing whether the four countries would share the same continental margin. The commission was of the opinion that Spain would not share as much as the other states. The four states could not thus use the same constraint line of 350 nautical miles. A fixed point at the foot of the slope on the northern margin would only allow the application of one constraint line from one margin but not to the other. A state situated on the southern margin could only use a constraint line relative to this southern margin and not that of the northern margin. The states decided to put an end to the examination of the request that had lasted three years by accepting the Commission's position with some reserves.

The difficulty had been exposed by the CLCS as follows: "28. (...) [T]he total surface area of the continental shelf calculated according to the exterior limits proposed in one joint communication could not be greater than the sum of the surface areas of the continental shelf delimited by the exterior continental shelf limits that each considered state would have proposed if they had presented individual communications. In other words, in the whole joint communication, each state must establish criteria that applies to the determination of the foot of the continental slope, the formulas it uses, the constraints, and the exterior limits". (21st session, March 17 - April 18, 2008).

The commission then postponed the joint request in the spirit of its creation which was to permit the examination of the request in the presence of different opinions and to refuse that it be used to increase the claimed land to the detriment of the area. Finally, on March 24, 2009, the CLCS adopted by consensus the recommendations proposed by the subcommittee.

In paragraph 28, the CLCS recommends that the exterior continental shelf extension limits in the region are those that were revised and submitted by the states on June 17, 2008 and constructed on the base of five fixed points connected by straight lines not exceeding 60 nautical mile of length. Point FP 18 is situated 200 nautical mile from Spain and Point FP 1 is situated on the limit proposed by Ireland on May 25, 2005 in its demand relative to the Abyssal Porcupine Plain.

Fig. 3: The outer limits of the extended continental shelf recommended for France, Ireland, Spain and the United Kingdom in the Bay of Biscay and the Celtic Sea



Source: Recommendations of the CLCS relative to the joint request made by France, Ireland, Spain, and United Kingdom on the 19th of May, 2006, concerning the Celtic Sea and the Bay of Biscay, annex IV, summary, p. 15.

## Following up on the recommendations of the CLCS

The filing of this joint request was able to cover up the diplomatic difficulties met today to reach an agreement on the extended continental shelf between France and Spain<sup>121</sup>.

It is now advisable to conclude the boundary agreements with the neighbouring states. But the application of the equidistance is unfavourable to France and the contrary to Spain and Ireland. If France wishes to gain more than a small triangle on this side of the exterior limit, it must negotiate<sup>122</sup>. In the west, there is still the matter of France reaching an accord with the United Kingdom to join the boundary line of the Franco-British sentence of 1977, with the possibility of setting a third point with Ireland.

<sup>121</sup> Hearing of Mr. Élie Jarmache before members of the Overseas delegation, June 26, 2012.

<sup>122</sup> Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

The joint request in the Bay of Biscay shows the limits of exercise attempted by France. The recommendations had been sent out on March 24, 2009, nearly four years had passed and the publication of the exterior limit to the United Nations and to the AIFM had still not taken place<sup>123</sup>. The difficulty seems to lie in the issue of delimiting the expanded continental shelf remaining between France and Spain. One could ask oneself the question to understand why it was necessary to wait for the issuing of the recommendations before initiating discussions about pursuing the line of the January 29th, 1974 agreement as far as the respective extended continental shelf exterior limits. The negotiations risked taking several years before arriving at an agreement with Spain and consequently before assuring the publication of the exterior limits<sup>124</sup>.

#### ☐ An application relating to Guyana

France's request was filed on May 22, 2007 to CLCS in the aim of determining the exterior limits of the continental shelves in the plateau region of Demerara. After an investigation of 28 months, the recommendations had been sent out on September 2, 2009 after the emergence of a problem with the localization of the foot of a slope that the CLCS had overcome by setting a localization that was different than envisaged. The recommended exterior limit grants a slightly smaller surface area than what France had considered. Nearly four years after the recommendation, the publication of the exterior limits of the extended continental shelf of Guyana has not been done because of the non-conclusion of maritime boundary with Suriname and Brazil.

## Data Collection: the GUYAPLAC Campaign

SHOM's theoretical study in 2003 established that French Guyana's continental margin extends beyond 200 nautical mile but does not reach the line of 350 nautical mile. The sediment thickness data were to be collected to prove that the extension could reach this limit. The extension is limited to the west by delimitation with Suriname, always current and to the east by the border with Brazil.

The GUYAPLAC campaign took place in May 2003 on the ship the Atlantis, with the aim of collecting data and interpretations necessary for the request. The operation was carried out under a contractual framework with the Minister of Industry.

### ☐ The filing of the application with CLCS<sup>125</sup>

The request for the extension of the continental shelf clarifies that this extension sits at the foot of the Atlantic margin, between the Demerara plateau and the deep delta of the Amazon. The continental shelf is a neighbour of Suriname to the west, and Brazil to the southeast. France informs the Commission that the continental shelf is subject to no difference between our country and any other state (Suriname and Brazil) and that it uses lines deduced from the formulas to 1% of sedimentary thickness (Gardiner formula) to set the exterior limit of the continental shelf in the limit of 350 nautical mile.

<sup>123</sup> Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

<sup>124</sup>Hearing of Mr. Serge Ségura before members of the Overseas delegation, July 11, 2012.

<sup>125</sup>Summary of the partial application to the Commission of Continental Shelf Limits concerning the areas of French Guiana and New Caledonia - CLCS Website.

The examination of the application and the recommendations of the CLCS

The first examination of the request took place during the eighteenth session of the CLCS, on August 27, 2007 and September 14, 2007 and concluded by the creation of a subcommittee in charge of examining and submitting the conclusions in a later session<sup>126</sup>.

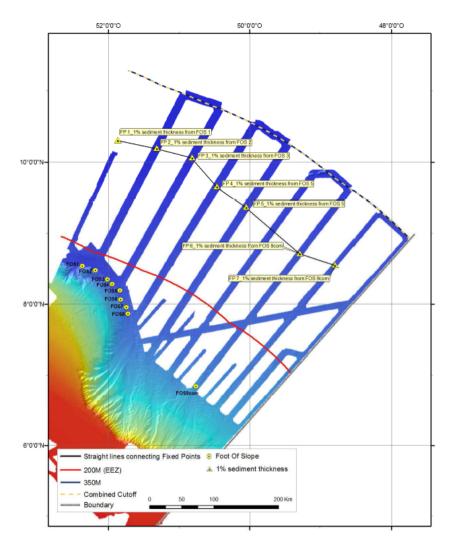
The Commission had been in disagreement with the determination by France on the localization of the foot of slope n°9 and demanded clarifications. The French delegation requested supplementary information in turn. Following numerous discussions and the furnishing of additional data, the subcommittee and the delegation got down to the task of finding an agreement on the adopted approach to define the basis of the foot of the slope. France will revise the position of the foot of slope n° 9

During the twenty-fourth session of the CLCS, from August 10 and September 11, 2009, the subcommittee presented its recommendations to the commission, and the CLCS adopted them by consensus.

In paragraph 40 of the recommendations from May 22, 2007, the CLP recommends that France establishes exterior limits of the extended continental plateau from Fixed Point 1 to Fixed Point 7, leaving the ending limits with Suriname and Brazil indeterminate.

<sup>126</sup>Minutes of the twentieth session of the CLCS, CLCS/56 point 12, page 8 - Website of the CLCS.

Fig. 4: The outer limits of the extended continental shelf recommended for French Guiana



Source: Recommendations of the CLCS relative to the request made by France on the 22nd of May, 2007, concerning French Guiana and New Caledonia, summary, p. 12.

## Following up on the recommendations of the CLCS

The request relative to French Guyana should not, according to the Quai d'Orsay, meet with any particular diplomatic difficulties. An agreement appeared feasible with Suriname as far as it was willing to settle it<sup>127</sup>, which obtained its recommendation from the CLCS on March 30th, 2011 from its request from December 5th, 2008. Time pressed as this made

<sup>127</sup>Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

nearly four years that France had received its recommendations (September 2, 2009) and two years since Suriname received its own.

As for the delimitation with Brazil, in its request, France had set a fixed point on the extended boundary line with Brazil. The recommendation of CLCS gave geographic coordinates of fixed point n°7 that would be appropriate to follow by a line not exceeding 60 nautical mile of length up to the extension of the border line that will be agreed upon between France and Brazil<sup>128</sup>, until it meets with the fixed point OL 1 claimed by Brazil in the additional clause to its request on May 17, 2004 that was subject to a recommendation by the CLCS on March 27, 2007 which had not yet been published and was subjected to a revised request in 2013<sup>129</sup>. France readied itself to conclude the delimitation agreement with Suriname and a compliment delimitation agreement on January 30, 2001 with Brazil. After this new step, the two parties would be able to delimit the entirety of their respective continental shelves.

#### ☐ An application relating to the New Caledonia

France's request was filed on May 22, 2007, in collaboration with the territorial community, to CLCS in the aim of determining the exterior limits of the continental shelves to the southeast and the southwest off the coast of New Caledonia. Following an objection from Vanuatu, France had to ask the CLCS not to examine the request of the southeast. After an investigation of 28 months, the recommendations had been sent out on September 2, 2009 concerning the south-western shelf, without which the particular problems would have to be overcome. The recommended exterior limit grants a slightly smaller surface area than what France had considered. Nearly four years after the recommendation, the publication of the exterior limits of the extended continental shelf southwest of New Caledonia had not yet been carried out due to the exclusion of an addendum to the maritime delimitation agreement with Australia.

## Data Collection: Campaigns NOUCAPLAC1 1 and 2

SHOM's theoretical study in 2003 estimated that the configurations of the maritime delimitations permitted the envisagement of 2 extension zones, one in the southwest and the other in the southeast. The extension is certain in the first. In the second, the position of the foot of a slope still needs confirmation. Delimitation with the continental shelf of the Australian island of Norfolk also remains unconfirmed. In fact, the continental shelf of New Caledonia and that of Australia from Norfolk Isle may overlap. But this overlap had not been anticipated in the negotiations between France and Australia. In case this overlap were to be confirmed <sup>130</sup>, it would require yet another negotiation between the two countries on the delimitation of this area.

The NOUCAPLAC (in August 2004) and NOUCAPLAC2 (August and September 2004) campaigns took place on the ship Atlantis in order to furnish data and interpretations necessary to the extension requests. These NOUCAPLAC1 campaign researches were relative to the nature and continuity of deep structures as well as the determination of the foot of

<sup>128</sup>Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

<sup>129</sup>Hearing of Mr. Élie Jarmache before members of the Overseas delegation, June 26, 2012.

<sup>130</sup>After the examination by CLCS of the French request concerning the southeast zone of New Caledonia.

the slope in the south-eastern area of New Caledonia. Seismic and bathymetric data from the NOUCAPLAC2 campaign were destined to confirm the continuity of the structures, in Lord Howe Rise above others, the natures and sedimentary thicknesses found specified the foot at the slope of the New Caledonia basin.

The NOUCAPLAC1 and NOUCAPLAC2 campaigns had been directed in collaboration with the territory of New Caledonia through the Geological Service (SGNC) of the Office of Industry, Mines, and Energy (DIMENC). The Government of New Caledonia had been informed of the EXTRAPLAC file's progress.

☐ The filing of the application with CLCS<sup>131</sup>

The request clarifies that this extension is divided into two sectors: on in the southwest, the other in the southeast. The extension of the continental shelf in the south-eastern region is situated in the south Loyalty Islands which end against the Cook Fracture Zone. This area is bounded, to the west, by the area under the jurisdiction of Australia. Beyond 200 nautical miles, there is a potential overlap between the French claims, the Australian claims, and the New Zealand claims of the continental shelf. The exterior limit of the continental shelf had essentially been set by using the Hedberg Formula (foot of the slope). The extension of the continental shelf in the south-western region of New Caledonia is situated in the south of Lord Howe's Rise. This extension was made in accordance with the delimitation agreement between France and Australia on January 4, 1982. Due to this bilateral agreement, the entire zone of the continental shelf extension claimed by France rests below the external edge of the continental margin, that is to say below that which France could claim according to Article 76 of the CNUDM<sup>132</sup>. The filed request also informs the CLCS that the continental shelf of New Caledonia in the south-eastern area was subject to exchanges of verbal notes between France and Australia on one hand, and France and New Zealand on the other hand. Through these exchanges, the three states assured the commission that these requests could be treated without prejudice from questions related to the setting of continental shelf boundaries between them. Vanuatu did not give such an assurance beforehand<sup>133</sup>.

The examination of the application and the recommendations of the CLCS

The first examination of the request took place during the eighteenth session of the CLCS, on August 27, 2007 and September 14, 2007and concluded by the creation of a subcommittee in charge of examining and submitting the conclusions in a later session<sup>134</sup>.

The request concerning New Caledonia does not seem, to the knowledge of the Overseas Delegation, to have met technical difficulties during their examination before the CLCS, who would have an influence over the surface area of the obtained extension.

Over the course of the presentation of the French request, Mr. Élie Jarmache, lawyer representative of the French General Secretary of the Sea, confirmed that France asked the commission not to examine the part of the partial request concerning the south-eastern

<sup>131</sup>Summary of the partial application to the Commission of Continental Shelf Limits concerning the areas of French Guiana and New Caledonia - CLCS Website.

<sup>132</sup>DIMENC Department of Industry, Mines and Energy of New Caledonia (DIMENC).

<sup>133</sup>Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

<sup>134</sup>Minutes of the twentieth session of the CLCS, CLCS/56 point 12, page 8 - Website of the CLCS.

area of the continental shelf of New Caledonia, following the objection formulated by Vanuatu in regards to the Isle of Matthew and the Isle of Hunter<sup>135</sup>. Mr. Jarmache insisted that this modification does not signify the recognition of the claims of Vanuatu. Finally, the south-western sector of the New Caledonia continental shelf was not subject to differences and the commission could consequently proceed with the examination of the part of the concerned request. The Service of Mines of the Office of Industry, Mines, and Energy of New Caledonia (DIMENC) participated in the presentation and defence of this file.

The request related to New Caledonia had been filed by France on May 22, 2007 without the last request making sure of the absence of dispute with Vanuatu for the zone situated southeast of this territory, refusing to consider that such a dispute could exist. The result is that, Vanuatu is being opposed to the examination of the request, since then this remains in a state of non-examination. For their part, Australia and New Zealand assured the Commission that the French request for the southwest could be treated without prejudice for the issues related to setting the boundaries of the continental shelf. For the area situated in the southwest, the extension had been claimed in accordance with the delimitation agreement between France and Australia on January 4th, 1982. In the absence of dissent, the commission put out the recommendations on September 2, 2009.

During the twenty-fourth session of the CLCS, from August 10 and September 11, 2009, the subcommittee presented its recommendations to the commission, and the CLCS adopted them by consensus<sup>136</sup>.

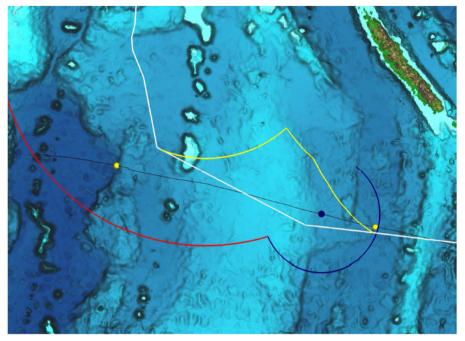
Paragraph 71 of the recommendation indicates that the zone included in 200 nautical mile of France and the maritime delimitation agreement with Australia constitutes the continental shelf beyond 200 nautical mile in the western area of the request.

<sup>135</sup> A letter from the Prime Minister of Vanuatu, Mr. Ham Lini Vanuarorora, addressed to the president of the French republic and reminding that Vanuatu considers the Isle of Matthew and the Isle of Hunter as part of its territory, had been brought to the attention of the CLCS on July 11, 2007, by the Minister of Foreign Affairs and Commerce of Vanuatu.

<sup>136</sup>Minutes of the twenty-fourth session of the CLCS, CLCS/64 point 4, page 4 - Website of the CLCS.

Fig. 5: Recommended exterior limits of the extended continental shelf.

off the coast of New Caledonia



Source: Recommendations of the CLCS relative to the request made by France on the 22nd of May, 2007, concerning French Guiana and New Caledonia, summary, p. 21.

## Following up on the recommendations of the CLCS

The request related to New Caledonia was subject to a recommendation to the southwest. Before the publication of the limits, it sufficed to create an addendum to the Agreement of 1982 to realize the extension of the shelf between the 200 nautical mile and the endpoint of the exterior limit.

As for the southeast sector, the issue of sovereignty over Matthew and Hunter is unacceptable to France<sup>137</sup> and the lifting of the mortgage on the request examination depends on the outcome of the discussions with Vanuatu.

Vanuatu filed a preliminary investigation on August 10, 2009, and revised on July 18, 2012. Claiming that the continental shelf of the Matthew and Hunter Isles is subject to an aged dispute with France that has not yet been settled, and whose nautical boundary delimitations remain on hold, Vanuatu effectuated this registration without prejudice from coming delimitations. Martinique envisages filing the request before the year 2015.

#### ☐ An application relating to West Indies (Guadeloupe and Martinique)

France's request was filed on February 5, 2009 to CLCS in the aim of determining the exterior limits of the continental shelves off the coast of Guadeloupe and Martinique. After an inquiry of 38 months, the recommendations had been sent out on 19th of April, 2012 at

<sup>137</sup>Hearing of Mr. Élie Jarmache before members of the Overseas delegation, June 26, 2012.

which point the particular obstacles must have been overcome. The recommended exterior limit grants a slightly smaller surface area than what France had considered. Nearly a year after the recommendation, the publication of the exterior limits of the extended continental shelf west of the West Indies had not yet been carried out due to the non-conclusion of an addendum to the agreement of a maritime delimitation with Barbados.

Data Collection: the ANTIPLAC Campaign

SHOM's theoretical study in 2003 shows a possible extension to the east, about equidistant to Barbados. To the west, the EEZ of Guadeloupe and Martinique are interrupted by the delimitations of the Aves Island of Venezuela.

The ANTIPLAC campaign took place in January 2007 on the ship Atlantis with the aim of furnishing data and interpretations necessary to the extension requests. This campaign had been led by an observer of Barbados.

The West Indies are situated on an active margin, characterized by the presence of an oceanic subduction zone. This geological context is generally not favourable to the extension of the continental shelf due to the particularly abrupt morphology of this kind of margin. Nevertheless, the West Indies has specific geological characteristics on the Atlantic Coast that allows hope that extension may be possible. Consequently, the ANTIPLAC campaign set into operation a multifaceted sounder and rapid seismic survey so as to chart out the sea front of the accretion zone and the sedimentary thickness off the shore of this front.

☐ The filing of the application with CLCS<sup>138</sup>

The file indicates that this extension is situated at the foot of the margin of the Caribbean. The continental shelf is adjacent to that of Barbados in the south. France informs the commission of the possibility of overlap in the extension request with that of Barbados, but by common agreement, this situation does not constitute an obstacle to the examination of the respective requests to expand the two states.

The examination of the application and the recommendations of the CLCS

The subcommittee had been created during the twenty-sixth session of the CLCS, meeting from August 2nd to September 3rd of 2010<sup>139</sup>.

The request related to the shelf of the West Indies does not seem, to the knowledge of the Overseas Delegation, to have encountered notable technical difficulties during its examination before the CLCS. The subcommittee decided on the French demand's modification on the fixed points FP 8 and 9, lying on the limit of 200 nautical mile from France.

During the twenty-ninth session of the CLCS, from March 19 to April 27, 2011, the subcommittee presented its recommendations to the commission, and the CLCS adopted them by consensus<sup>140</sup>.

<sup>138</sup>Partial submission to the Commission on the Limits of the Continental Shelf on the areas of the French Antilles and the Kerguelen Islands - Website of the CLCS.

<sup>139</sup>Minutes of the twenty-fifth session of the CLCS, CLCS/68 point 13, page 12 – Website of the CLCS.

<sup>140</sup>Minutes of the twenty-fourth session of the CLCS, CLCS/74 point 7, page 6 – Website of the CLCS.

Paragraph 44 contains the recommendation that the exterior limit of the expanded continental shelf of the West Indies should be made up of ten fixed points indicated in the appendix and linked by straight lines with a length not exceeding 60 nautical mile.

Final outer limit line
Continental margin
Combined formulae line
200 M
350 M - Constraint line

Point X on the 200M line

French Antilles (FRA)

Fosse

Fig. 6: The outer limits of the extended continental shelf recommended off the coast of French West Indies

Source: Recommendations of the CLCS relative to the request made by France on the 5th of February, 2009, concerning French West Indies and the Kerguelen Islands, summary, p. 71.

## Following up on the recommendations of the CLCS

Paragraph 45 of the recommendation highlights the final establishment of the exterior limit of the expanded continental shelf in the West Indies region depends on the delimitation with another state. The request related to the West Indies filed on February 5, 2009 leads the MAE to get closer to Barbados and successfully finish an agreement of maritime delimitation on October 15, 2009. This agreement took place after Barbados had filed its request on May 8, 2008 and before the recommendation had been sent out by the commission on April 15, 2010. Following the revised request of July 25, 2011, an additional recommendation had been sent out on April 13, 2012.

Article 3 of the maritime delimitation agreement between France and Barbados on October 15, 2009 clarifies that the defined line of the continental shelf within the 200 nautical mile will be followed beyond point 7 by an adjoining line, geodesic arcs, and three points subject to a list containing their geographic coordinates.

There are only two states left to expand the delimitation line beyond point 7 and to link this point with points 8, 9, or another point situated on a line connecting these two points.

Following the signature of the future complimentary agreement with Barbados on the endpoint of their respective exterior limits, France could effectuate the registration to the United Nations and the AIFM provided in article 84 of the CNUDM.

#### ☐ An application relating to Kerguelen Islands

France's request was filed on February 5, 2009 to CLCS in the aim of determining the exterior limits of the continental shelves off the coast of Kerguelen islands. After an investigation of 38 months, the recommendation had been sent out on April 19, 2012 after difficulties in localizing many slope foots arose which CLCS overcame by setting a different localization than envisaged as well as rejecting the depth constraint line (100 nautical mile from the isobaths to 2500 meters) due to insufficient evidence. The recommended exterior limit grants a substantially smaller surface area than what France has considered. More than one year after the recommendation, the publication of the exterior limits of the extended continental shelf to the west of the Kerguelen Islands had still not been carried out, due to the non-conclusion of an addendum to the Maritime Delimitation Agreement with Australia. In this request, France reserves the rights to the filing for a claim on Adelie Land.

The extension of the Kerguelen Zone also concerns Australia (Heard and McDonald Islands), who had filed the request on November 15, 2004 and who received the recommendation from the CLCS on April 9, 2008.

### Data Collection: Campaigns KERGUEPLAC 1 to 3

SHOM's theoretical study in 2003 put forward a certain extension of the Kerguelen Islands principally on the basis of the foot of the slope, the sedimentary thickness was low, with a limitation on the east by the Australian Isles of Heard and McDonald.

The KERGUEPLAC (February and March 2004), KERGUEPLAC2 (September to November 2005), and KERGUEPLAC3 missions took place on the Marion Dufresne to gather data and interpretations necessary to the requests for extension. This means notably to acquire bathymetric, gravimetric, and magnetic data necessary to determine the foot of the slope of the Kerguelen plate and the detailed cartography of the isobaths within 2500 nautical mile in the key regions. This also means determining the sedimentary thicknesses on the edge of the plate and carrying out dredges to determine the origin of the radial rises to the northeast of the plate. The KERGUEPLAC1 mission focalized on the western region of the Kerguelen plate, the KERGUEPLAC2 mission on the eastern region of the plate, and KERGUEPLAC 3 mission covered the northeast and the southwest areas of the northern part of the Kerguelen plate.

## ☐ The filing of the application with CLCS<sup>141</sup>

The request clarifies that this extension is limited to the southwest by the area under Australia's jurisdiction. It also informs the commission of the absence of any dispute between France and any other state concerning the continental shelf of Kerguelen. The exterior limit of the continental shelf had been constructed from 885 fixed points, calculated for the

<sup>141</sup>Partial submission to the Commission on the Limits of the Continental Shelf in accordance with Article 76, paragraph 8 of the UN Convention on the Law of the Sea concerning areas of French Antilles and the Kerguelen Islands-Website of the CLCS.

most part by using the Hedberg formula (foot of the slope), and by taking the maritime delimitation agreement of January 4, 1982 into account.

Rights reserved for Adelie Land

At the same time of the request, on February 5, 2009, via a note of France's permanent mission to the United Nations' General Secretary, France reserved its rights to file a request in the future for Adelie Land while reminding "the shared principles and objectives by the treaty on the Antarctic and the CNUDM as well as the importance of seeing the Antarctic system and CNUDM work in harmony, and therefore assuring the sustainability of pacific cooperation, security, and stability in the Antarctic zone". This note adds that"In accordance with the commission's ruling, France made a new partial demand not including the continental plate areas adjoining the Antarctic, zones for which a request could be made later notwithstanding the arrangements relative to the 10 year period defined by article IV of annex II of the CNUDM and the decisions on its application taken by the 11th meeting of the states part of the CNUDM."

This note aroused reactions from the Netherlands and Japan. The first state recalled its position of its failure to recognize the pretentions in the Antarctic territories and the demands of the states that reserved their rights to the continental shelf in the Antarctic. The second recalled Article IV of the Antarctic treaty and that it recognized no state's right or pretention to the territorial sovereignty in the Antarctic and, consequently, no right or pretention to the seabed and the undergrounds adjacent to the continent.

The examination of the application and the recommendations of the CLCS

The presentation of the application progressed during the twenty-fifth session of the CLCS, from March 15 to April 23, 2010<sup>142</sup>. The subcommittee in charge of examining and submitting these conclusions to the commission had been created during the twenty-sixth session of the CLCS which was reunited from August 2 to September 3, 2010<sup>143</sup>.

The Committee expressed its disagreement on the position of slope feet FOS 20, 210, 220, 230. France proposed other positions that were refused. Following a French communication on March 23, 2012, the commission finally recommended that these points served as a base to establish the external edge of the continental shelf in the region. Furthermore, in regards to the depth constraint line (100 nautical mile from the isobaths to 2,500 meters), France maintained that the Gallieni Ridge is a shallows that is a natural constituent of the continental shelf. For the subcommittee, it means an underwater ridge. After discussion, it concluded that uncertainties remained in a lack of data in regards to the Gallieni Ridge and considered that France did not report well-founded evidence to its position. It concluded that the constraint line based on depth is not justified for that concerns the Gallieni Ridge and it should apply the constraint line based on the sole distance.

The application in regards to the Kerguelen Islands saw the CLCS oppose itself to France on the position of four feet of the slope and on the localization of the constraint line to 100 nautical mile of the isobaths of 2500 meters. If, from the first divergence, the difficulty had seemed to be easily surmounted, the second would not be the same. Probably, due to the lack of the collection of necessary data and information, and to the methods used to realize it, the CLCS considered that France had not reported well-founded proof to its position.

<sup>142</sup>Minutes of the twenty-fifth session of the CLCS, CLCS/66 point 9, page 7 - Website of the CLCS.

<sup>143</sup>Minutes of the twenty-fifth session of the CLCS, CLCS/68 point 13, page 12 - Website of the CLCS.

All of these issues lead to the reduction in obtaining the claimed surface of 40,000 km<sup>2</sup>. The difficulty at the root of this surface area reduction of 40,000 km<sup>2</sup> operated by the CLCS in relation to the application resides in collecting rock samples operated by dredging with the Marion Dufresne. In order to provide evidence that the CLCS refused, forages were necessary, but without guarantee<sup>144</sup>. The alternative was the choice between an extension posed by the CLCS or to return before the commission with a new application. France chose the first term of the alternative<sup>145</sup>.

During the twenty-ninth session of the CLCS, from March 19 to April 27, 2011, the subcommittee presented its recommendations to the commission, and the CLCS adopted them by consensus<sup>146</sup>.

Paragraph 93 of the recommendation indicates the agreement of the CLCS on the determination of the 920 fixed points contained in the French request, such as it was revised on March 23, 2012 and in their connection between them by straight lines not exceeding 60 nautical mile in length.

Elements of information provided by Mr. Walter Roest on December 3, 2012, in reply to written question of the rapporteur.

<sup>145</sup> Elements of information provided by Mr. Élie Jarmache on January 18, 2013, in reply to written question of the rapporteur.

<sup>146</sup> Minutes of the twenty-fourth session of the CLCS, CLCS/74 point 7, page 6 – Website of the CLCS.

49 90%

Couter limit of the continental shelf as submitted Adjusted outer limit of the continental shelf — 200M.

Boundary

Fig. 7: The outer limits of the extended continental shelf recommended off the coast of Kerguelen Islands(yellow line)

Source: Recommendations of the CLCS relative to the request made by France on the 5th of February, 2009, concerning French West Indies and the Kerguelen Islands, summary, p. 81.

Paragraph 93 recommends that the link between the French 200 nautical mile should be defined by the intersections of the 200 nautical mile and that the line, not exceeding 60 nautical mile in length, joins arcs of 60 nautical mile, measured starting from FOS 010 and 020. It recommends moreover that France proceeds with the establishment of the exterior limit of the expanded continental shelf starting from the aforementioned intersection with the French 200 nautical mile to Point FP 920 on the agreed line between France and Australia.

## Following up on the recommendation of the CLCS

In accordance with the maritime delimitation agreement between France and Australia on January 4, 1982 that delimits the maritime areas up to the limit of 200 nautical mile, the two states will have to reach an agreement to extend the delimitation line to the east to set the boundaries on the expanded continental shelf.

The request concerning the Kerguelen Islands did not seem to have posed diplomatic difficulties as far as a delimitation agreement had been reached with Australia for Heard Isle and McDonald Isle in 1982. This delimitation was limited to the continental shelf situated within the 200 nautical mile.

Over the course of the request's inquiry, France probably put forward a verbal agreement with Australia for the extension of the delimitation line beyond 200 miles, because the recommendation of April 19, 2012 makes reference to point FP 290 on the agreed line

between France and Australia. If this is truly the case<sup>147</sup>, the realization of this agreement by an addition to the agreement between France and Australia of 1982 should not incite much difficulty.

The recommendation for the continental shelf of Australia dated April 8, 2008 clarifies that, for the region of the Kerguelen plates off the shore of Heard Isle and McDonald Isle, when setting the exterior limit, Australia must take into account the potential overlap with France, and by keeping in mind that the recommendations are without prejudice to questions relative to delimitation treaties.

Before the limit publications, it would have sufficed to make an addendum to the agreement of 1982 to take into account the extension of the plate between the 200 nautical mile and the end point of the exterior limit. After this, France could carry out the filing to the United Nations and to AIFM provided by Article 84 of the CNUDM.

## The application awaiting examination before the CLCS

The applications for the continental shelf extension for the Crozet Archipelago (joint applications with South Africa for the Prince Edward Isles), Reunion Island, and the St.-Pauland-Amsterdam Isles situated in the Indian Ocean have been submitted in May 2009 to the CLCS and are awaiting examination<sup>148</sup>. A preliminary inquiry submitted on May 8, 2009 for the extended continental shelf off the coast of Wallis and Futuna in the Pacific Ocean had been followed by a joint application submitted on December 7, 2012 by Tuvalu, France, and New Zealand on behalf of the non-autonomous territory of Tokelau, concerning the zone of the shelf of these islands.

#### ☐ The joint request in the region of the Crozet Archipelago and the Prince Edward Isles

The joint request of France and South Africa had been submitted to the CLCS on May 6, 2009 with the intention of determining the exterior limits of the continental shelf off the shore of the Crozet Archipelago and the Prince Edward Isles<sup>149</sup>. The presentation of the request took place in August 2010. The applicants thus indicated reserving the possibility of presenting a revised demand in 2013 that would take into account the depth constraints (100 nautical mile of the isobaths to 2,500 meters) currently still under examination. The inquiry which has not yet started should take place in 2018-2020 No delimitation agreement has yet been concluded between the two States concerning the continental shelf they should be sharing.

#### Data Collection

SHOM's theoretical study in 2003 showed that this Island situated on the edge of an oceanic ridge does not have access to an extension except insofar as it would be possible to prove the continuity between the plates of the Crozet Archipelago and the Prince Edward Isles.

<sup>147</sup> Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

<sup>148</sup>These requests had been presented during the CLCS session of July and August 2013, just as those relating to Wallis and Futuna.

<sup>149</sup>Summary of the partial application to the Commission of Continental Shelf Limits concerning the Prince Edward Islands and the Crozet Archipelago. Website of CLCS

The collection of data <sup>150</sup> necessary to back up the application is bases upon results of scientific campaign entitled "*Del Dano Rise*" in 2005 on the ship Marion Dufresne II, a campaign in conjunction with South Africa. A campaign titled "*Discovery Ridge – Crozetplac*" took place in February-March 2010 on the same ship and had lead to a supplementary acquisition of data still in collaboration with South Africa.

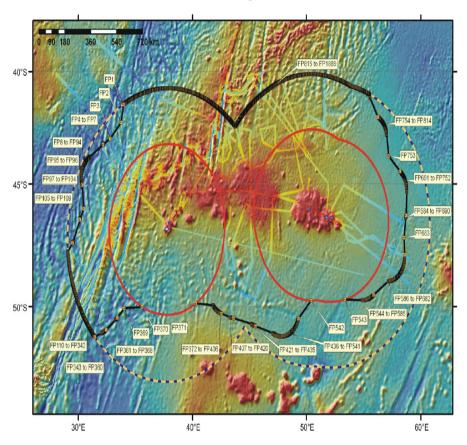
The filing of the application with CLCS

The request clarifies that this extension is situated in the area of the Del Cano Rise, the Crozet Bank, the *Discovery II* Rise, and the Southwest Indian Ridge. It also informs the commission of the absence of dispute between France, South Africa, and any other state concerning the continental shelf in the area of the Prince Edward Isles and the Crozet Archipelago. The request had been submitted without a delimitation agreement being concluded between the requesting States. Negotiations are in progress.

The final projected exterior limit of the continental shelf is set by connecting fixed points, using straight lines with a length not exceeding 60 nautical miles, which are generated by the Hedberg Method (60 nautical mile from the foot of the slope) in respect to the constraint line of 350 nautical miles. The file had been established in collaboration with the IPEV.

<sup>150</sup>Accompanying note to the presentation of Mr. Jean-Yves Perrot, President and General Director of IFREMER, during his hearing before the members of the Overseas Delegation on September 25, 2012.

Fig. 8: Claimed outer limits of the extended continental shelf off the coast of Prince Edward Islands (on the left) and the Crozet Archipelago (on the right)



Source: Partial joint application made by South Africa and France to the CLCS regarding the Prince Edward Islands and the Crozet Archipelago, summary, part 1, p. 4.

#### → The examination of the application

The presentation of the joint request between France and South Africa took place during the twenty-sixth session of the CLCS on August 2 to September 3, 2010<sup>151</sup>. During the course of this presentation on August 19, 2020 by Mr. Jarmache, representative of the General Secretary of the Sea for France, and Mrs. Sandea De Wet, First Adviser in state rights for South Africa, the former clarified that "the request was without prejudice of the establishment of future maritime limits between the two coastal states (...) [and that the] two states reserve the right to present supplementary information about the depth constraint as soon as the analysis of the new regional bathymetric data was finished. In this regard, it clarified that the realization of the depth constraint would have an effect on the exterior limit of the continental shelf indicated in the request".

<sup>151</sup>Minutes of the twenty-sixth session of the CLCS, CLCS/68 point 8, page 7. Website of CLCS

The joint request in relation to the Crozet Archipelago and the Prince Edward Isles seems to have presented technical difficulties during its preparation, because France only completed the data and information collection relative to the depth constraint line establishment in 2010, namely after the request was filed in 2009, and thus registered the file without having completed the entirety of the collection and analysis of this last one. The 2010 campaign was financed principally by South Africa, France made use of the Marion Dufresne. A revision of the request is already announced for March 2013. Thus, we know the supplementary surface area claimed.

The request in relation to the Crozet Archipelago and the Prince Edward Isles could have been filed thanks to a diplomatic action privileging the choice of a joint request with South Africa for the Prince Edward Isle which allowed the assurance to the CLCS that the request would be treated by the two states without prejudice to questions relative to limit setting between the two states. No delimitation agreement has yet been concluded. The experience acquired by the Quai d'Orsay on the occasion of the joint request related to the Bay of Biscay could only curb the optimism that those who think that a delimitation agreement is easy. It is acknowledged that the time that will elapse before the request's examination should be taken advantage in order to conclude a delimitation treaty before the distribution of the recommendation, such as was the case with the delimitation agreement between the West Indies and Barbados.

The commission decided that this request would be examined by a subcommittee who would be created in a subsequent session and examined in plenary session when its turn came, with the requests being examined in the order in which they were received. There are still around ten requests to be examined by the CLCS before this last one names a subcommittee in charge of this examination. Taking into account the delay of the examination of each request and the number of request examined at the same time, the CLCS should not reach the French-South African dossier before the year 2018-2020.

The form under which that could take the compliment of the request is still unknown. It is probable that a revised summary might be necessary to make public the information that enlarges the claimed territory and pushes the exterior limit toward the shore. One might think in a way that this is the two states do not lose their turn in the examination process. This would be the third French request based on the depth constraint of the isobaths of 2500 meters, all other being based on the distance constraint of 350 nautical miles, with the exception of those in regards to the Kerguelen Islands and Amsterdam Island.

#### ☐ An application relating to the Reunion,

France's request was filed on May 8, 2009 to CLCS in the aim of determining the exterior limits of the continental shelves off the coast of the island of Reunion. The presentation that France could carry out in August of 2009 had been reported. The inquiry which has not yet started should take place in 2022-2025 No delimitation agreement is provided to the extent that the French claim does not overlap the claim of Madagascar limited to 200M.

#### Data Collection

SHOM's theoretical study in 2003 indicates that an extension is possible to the southeast of Reunion on the basis of the foot of the slope.

The collection of data necessary to back up the application relative to the Isle of Reunion relies on the results of a scientific campaign titled "FOREVER" (Institute of Global Physics of

Paris) in 2005 and also uses the campaigns ERODER 1 (in 2005) and 2 (in 2008), campaigns led by l'IFREMER and the University of Reunion<sup>152</sup>.

→ The filing of the application with CLCS<sup>153</sup>

The file clarifies that this extension is found in the Indian Ocean to the south of Mascarene Plateau, to the east of Madagascar. It highlights the absence of dispute between France and all other states in regards to the continental shelf of Reunion Isle, the expanded continental shelf being located south of Reunion. A delimitation agreement of maritime zones had been reached between France and Madagascar on April 14, 2005 and came into effect on June 18, 2007<sup>154</sup>. The exterior limit of the continental plate had been built from 136 fixed points calculated by using the Hedberg Formula (60 nautical mile from the foot of the slope) in the interior of the 350 nautical mile long constraint line and a fixed point in the limit of 200 nautical mile. The file had been established in collaboration of the Paul-Émile Victor Polar Institute (IPEV).

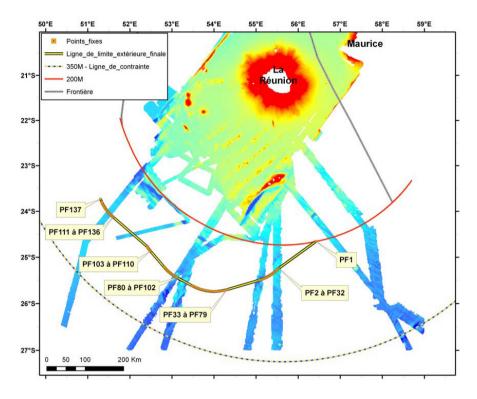
The extension of the continental shelf off the coasts of Reunion concerns Madagascar who had filed its application on April 29, 2011. This state presented its application on August 24, 2011 indicating the absence of dispute between third-party states and the existence of discussion about the bilateral delimitation with Mozambique. Being number 56 in the order of requested registrations, on the basis of the current speed of file process by the CLCS, the examination should not take place before 2028-2030. The extended continental shelf that it claims does not overlap with that presented by Reunion in its request to the CLCS. The French claim stops in the west in the limit of 200 nautical mile of the Madagascar coasts, and in the south of the last point of the 2005 delimitation agreement between these two states. One could however wonder about the nearly miraculous ruling of Reunion's expanded continental shelf in the limit of 200 nautical mile of Madagascar. One could wonder if the non-objection of Madagascar would persist if France had considered in its extension request the prolongation inside 200 nautical mile from Madagascar. An issue of delimitation could be considered if France envisaged extending its continental shelf more to the west so that it overlapped with the continental shelf inside 200 nautical mile from Madagascar. One could wonder why France did not apply its rights over the entirety of the continental shelf against the Madagascar continental shelf limited to 200 nautical mile in this zone, if not to avoid a discussion over the bilateral delimitation to the south of the April 2005 agreement.

<sup>152</sup>Note handed in by Mr. Jean-Yves Perrot of IFREMER, during his hearing of September 25, 2012.

<sup>153</sup>The partial application to the Commission for the Limits of Continental Shelves concerning the Isle of Reunion and the Isles of St. Paul and Amsterdam. Website of CLCS

<sup>154</sup> Point 1 of the northern borderline is situated only 195 nautical miles from the Isle of Tromelin. This point could be modified when the dispute on Tromelin between France, Madagascar, and Maurice is resolved.

Fig. 9: Claimed outer limits of the extended continental shelf claimed off the coast of Reunion



Source: Partial joint application made by France to the CLCS regarding the island of Reunion and the islands of St. Paul and Amsterdam, summary, part 1, p. 3.

#### The examination of the application

France had been invited to present this application during the twenty-fifth session of the CLCS held in August-September 2009. It decided to carry out this presentation later, having all the time to do it; the date of this last presentation's occurrence could not modify the order of the request examinations. The requests take place in the order that they are received. French application is at number 40 of the list. In the current rate of the commission's work, the application should not be examined before 2022-2025, with the last sub-commission having been named at the end of 2012 only examining application number 28.

#### ☐ An application relating to the islands of St. Paul and Amsterdam

France's request was filed on May 8, 2009 to CLCS in the aim of determining the exterior limits of the continental shelves south of the islands of St. Paul and north of Amsterdam Islands The presentation that France could carry out in August of 2009 had been reported. The inquiry which has not yet started should take place in 2022-2025 No delimitation agreement is provided to the extent that the French claim does not overlap the claim of any third State.

Data Collection: the PLURIEL Campaign

SHOM's study in 2003 points out that the islands of St.-Paul and Amsterdam situated on a rise could not be extended beyond 350 nautical mile.

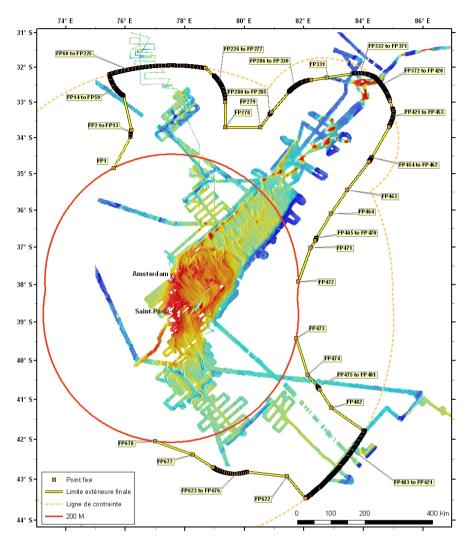
The PLUme-Ridge Interaction and EvoLution (PLURIEL) campaign had been organised in September and October 2006 on the ship Marion Dufresne in order to gather data and interpretations necessary to the extension requests. The campaign permitted the acquisition of bathymetric data necessary to the determination of the slope foot of the St. Paul and Amsterdam shelves and furnished detailed cartography of the isobaths 2500 m in the key regions. The magnetic and gravimetric data had been collected as well and geophysical and geochemical characterization of the interaction between the hot spot of St. Paul and Amsterdam and the southeast Indian rise over the course of the last ten million years had been carried out by around forty dredges.

→ The filing of the application with CLCS<sup>155</sup>

The application clarifies that the continental shelf extensions of these islands are situated in the south of the Indian Ocean on the dorsal fin of Southwest Indian. It underlines the lack of dispute concerning the continental shelves of the St. Paul and Amsterdam Islands, which do not overlap those of any other state, the closest neighbour being the Kerguelen Islands. The exterior limit of the extended continental shelves had been constructed from 678 fixed points. 320 used the Hedberg Formula (60 nautical miles from the slope foot), 354 other fixed points had resorted to either the constraint line of 350 nautical mile or that of 100 nautical mile from the isobaths of 2500 meters, and four to the limit of 200 M. The exterior limit of the continental shelf of Amsterdam Island is, at least partially, based on the formula of the depth constraints of 100 M from the isobaths of 2500 meters. The file had been established in collaboration with the Paul-Émile Victor Polar Institute (IPEV).

<sup>155</sup> The partial application to the Commission for the Limits of Continental Shelves concerning the Isle of Reunion and the Isles of St. Paul and Amsterdam.

Fig. 10: Claimed outer limits of the extended continental shelf claimed off the coast of Saint-Paul and Amsterdam



 $Source: Partial\ joint\ application\ made\ by\ France\ to\ the\ CLCS\ regarding\ the\ island\ of\ Reunion\ and\ the\ islands\ of\ St.\ Paul\ and\ Amsterdam,\ summary,\ part\ 1,\ p.\ 3.$ 

### $\ensuremath{\,\boxdot\,}$ The examination of the application

France had been invited to present this application during the twenty-fourth session of the CLCS held in August-September 2009. It decided to carry out this presentation later, having all the time to do it; the date of this last presentation's occurrence could not modify the order of the request examinations. The applications take place in the order that they are received. French application is at number 40 of the list. In the current rate of the commission's work, the application should not be examined before 2022-2025, with the last sub-commission having been named at the end of 2012 only examining application number 28.

#### ☐ The joint application relating to the Robbie Rise off the coast of Wallis and Futuna

The joint application had been filed on December 7, 2012 to the CLCS by Tuvalu, France, and New Zealand on behalf of Tokelau with the aim of determining the exterior limits of the continental shelf off the northern coast of Wallis, the eastern coast of Tuvalu, and the western coast of Tokelau. For France, this application followed a preliminary inquiry filed on May 8, 2009 due to the delay taken with the application's preparation For New Zealand, it followed a preliminary inquiry filed on May 11, 2009. The applicants could make a presentation to the CLCS in the following months on the condition that they decide to report. The examination of the application should not start before 2030. The three states must work together to reach a maritime delimitation agreement.

☐ Data Collection: the WALLISPLAC Campaign

A theoretical study conducted in 2003 by SHOM showed that the French application for the extension of the continental shelf in the region of the ridge Robbie beyond 200 M north of Wallis and Futuna was justified.

Following this study, the acquisition of supplementary data for the investigation of a complete application has been judged necessary. The WALLISPLAC campaign had been organized in September/October 2010 on the ship The Atlantis, in the presence of Tuvaluan and SOPAC observers <sup>156</sup>, in order to furnish data and interpretations necessary to the extension applications.

The Isles of Wallis and Futuna are separated by around 250 km and are currently on the same tectonic plate, the Pacific shelf. These two archipelagos have a different geologic history because they are situated on either side of a prehistoric subduction zone. They are separated by a succession of deep ditches (more than 4500 nautical mile) which underlines, in the procession of the ditches of the Tonga isles, the eastern ending of the prehistoric Vitiaz outline. The global approach consisted of making object of the observation according to which the 'abnormally' weak bathymetric zone where the Isle of Wallis emerges runs the length of the Robbie Rise, and that this zone is significantly distinguished from the large depths. Consequently, the WALLISPLAC campaign put to use a multifaceted and quick-seismic sounder so as to chart out the northern front of the Robbie Rise and determine the slope's base.

The filing of preliminary information to the CLCS 157

Preliminary inquiries indicative of the exterior limit of the continental shelf beyond 200 nautical miles of the Wallis and Futuna Islands, the extensions being situated in the south-western Pacific Ocean, had been submitted by France to the CLCS on May 8, 2009, while referring to the meeting of the states part of the CNUDM (SPLOS/183)<sup>158</sup>. They were

<sup>156</sup>Secretary of the Pacific Community, Division of Geoscience and Applied Technology.

<sup>157</sup>Preliminary information indicative of the exterior limits of the continental shelf of French Polynesia and Wallis and Futuna, in accordance with the decision represented in the SPLOS/183 document of the eighteenth meeting of the states part of the CNUDM, concerning the application received on May 8, 2009, CLCS Website.

<sup>158</sup>See much later for the significance of the «preliminary information indicative of the exterior limits of the continental shelf as well as a description of the state of preparations and forseen date of the application filing».

without prejudice to the complete applications concerning these territories that France reserved the right to file on a later date to the CLCS. The position indicative of the exterior limit of the continental shelf of the Wallis and Futuna Isles relies on the Hedberg Formula (60 nautical mile from the slope's base) and is situated on a distance not exceeding 350 nautical miles from the islands. 9 fixed points have been determined separated from a distance not exceeding 60 nautical mile. The file had been established in collaboration with the Paul-Émile Victor Polar Institute (IPEV).

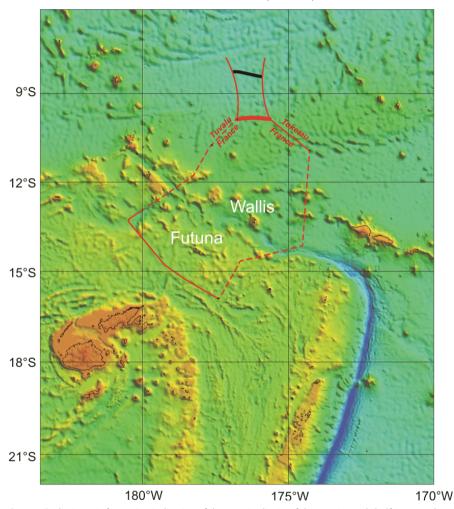


Fig. 11: Indicative outer limits of the extended continental shelf off the coast of Wallis (in black)

Source: Preliminary information indicative of the exterior limits of the continental shelf, in accordance with the decision represented in the SPLOS/183 document of the eighteenth meeting of the states part of the CNUDM, concerning French Polynesia and the Wallis and Futuna Isles, p. 5. In red (bold)

French limit of 200 nautical miles. The red lines (thin) show the boundaries with the neighbouring countries (the limits not being subject to agreement are indicated by dashes),

As well as their indicated limits of 200 nautical miles.

In terms of this document, France undertook the application to the CLCS for the extension of the continental shelf of Wallis and Futuna in a 4 year delay, being in 2013. This period should allow the realization of work carried out in the aim of acquiring recent data around the islands during a sea campaign of several days. Finally, the application had been filed on December 7, 2012 so that Tuvalu observes the delay of 10 years left to the coastal states to submit their applications after the date of the ratification of the Montego Bay Convention, expiring for Tuvalu on December 9, 2012.

For its part, New Zealand had submitted preliminary information on May 11, 2009 concerning the continental shelf beyond 200 nautical mile of Tokelau situated to the west on the Robbie Rise of which is situated in the east. It had foreseen the filing of a request in 2014.

☐ The filing of the application with CLCS<sup>159</sup>

The file clarifies that this extension depends on the southwest region of the Pacific, characterized by a series of submarine ditches, plateaus, bathymetric elevations, ditches, and basins. In this area of the Robbie Rise, the common area of the continental shelf is a bathymetric elevation between 3500 and 4000 meters in depth. To the north, the seafloor reaches 5000 to 5500 meters.

The three coastal states agreed to create a joint request, of a common nature, and comprising one document prepared in collaboration. This also means a partial request for France. The three states confirm that the zone of the continental shelf is subject to no dispute between them or in regards to any other state. They agreed "to establish the exterior limits of the continental shelf in the region of the Robbie Rise without prejudice to the delimitation of the common part of the extended continental shelf. Consequently, the delimitation of the area that is the subject of this joint submission shall be agreed once the Commission has concluded its consideration of this joint submission and after the exterior limits of the area have been duly established"<sup>160</sup>. One will note the divergence between the texts in French (accepted) and English (agreed). Shouldn't we read it as "convenue" (settled) (instead of "acceptée" (accepted)?

By an exchange of notes between France and Tuvalu carrying a provisory arrangement concerning the maritime delimitation between the two states signed on November 5, 1985 and coming into effect on November 5 of the same year, the two states acknowledged the equidistant line as a limit of reference in looking forward to having access to the maps. The limit spans around 300 nautical miles and concerns the 200 nautical mile and not the extended continental shelf. In the future, the border could then be prolonged toward the northeast. The vague nature of the agreement permits the parties to reach a definitive agreement on a variant on a strict equidistance line. A tri-point should be determined between the three states.

On June 20, 2003, France and New Zealand signed an agreement concerning the maritime delimitation of the continental shelf and the economic zone exclusive to the 200 nautical mile between Wallis and Futuna and Tokelau, entered into effect on November

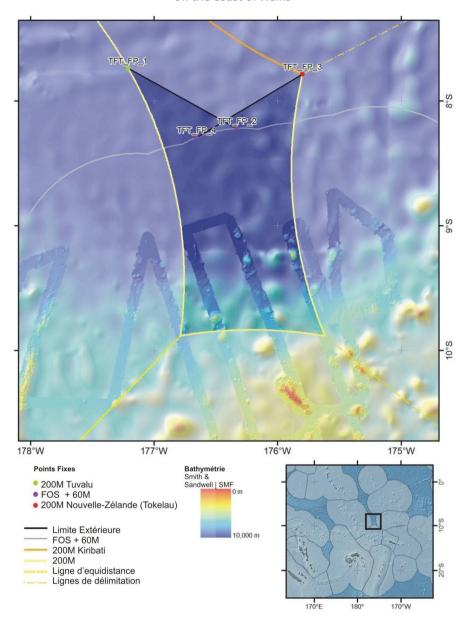
<sup>159</sup>Joint application by Tuvalu, the French Republic and New Zealand, (Tokelau) to the Commission on the Limits of the Continental Shelf. Summary TFT-ES-Doc-FR. Website of CLCS

<sup>160</sup>The English text reads as follows: «Therefore, the delimitation of the area that is the subject of this joint Submission shall be agreed once the Commission has concluded its consideration of the Joint Submission and after the outer limits of the area concerned have been duly established. «

12, 2003. This agreement indicates that the boundary line is a line equidistant to a length of about 101 nautical mile between three points whose coordinates are defined in the document. A future delimitation could be necessary to the northwest of the end point of the agreement in order to divide the expanded continental shelf. A tri-point should be determined between the three states.

The exterior limit of the expanded continental shelf had been established by fixed points connected by straight lines not exceeding 60 nautical mile. The first straight segment is defined by a Fixed Point situated on the line 200 nautical mile from Tuvalu and a second Fixed Point on the Slope Base above 60 nautical mile, and the second straight segment is defined by a Fixed Point situated on the line 200 nautical mile from Tokelau and a second Fixed Point on the Slope Base line above 60 nautical mile. The fixed point on the line 200 nautical mile from Tokelau is situated where this limit cuts the limit 200 nautical mile from Kiribati. The document adds, probably following the experience gained on the occasion of the joint demand of the Bay of Biscay, "The three coastal states note in this regard that the configuration of the outer limits of the continental shelf in this Joint Application do not lead to, due to this joint process, an area of the continental shelf more expanded than the sum of the areas of which the states would be entitled to individually".

Fig. 12: Claimed outer limits of the extended continental shelf claimed off the coast of Wallis



Source: Joint application to the CLCS by Tuvalu, the French Republic and New Zealand, p. 7.

#### The examination of the application

The application would have had to been subject to a presentation before the CLPC in three months conforming to Article 51 of its interior ruling. This last could be delayed without France losing its turn at examination.

Following the presentation, the CLPC indicated that the application must wait its turn so that the CLPC can name a subcommittee to examine it. On the basis of the current rate of the application process, this last one should not start its examination before the 2030's.

The experience acquitted by the Quai d'Orsay on occasion of the application concerning the extended continental shelf of the West Indies and the agreement signed with Barbados could be drawn on to decide if the time that will elapse before the application's examination could not be taken advantage to adapt the existing agreements to the new exterior limit claimed by the three states related to those envisaged by France in the preliminary information of May 8, 2009.

# Preliminary information filed

According to the CNUDM, ratified by France on May 11, 1996, France should have submitted all of its extension requests to the CLCS in May 2006. Luckily for France, who was not ready to observe this delay, the meeting of the states part of the CNUDM decided in 2001 that, for a participating state that the Convention put into effect before May 13 1999, the delay of 10 years mentioned in Article 4 of Annex II of the Convention is considered as having started on May 13, 1999. Consequently, in which concerns France, the delay limited to 10 years expired on May 13, 2009. It is this date that the French government had reserved for the application of all the possible extensions when it set the EXTRAPLAC programme into motion in 2002.

In 2008, the meeting of the partying state authorized the states that would go to be defaulting in respect to this delay to submit instead and in place of requests, "preliminary information indicative of exterior limits of the continental shelf beyond 200 nautical miles, a description of the state of advancement of the file, and a prediction of the date on which it would be submitted, in accordance to the order of Article 76 of the Convention, the interior regulations of the Commission, and its technical and scientific directives".

This decision permitted France to submit four preliminary data only a few hours before the deadline set for their submission, instead and in place of the requests that it had been incapable of presenting in time and that it could not have presented any later. This means that those relating to the extended continental shelf off the coast of the overseas territories of Saint Pierre and Miguelon, French Polynesia, Wallis and Futuna<sup>161</sup> and Clipperton.

The immediate sanction for France is that, while expecting the reception of an application responding to the prescriptions of Article 76 of the Convention, the preliminary inquiry will not be examined by the CLCS. In other words between 15 and 20 years late for the examination of each future application, for the normal work rate of the CLPC. However, the preliminary information filed in May 2009 regarding the continental shelf off of Wallis and Futuna was transformed in a request which was filed on December 7, 2012 with number 62 in the list of examination applications. It won't be the purpose of a recommendation before approximately 20 years in the normal work rate of the CLPC. The French application which was filed in May 2009, those of Crozet, Reunion, St. Paul and Amsterdam islands filed respectively on the 6th and 8th of May 2009, will benefit from a recommendation in the next 5 years. The French continental shelf having been the purpose of the preliminary information at the same date, instead of an application, will have to await an application filed in 2013

<sup>161</sup>This preliminary information has been transformed into application on December 2012.

and will probably not be addressed before about twenty years. Between 15 and 20 years late resulting in the non submission of applications by the expected date of May 2009.

It is a chance that France could benefit from this favour that was agreed in 2008 to all applying States given the situation of "coastal countries in development, including the small developing island States, continuing to experience particular problems regarding communicating to the Commission the information from article 76 of the Convention...because they lack the financial and technical means, the abilities and skills or for similar reasons" 162.

Mr. Segura of the MAE has explained that in the context of EXTRAPLAC, the decision was made to file all the technically valid records without diplomatic vision regarding the filing of the application <sup>163</sup>.

Comparatively he added to the filing of preliminary information that France had used this procedure, preferably intended for the developing countries who don't have neither the resources not the means to keep to the deadline of May 2009, because of the increased work load regarding the preparation of French applications He specified that, even if France felt self conscious about having resorted to such a procedure, a filing of preliminary information doesn't automatically signify filing an application in the future <sup>164</sup>.

#### ☐ Preliminary information concerning Saint Pierre and Miquelon

The preliminary information concerning the continental shelf of the Archipelago above 200 nautical mile was filed on May 8, 2009 by France before the CLPC toward informing the Commission on the three points requested by the parties of the State Assembly: the outer limits of the extended continental shelf claimed, a description of the progress status of the records and the anticipation of the submission date of the application. The extension is situated at the foot of the margin of the north central Atlantic ocean shared with Canada and the United States of America Canada made it known that it refused all French demand of maritime zones. Following the positive results of a scientific campaign carried out after 2009 because of the delay in the preparation of the application, the decision to file an application or not in 2013 will be made by the Prime Minister.

#### Data Collection

A theoretical study conducted in 2003 by SHOM showed that the French application was justified.

No campaign will occur before May 13 2009 in order to provide the necessary data and interpretations for the application extension. Despite the guarantee given by the Minister of Overseas delegation in 2004 <sup>165</sup>, the petition of the inhabitants of the territory in December 2005, the guarantee given by the new Minister of Overseas delegation in 2006 <sup>166</sup>,

<sup>162</sup>SPLOS/183 June 24, 2008.

<sup>163</sup>Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

<sup>164</sup>Hearing of Mr. Ségura before members of the Overseas delegation, July 11, 2012.

<sup>165</sup>See the announcement by Brigitte Girardin, Minister of State for Overseas Territories in November 2004, a campaign of Marion Dufresne programmed in early 2006 to conduct seismic surveys.

<sup>166</sup>Declaration of Mr. François Baroin: "France's application (...) must be the purpose of a file of demand supported by the scientific records which are programmed in the framework of the EXTRAPLAC campaign

the commitment from the Prime Minister on April 3, 2006 that the extension file will be re-launched with the Canadian authorities and the confirmation of the archipelago appear in the EXTRAPLAC programme <sup>167</sup>, the reiteration of this guarantee by the MAE on November 2 2006 <sup>168</sup>, the request from the territorial committee of Saint Pierre and Miquelon <sup>169</sup>, the confirmation of March 18, 2006 of the MAE <sup>170</sup>, the declaration of the Minister of Overseas delegations October 25, 2006 <sup>171</sup>, neither the General Secretary of the Sea, nor the IFREMER have dispatched vessels in order to carry out seismic records or other necessary measures.

In addition, as indicated the General Secretary of the Sea, "the case of Saint Pierre and Miquelon poses a juridical and diplomatic problems due to a quite negative attitude from Canada neighbour who will not acknowledge a right to the extension of the continental shelf for France Contact was made with these countries to study how to lift the block without going into a crisis situation, notably in envisioning a campaign project in cooperation with this zone 172".

After filing the preliminary information of May 8 2009, it wasn't until the summer 2011 that a seismic campaign was carried out off the coast of Saint Pierre and Miquelon to complete the preparation of the application following repeated interventions of the archipelago representatives The IFREMER ship, the Suroit, carried out scientific statements in the frameworks of the EXTRAPLAC assignment in July 2011. Following this mission, July 22 during a meeting at the Division of Agriculture, Trade, Industry, Occupations and Artisans (CACIMA) in Saint-Pierre, it was indicated that "according to the scientific data recorded, the French government legitimized everything to carry on with action next to the CLPC to take advantage of its rights<sup>173</sup>". Springing from this campaign is that the foot of the embankment was situated at least 200 nautical mile from the coast, that the thickness of the rock sediment allowed the application of the Gardiner line (thickness of sediment) as far as 350 nautical mile from the coast and that the conditions for an application of extension of the continental shelf was combined. For Walter Roest, the technical and scientific elements allowed the filing of an application of extension for the Archipelago <sup>174</sup>.

The technical file was sent to the General Secretary of the Sea (SG Mer) in June 2012. Nothing was decided at the time of the Piloting Committee meeting of December 10,

<sup>167</sup>Letter of the Prime Minister to Mr. Gérard Grignon, a deputy for Saint Pierre and Miquelon, April 32006.

<sup>168«</sup>Saint Pierre and Miquelon Archipelago remains on the preparatory list for the submission of a request for extension of the continental shelf».

<sup>169</sup>See for example the deliberation n° 17306 of September 15, 2006 of the territorial committee's request «for the government to file before May 2009 at the Commission the limits of the continental shelf an application of examination of the relative data regarding the exteriior limit of the continental shelf off the coast of Saint Pierre and Miquelon».

 $<sup>170 \</sup>text{ ``} \textit{I want to confirm that Saint Pierre and Miquelon is included in the EXTRAPLAC programme... ``a.}$ 

<sup>171 «</sup>the government can confirm - Saint Pierre and Miquelon Archipelago remains on the preparatory list for the submission of a request for extension of the continental shelf».

<sup>172</sup>SG Mer, Governance Espaces maritimes exploitation et extension, July 25, 2006. <a href="http://www.sgmer.gouv.fr/Espaces-maritimes-exploitation-et.html">http://www.sgmer.gouv.fr/Espaces-maritimes-exploitation-et.html</a>.

<sup>173</sup> http://annickgirardin.net/category/economie/plateau-continental/.

<sup>174</sup>Hearing of Mr. Élie Jarmache before members of the Overseas delegation, June 26, 2012.

2012 in view of the divergence of views between the Minister of Foreign Affairs and the Minister of Overseas Delegations. Canada before filing its applications with the CLPC before November 2013 "a conjunctive job between the minister of foreign affairs and the minister of overseas delegations is under way to study again and support our application<sup>175</sup>".

☐ The filing of the preliminary information<sup>176</sup>

The preliminary information will be filed May 8, 2009 following a difficult management, otherwise awkward. Because an arbitral decision of 1992 had sorted the disagreement between France and Canada to the detriment of Saint Pierre and Miguelon for that which concerns the continental shelf and the EEZ as far as 200 nautical mile deeming it ineffective for the continental shelf beyond that, the Quai d'Orsay considers the classified file. This decision, on this side of French presumptions, profoundly marked the population of Saint Pierre and Miguelon who sometimes found it unfair and an abandonment on behalf of France 177 and the Quai d'Orsay as a second failure after that of the Minquiers and Ecrehous Affair of 1953 held before the International Court of Justice. Thereafter, May 17 2005, an agreement between France and Canada on the exploration and exploitation of the cross - border hydrocarbon fields was concluded May 17, 2005. They implemented a specific regimen for the zone of exploitation community united with an exploitation in union (unitization) in the case of a discovery of a cross-border hydrocarbon deposit. It applied itself in the ten thousand sailors of the maritime border defined by the arbitral sentence of 1992, without guaranteeing, however, the agreement for Canada to file a French application of extension alone or conjointly.

In response to the reluctance of the MAE, and following numerous interventions of the people of St. Pierre and Miquelon of whom made reference to the information report the delimitation of the maritime border between France and Canada of Mrs. Annick Girardin and Mr. Louis Guédon of December 10 2008 <sup>178</sup> occurred at the right time to deal with the ministerial re-examination of the question of the continental shelf off the coast of the archipelago, to the transmission of necessary preliminary information for the subsequent filing of an application of extension of the continental shelf. At the request of the Minister of the Overseas Delegation, the government filed preliminary information in May 2009.

This preliminary information was filed without detriment for the complete application concerning Saint Pierre and Miquelon, that France keeps its right to file at a subsequent date close to the CLPC. The indicative position of the extended limit of the French continental

<sup>175</sup>Elements of information provided by the DéGéOM on January 21, 2013, in reply to written question of the rapporteur.

<sup>176</sup>Preliminary information indicative of the exterior limits of the continental shelf of Saint Pierre and Miquelon, in accordance with the decision represented in the SPLOS/183 document of the eighteenth meeting of the states part of the CNUDM, concerning the application received on May 8, 2009, CLCS Website.

<sup>177</sup>Lorgeoux Jeanny, André Tillard, senators, co-presidents, Beaumont René, Boutant Michel, Gerriau Joël and Paul Philippe, senators, *Information report on behalf of the Committee on Foreign Affairs, Defence and Armed Forces on behalf of the Working Group onmaritimisation*, n° 674, Senate, July 17, 2012, p. 41.

<sup>178</sup>See Girardin Annick and Guédon Louis, deputies, Information report on behalf of the Committee on Foreign Affairs *La délimitation des frontières maritimes entre la France et le Canada*, Assemblée nationale, XIIIème législature, December 10, 2008.

shelf off the coast of Saint Pierre and Miquelon supports itself on the ability of paragraph 4 (a) (i) of article 76 (Gardiner formula); the seismic data in the public realm revealing a sediment thickness sufficient for applying this formula respecting the constraint of the 350 thousand nautical miles.

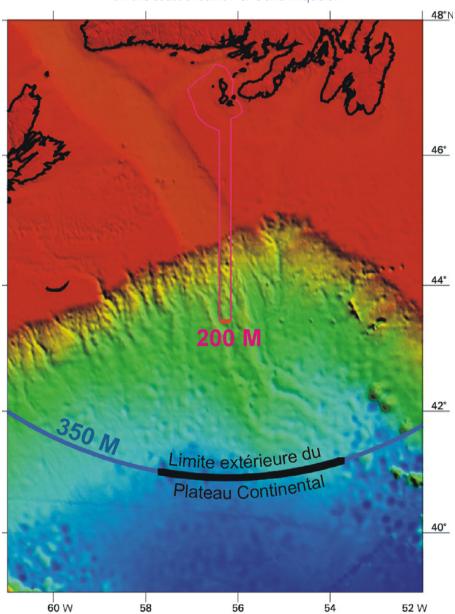


Fig. 13: Indicative outer limits of the extended continental shelf off the coast of Saint Pierre and Miguelon

Source: Indicative information on the exterior limits of the continental shelf According to the decision appearing in the document SPLOS/183 of the eighteenth meeting of the States involved in CNUDM regarding Saint Pierre and Miquelon, p. 4.

#### The verbal note of Canada

The filing elicited a reaction from Canada in November 2009 In this note "the Canadian government rejected all demand by the maritime zones of the French Republic including those zones of the continental shelf, beyond those given to the French Republic by the Arbitrage Court in the Affair of delimitation of maritime spaces between Canada and the French Republic (June 10, 1992) According to the decision of 1992, at the United Nations Convention on the rights of the sea and on international rights principles, the question of the demand by the French Republic of the extended zone of continental shelf off the coast of Saint Pierre and Miquelon cannot settle

Gerard Grignon, the reporter of the current report, noting that Serge Segura, of MAE had previously indicated that the position of his minister, which he indicated, was to register all the files that were possible to register, he was told that the recent scientific campaign had given positive results that he agreed to contemplate the continuation: filing or no filing, considering the opposition of Canada.

#### The filing of the application with CLCS

The preliminary information indicates that "the work to be done leads to estimate a useful delay of four years for France to submit a complete file for the application of extension for Saint Pierre and Miquelon".

Following the campaign of Suroit in 2011, the technical report favourably conclusive for the extension of the continental shelf was handed back to SG Mer.

The preliminary information was supplied, according to paragraph 2, b) Annex 1 of the Rules of Procedure of the Commission, "without detriment to the delimitation between France and Canada". Canada communicated that it had filed its application of extension of the continental shelf before December 6, 2013 for all of its territories <sup>179</sup>. Those off the coast of the Canadian provinces and that straddle in part those of Saint Pierre and Miquelon. In the absence of a joint application or the agreement of mutual non detriment, the filing of the French application cannot be done without the evidence of the existence of a disagreement with Canada, that which prevents the CLPC to examine equally the French application as the Canadian application for this area. The work load of the Commission leaves to augur an examination of the applications filed in 2013 in about 20 years, or after 2030. All blocks of the examination of the respective applications will impose a negotiated solution in the next 20 years.

The fact that equally the future French applications as well as the future Canadian applications will not be studied before 20 years militate in favour of a filing which leaves all possibilities to find a negotiated solution open over the coming years <sup>180</sup>, instead of expressing a renouncement for the filing of all applications from 2013.

<sup>179</sup>The application of Canada to CLCS within the UNCLOS framework («Continental shelf programme»), <a href="http://www.dfo-mpo.gc.ca">http://www.dfo-mpo.gc.ca</a>.

<sup>180</sup>The President of the Republic, during an interview, in July 2013, with the members of Parliament of Saint-Pierre and Miquelon, reaffirmed that «France defended the interests of the archipelago regarding the extension of the continental shelf off the coast of Saint-Pierre et Miquelon. He as well confirmed the intention of France for this purpose, of registering a file before the Commission of the limits of the continental shelf «

#### ☐ Preliminary information concerning French Polynesia

The preliminary information was filed by France May 8, 2009 close to the CLPC towards giving information on the filing of a future application on the exterior limits of the continental shelf off the coast of French Polynesia. Due to the delay in the drawing up of the claim, this last file should be filed at the beginning of 2014. Delimitation agreements with neighbouring states of Kiribati and the Cook Islands will be completed upon filling of the application to cover the extension of the continental shelf.

#### Data Collection: the POLYPLAC Campaign

A theoretical study conducted in 2003 showed that the French application in certain zones off the coast of French Polynesia was justified.

Probably, for budgetary reasons, no campaign EXTRAPLAC in order to provide for the necessary data and interpretations for the application of extension was undertaken. Accordingly, France was obliged to file in May 2009, officially an application as initially planned, a simple preliminary information.

Following this filing, still for budgetary reasons, the choice was made to carry out this acquisition of data across several missions. The campaign POLYPAC, organized in September 2012 on board the Atlanta, to get on with the acquisition of the necessary geophysical data off the coast of only the Marquises. In this place, a ripple moves towards the east of the Marquises shelf beyond the limit of 200 nautical mile. The purpose was "to study the natural prolongation of the archipelago of the Marquises towards the deepness, along the oceanic ripple<sup>181</sup>". Other zones of Polynesia could be the purpose of future operations, IFREMER having identified seven zones around this territory is able to lead an extension of the continental shelf.

#### The filing of the preliminary information<sup>182</sup>

This preliminary information was furnished without detriment of the complete application regarding this territory, that France reserved the right to file at an ulterior date close to the CLPC. The indicative position of the exterior limit of the continental shelf off the coast of French Polynesia relies on the dispositions of paragraph 1, 4 (a) (ii) of article 76 (Hedberg formula) and is situated at a distance not more than 350 thousand nautical miles.

The preliminary information indicates that "the work to be done leads to estimate a useful delay of four years for France to submit a complete file for the application of extension for French Polynesia".

<sup>181</sup> Press release, Nuku Hiva, «Vers une extension du plateau continental en Polynésie: retour de la campagne POLYPLAC «, IFREMER, September 13, 2012.

<sup>182</sup> Preliminary information indicative of the exterior limits of the continental shelf of French Polynesia and Wallis and Futuna, application received May 8, 2009 – Internet Site of the CLPC.

18°S

18°S

160°W

150°W

140°W

130°W

Fig. 14: Indicative outer limits of the extended continental shelf off the coast of French Polynesia (in black)

Source: Preliminary information indicative of the exterior limits of the continental shelf, in accordance with the decision represented in the SPLOS/183 document of the eighteenth meeting of the states part of the CNUDM, concerning French Polynesia and the Wallis and Futuna Isles, p. 4. In red (bold)

French limit of 200 nautical miles. The red lines (fine) show the delimitations with the neighbouring countries, as well as their indicative limits of 200 nautical miles.

#### The filing of the application with CLCS

The Overseas Delegation of the CESE was informed that French Polynesia should look for its application filed by France during the first few months of 2014. A second POLYPLAC campaign was envisioned in 2013, in so far as the ships found themselves in the zone, to avoid the transit costs. The preliminary information was provided without detriment of delimitation between France and all other States. French Polynesia shares the same extended continental shelf with several neighbouring countries.

A relative agreement to the creation of a line of delimitation between the EEZ surrounding French Polynesia and the EEZ of Kiribati was signed December 18, 2012. This agreement in force also covered the continental shelf. A convention of maritime delimitation was signed and entered in force on August 3, 1990 between France and the Cook Islands It covers the continental shelf and the EEZ of the two States along 1195 km The comparison of the chart of preliminary information filed by France on May 8, 2009 shows overlaps with the application

of Kiribati from December 24, 2012 but not with those of the Cook Islands from April 18, 2009 which targets another zone. The French claim stopped, here again, on the 200 nautical mile limit of the Cook Islands, however on a limit which wasn't the object of the delimitation agreement of 1990. It is probable that the MAE preoccupies itself in order to arrive at the conclusion of a provisional arrangement with the Cook Islands being able to authorize the CLPC to examine the application in this zone and give its recommendations. In this application, Kiribati indicates that no disagreement exists south of the zone of the extended continental shelf making it the purpose of their application It agrees to wait for the reaction of the Quai d'Orsay for verification, hearing that the absence of some kind of agreement could prevent the examination of the respective applications of the States in this zone.

#### ☐ The special case of Clipperton island

The preliminary information was filed by France May 8, 2009 close to the CLPC towards giving information on the filing of a future application on the exterior limits of the continental shelf to the east and the west of Clipperton Island. Having delays take place in the preparation of the application, a preliminary information had to be filed. No delimitation agreement is provided to the extent that the French claim does not overlap the claim of any third State. May 10, France withdrew the filing of the preliminary information published on the site of the CLPC, unheralded. The application could still be filed.

The status of Clipperton created for awhile a certain number of uncertainties in large parts raised by the constitutional law of July 23, 2008 which enrolled the last paragraph of Article 72-3 of the Constitution that mentions Clipperton Island. This paragraph filed accordingly that the law determined the legislative regime and the particular organization of Clipperton. According to the law of February 21 2007 holding statutory and institutional relative to overseas, the Clipperton Island is henceforth under Title II of the law from August 6, 1955 holding TAAF status and the Clipperton Island. This law puts the island under the principle of legislative and entails identity, accordingly, an application of total rights of the laws and regulations of the Republic. This law included as a result the Clipperton Island in the application area of the international treaties retaining France. If from a statutory point of view, the island doesn't depend on French Polynesia, for practical reason, the overseas delegation minister, the island administration representative for the State of Papeete.

The preliminary information concerning the continental shelf of the Clipperton island above 200 nautical mile was filed on May 8, 2009 by France before the CLPC toward informing the Commission on the three points: the outer limits of the extended continental shelf claimed, a description of the progress status of the records and the anticipation of the submission date of the application. The extension for this territory is situated in the East Pacific ocean <sup>183</sup>. The coasts of Mexico are located approximately 700 M to the north-east and therefore no overlapping Mexican and French claims. The Clipperton Island constitutes a particular case in the French extension applications because less than two days after the filing, France withdrew this preliminary information and this, without explanation.

<sup>183</sup> The continental shelf of the Clipperton Island shouldn't be confused with the area of polymetalic nodules of the oriental north pacific extends between the Clarion fracture coming out of Mexico and that of Clipperton coming out of France. Situated to the north of the Clipperton Island beyond 350 nautical mile, this zone comes from the AIFM and a part of this was the purpose for a mining permit of 75 000 km² attributed to France in 1987 speaking as a pioneer investor.

#### ─ Data Collection

The theoretical study carried out by the SHOM in 2003 showed a French application to the East and the West of the Clipperton Island It believes that a possibility of extension of the order of 25 000 Km² exists for this islet on a fracture zone but resting on an interpretation of the notion at the foot of the embankment which still needs to be confirmed. The continental shelf shows from east to west several breaks—of the slope from the islet. This study recommends that the question to rise on the choice of final location could be by the bias of acquisition of complementary bathymetric data for this zone.

Probably for budgetary reasons, no oceanographic campaign was intervened before May 2009.

The filing of the preliminary information<sup>184</sup>

This preliminary information was furnished without detriment of the complete application regarding this territory, that France reserved the right to file at an ulterior date close to the CLPC. The indicative position of the exterior limit of the continental shelf off the coast of Clipperton was founded on the aptitudes of paragraphs 1 and 4 (a) (ii) of article 76 (Hedberg formula 60 nautical mile at the foot of the embankment) 162 fixed points were determined for the zone east and 141 for the zone west. The distance between them doesn't exceed 60 nautical miles. The exterior limit is situated at a distance not exceeding 350 nautical miles.

<sup>184</sup>Preliminary information indicative of the exterior limits of the continental shelf, in accordance with the decision represented in the SPLOS/183 document of the eighteenth meeting of the states part of the CNUDM. Clipperton Application received on May 8, 2009 - Website of the CLPC.

14°N

10°N

6°N

115°W

110°W

105°W

Fig. 15: Indicative outer limits of the extended continental shelf off the coast of Clipperton Island (in black)

Source: Preliminary indicative information on the exterior limits of the continental shelf according to the decision appearing in the SPLOS/183 documents of the 18th State Assembly part of the United Nations Convention of the rights of the sea – Clipperton, p. 2. (Projection: Mercator; Bathymétrie GEBCO).

The preliminary information stated that it is necessary to obtain the recent bathymetric data on the key positions, during a sea campaign for around 10 days, this zone relatively removed from the normal oceanographic ship routes wasn't rich in public data. France deemed 4 years the relevant delay for submitting a complete file. Today we can think that this campaign didn't take place as the preliminary information was withdrawn.

Nonetheless, it agrees to ask themselves about the reasons for which France performed such a withdrawal of the preliminary information. At the level of the submission procedure of this document, there was a dysfunction between the filing services and those made the decisions regarding filing or not. It is even so surprising to forward an application to New York in order not to file. It is even more surprising to see the application filed and then withdrew. There was no plausible explanation given to the Overseas delegation of CESE despite repeated requests.

As to the underlying reason of the decision to withdraw the preliminary information, the Overseas delegation heard contradicting versions. For the MAE, the non-existence of an extension of the legal continental shelf is to blame. We can ask why then the IFREMER allowed the application which was prepared with an unfounded scientific point of view to be forwarded from Brest to New York? For the SG Mer, he didn't want to dissatisfy Mexico, contrary to the statements of the MAE. What is the most surprising is that the MAE requested an arbitrage of the Prime Minister on a strictly scientific file. The current study nonetheless

tried to convey the elements of the response of the occurrence of this anomaly which raises substantive questions in the file of the extension of the continental shelf off the coast of an overseas territory. The overseas delegation didn't obtain nor find a satisfactory response.

An application could still be filed near the CLPC

The French Clipperton Island, or Passion Island, 1.7 km² of emerging land discovered by a French on April 3, 1711, was the purpose of a disagreement of sovereignty with Mexico which was ultimately ruled by an arbitrage of the Italian King Victor-Emmanuel III on January 28 1931. Without the extension of the continental shelf, the area under the French jurisdiction which today makes up 434,000 km² and is situated at the forefront for maritime area reported to the onshore area (55,000 km² against 0.5 for the metropolis) <sup>185</sup>. France promulgates a EEZ by decree February 3, 1978. According to the law N° 2007-224 of February 21, 2007 and the ministerial order of February 3, 2008, the French fishermen could fish in the waters of the EEZ with the authorization of the High Commissioner representing the State in French Polynesia. A reminder that the island is not part of the territory taking up this authority.

The information report of the Senate did work on behalf of the Maritimisation of 2012 wrote, maybe with some vaqueness as the inspection took place in 2005, with the fishing agreement of 2007, that "France deems to have a EEZ since 1998 (sic), one that never posed problems with Mexico until, there was three or four years, a French military ship confiscated an illegal Mexican fishing armament and destroyed their fishing equipment. The Mexicans, relying on the Convention of Montego Bay, argued that Clipperton was unfit for habitation and, as a result, our EEZ unsubstantiated As a result they had threatened to take hold of international jurisdictions France preferred to find an amicable agreement 186". The response of the Secretary of Overseas Territories published in the Senate JO of 08/10/2009, p. 2370 to the written question N° 09607 by M. Christian Cointat published in JO Senate from July 17, 2009, p. 1789, indicates: "No French ship farmed these waters, France having concluded since March 29, 2007 an agreement for a duration of 10 renewable years with Mexico which authorized the ships under Mexican flag to benefit from the fishing licenses in the EEZ of Clipperton, including in the 12 nautical miles including the territorial waters The said fishing licenses were delivered by the high commissioner of the Republic of French Polynesia. The Secretary of the Overseas Delegation could only regret the fact that this agreement had been signed for such a long time and didn't

<sup>185</sup>Jost Christian, «Clipperton. Jeux et enjeux géopolitiques et économiques dans le Pacifique nordoriental «, Diplomatie affaires stratégiques et internationales, special issue N° 13. Geopolitical and geostrategic seas and oceans, August-September 2010.

<sup>186</sup>Lorgeoux Jeanny, André Tillard, senators, co-presidents, Beaumont René, Boutant Michel, Gerriau Joël and Paul Philippe, senators, Information report on behalf of the Committee on Foreign Affairs, Defence and Armed Forces on behalf of the Working Group onmaritimisation, n° 674, Senate, July 17, 2012, p. 103. The report is not very precise in regards to the date of inspection because it mentions «there were three or four years». Knowing that the report is from July 2012, for the Senators the date of the inspection is situated in 2008 or 2009. This seems inaccurate because the inspection in question probably took place between March and July 2005: «The frigate [Prairial] then visits the explorer Jean-Louis Etienne on Clipperton, monitoring the EEZ connected to the archipelago (sic), inspecting a Mexican fishing ship and monitoring a Salvadorian fishing ship (...) «. Source: http://forummarine.forumactif.com/t5449-frégates-de-surveillance-classe-floreal. It is this inspection which was originally the fishing agreement of 2007 and not that of 2008 reported as follows. «The Prairial also carried out (...) a patrol around the French island Clipperton. At this time, two reports were drawn up for violations against foreign ships in obvious offence of illegal fishing in the Exclusive Economic zone (EEZ) of France «. Source: http://Tahiti presse.pf 04/12/2008 cited by: http://www.alabordache.fr/marine/espacemarine-frégate\_rang\_2/prairial/actualité.

impose any counterpart, nor quota and limits of netting to the Mexican ships, contrary to the dynamics of sustainable management of fishing and protection of the biodiversity as well as our long and short term economic interests".

Soon after, Mexico should have filed "an application for a fishing authorization in the zone of Clipperton, recognized by the same French sovereignty<sup>187</sup>" with a big relief from the Quai d'Orsay. Regarding the amicable agreement, for his part, Mr. Élie Jarmache, SG Mer, stated before the Senate: "It had been dangerous to enter into a system with a potential 'domino' effect for example in the Indian ocean... We have thus negotiated a fishing agreement with the Mexicans; in other terms we have bought the maritime peace without having, as a matter of form, surrounding the environmental and ecological considerations agreement. The SG Mer doesn't seem to be in sync with the Secretary of State for the Overseas Delegation on the signing of the fishing agreement by which France granted, for free, the licenses to the Mexican ships to allow them to practice fishing activities in the 200 M surrounding Clipperton Island.

The voices of Mexico weren't really gagged and continued to demand the retrocession of the Island of Mexico. Voices in France are regularly heard to denounce "fishing by foreign armaments in the zone of Clipperton, [that] causes an impressive loss of income for the public finances 188". This area rich in tuna continued to be plundered by the Panamanian, American, Chinese, Japanese and Korean fishermen for lack of presence and French surveillance. 189 In a statement from January 13, 2009 the Secretary of state for Overseas Delegation, Mr. Yves Jégo, protested "we can't let the EEZ of Clipperton be plundered by the Mexican fishermen<sup>190</sup>". After the filing and the withdrawal from France of the preliminary information in May 2009, Ms. Alliot-Marie, Interior ministry, of Overseas Delegations and territorial communities, mentioned Clipperton on June 9, 2009 during her intervention during Grenelle de la mer (multiparty debate) on the sea. "Do we have to let the Mexican ships fish tuna freely in the exclusive economic zone of Clipperton?<sup>191"</sup> November 30, 2010, France filed a list of geographical coordinates of the points used to calculate the layout of the exterior limits of the EEZ of the Clipperton Island. By a verbal note of May 14, 2012, Mexico informed the United Nations: "the Government of Mexico declares that it retains all rights in the zone that may accrue to it under international law"192. This didn't prevent France, June 27, 2012, to file with the General Secretary of the United Nations a sea chart showing the exterior limits of the EEZ off the coast of the Clipperton Island. The vague situation of May 2009 seems to continue still today at the level of disputes regarding the ministerial departments concerned.

<sup>187</sup> Jost Christian, abovementioned article, p. 55.

<sup>188</sup>Yang Georges, «Clipperton, un atoll français du Pacifique (4) L'île de la Passion, de toutes les passions – Potentiel et perspectives économiques «, Agora Vox, December 3, 2011.

<sup>189</sup>Jost Christian, abovementioned article, p. 53.

<sup>190</sup>Comments reported by Christian Jost, abovementioned article, p. 51.

<sup>191</sup> Comments reported by Georges Yang in publication «Clipperton, un atoll français du Pacifique (4) L'île de la Passion, de toutes les passions – Potentiel et perspectives économiques «, Agora Vox, December 3, 2011.

<sup>192</sup>In translation: «The Mexican government claims to hold in the area all rights granted to it under international law».

The only question that seems important is to know the legal status of the Clipperton Island in the frameworks of the Convention of Montego Bay. Is an island in the sense of the Article 121 of this Convention and consequently benefiting from a continental shelf and a EEZ up to 200 nautical mile as well as a continental shelf extended beyond that? Not a rock which doesn't lend itself to human habitation or a clean economic life and consequently benefits neither from a EEZ nor a continental shelf? Everything questioned by Mexico regarding the status of the Clipperton Island undermined by the same all the interest of this State to the sovereignty on the island: no more fishing and no more exclusive mining; only a territorial sea of 12 nautical mile

But it remains that it is difficult to understand the position of France of not filing an application of extension for Clipperton. Is it not illogical not to file an application of extension of the continental shelf justified scientifically and at the same time claim a continental shelf and a EEZ in the 200 nautical mile, like France has just repeated, conceding the fishing licenses of the only Mexican ships and in filing in November 2010 and in June 2012 the exterior limits of its jurisdiction on the maritime area up to 200 nautical mile and its sovereign rights regarding the resources of the continental shelf off the coast of the Clipperton Island, that Mexico rejected in emitting protests?

The filing of an application for the continental shelf off the coast of the Clipperton Island appeared justified in as much as the objections of Mexico undermining the grounds of the fishing agreement in the 200 nautical miles around Clipperton concluded in 2007 between France and this State and all its rights beyond the 12 M in case its claim of Clipperton finishes with success. The filing allowed France to start exploring the natural resources of this extended continental shelf which isn't overlapped by the rival presumptions of a third party. The non filing of an application authorized an application for a license of canvassing for minerals near the AIFM and the conferment of the latter in an area that it could therefore consider as located at the interior of the internal limits of the Zone.

He is happy that Article 77 of the CNUDM still allows France to file an application of extension of the continental shelf off the coast of the Clipperton Island even if it means a risk of not being examined before around 20 or 30 years.

# The territories offshore for which no claim or preliminary information has been filed Scattered Islands and Mayotte

For the ultramarine territories of the Indian Ocean of the Scattered islands and Mayotte, no claim for the extension of the continental shelf or preliminary information indicating the outer limits of the latter has been filed with the CLCS dated on 13 May, 2009, as it was considered that the conditions had not been met for an extension claim (no pass of membership test for Europe or claims from third States within the 200 miles for the other ones).

In the TAAF, group *sui generis*, the fifth district is that of the Scattered Islands in the Indian Ocean: Bassas da India, Europa Island, Glorioso Islands, Juan de Nova Island and Tromelin Island. As the Mayotte Islands, it is classified as an Overseas Delegation by means of Article 73 in the Constitution The geopolitical Atlas of maritime areas 193 geographically separated

<sup>193</sup>Ortolland Didier et Pirat Jean-Pierre, *Atlas géopolitique des espaces maritime*, Éditions TECHNIP, 2<sup>nd</sup> edition, 2010, p. 116.

Tromelin from the Scattered Islands: "three of them are located in the Mozambique canal, Glorioso (5 km²) to the north of the Canal, Juan de Nova (5 km²) towards the centre and towards the south of Europe (30 km² ...) this coincides with adding Bassas da India which is presented on the nautical map as a circle of coral reef 35km in circumference. Tromelin Island (1 km²) is situated in the Indian Ocean 535km north of Reunion Island and 600 km East of Madagascar". At the end of the current study, it appeared logical to group all these islands with the Mayotte Island which isn't part of the Scattered Islands group insofar as the latter, inhabited island, is geographically located in the north of the Mozambique channel between Glorioso and Juan de Nova. The existing claims on these islands emanate either from Madagascar, Comoros, or even Mauritius.

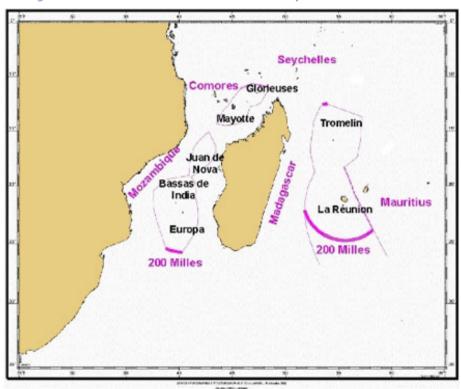


Fig. 16: Situation of the Scattered Islands and Mayotte in the Indian Ocean

Source: Extraplac - IFREMER.

#### Data Collection

The theoretical study carried out by the SHOM in 2003 indicated the possibility of an extension 10,000 km² only south of Europa island relying however on the definition and the questionable choice of the foot of an embankment and on the optimistic public bathymetric data. In addition, the thickness of sediment encountered doesn't present the possibility of extension. The French sovereignty on Europa Island is contested by Madagascar.

A scientific campaign was carried out in 2007 in collaboration with Mozambique on board the Marion Dufresne<sup>194</sup>.

── No filing of preliminary information

No preliminary information had been filed by the deadline of May 13, 2009 which means that the scientific data collected since 2003 could not at the same time justify the test of affiliation.

The Bassas da India Islands, the Glorioso Islands, the Juan de Nova Island, Island of Tromelin and Mayotte were endowed by French law a continental shelf that doesn't extend 200M because of the presence of other States. Their exterior limit in the 200 nautical mile is also determined by the overlaps of the presumptions of the other States for the continental shelf in the absence of delimitation agreements.<sup>195</sup> Europa Island is endowed a continental shelf expanding up to the limit of 200 nautical mile. Coastal projections towards the south of the island add the potentiality of an expanded continental shelf up to the outer edge of the continental margin which could be shared with Mozambique. But EXTRAPLAC concluded that it is difficult to establish the legal title to an expanded continental shelf in this zone and that the conditions lay out by the scientific and technical directives established by the CLPC in 1999 with regards to the satisfaction of the test of affiliation wouldn't be completed for France. Walter Roest confirmed during his hearing that following a campaign in the sea to the south of Europa Island, it had been established that the extension wasn't geologically founded <sup>1967</sup>.

The neighbouring States haven't stayed passive in this zone, in particular Mozambique who, after handing in May 11, 2009 a preliminary information, filed an application July 7, 2010 which covers the continental shelf to the south of 200 nautical mile of Europa Island, that which France had focused on which wasn't achieved. The application mentioned that the zone claimed was the object of any disagreement with the neighbouring States. This comment aimed in particular at France, even if the latter wasn't mentioned, as their two continental shelves meets on the 200 nautical mile limit of Europa<sup>197</sup>. In the absence of the victory of an expanded continental shelf, France will have the satisfaction of seeing Mozambique recognise a French continental shelf 200 nautical mile at the south of Europa. The IFREMER is officially quoted as an organisation having brought its assistance to Mozambique by participating in the pickup and analysis of additional data. The Overseas delegation didn't collect supplementary information on the continental shelf on the south of Europa that France succeeded in sharing with Mozambique.

Madagascar filed an application April 29, 2011 that didn't aim for the zone of the continental shelf concerned at 200 nautical miles south of Europa.

<sup>194</sup>Source: note accompanying the presentation of Mr. Jean-Yves Perrot, CEI of IFREMER, at his hearing before the members of the delegation for Overseas delegation, September 25, 2012.

<sup>195</sup>The only existing agreement is that of February 19, 2001 between France (Glorioso Island and Lys Island) and the Seychelles (Assumption Island and Astove Island) relative to the delimitation of the maritime border of the exclusive economic zone and the continental shelf.

<sup>196</sup>Hearing of Mr. Élie Jarmache before members of the Overseas delegation, June 26, 2012.

<sup>197</sup>The steady point MOZ-OL-01 is located on the 200 nautical mile of the Island of Europa in invoking Gardiner's formula (thickness of sediment).

The Seychelles filed a preliminary information May 8, 2009 for a zone located to the north west (area of the Aldabra Island), very far from the Glorioso Islands.

Maurice had claims of sovereignty on Tromelin<sup>198</sup>. This State filed a conjunctive application with the Seychelles on December 1, 2008, regarding the continental shelf zone located in the north east area and beyond 200 nautical mile of Tromelin Island. The French law of 1968 allocated a continental shelf up to 200 nautical mile which is covered by the agreement frameworks on the joint economic, scientific and environmental management relative to the Island of Tromelin and its surrounding maritime areas concluded June 7, 2010 between France and Mauritius. It "sets the scope of the application which included the island, territorial sea and the EEZ of 200 nautical mile around Tromelin, with the exception of the part located to the south of the island in order to avoid infringement by joint management on the EEZ of 200 nautical miles off the coast of Reunion Island as well as off the coast of Mauritius Island 199". As indicated in the impact study of the government bill "[i] there wouldn't be question that France eschewed the sovereignty on Tromelin not only on principle but also because it could have an impact on the other disagreements relative to the French Overseas possessions, in particular those with Madagascar speaking of the Scattered Islands located in the canal of Mozambique. Each of the States keeps to its position regarding the question of sovereignty or territorial and maritime skills of the island of Tromelin and the surrounding maritime areas". EXTRAPLAC didn't convey proof of an expanded continental shelf for Tromelin, which didn't bother Mauritius who had filed its own application and already obtained its recommendation of the CLPC

For their part, the Comoros filed with the CLPC preliminary information June 2, 2009. Its simplicity gives evidence of the status of the progress of the application. It doesn't give any indication on the exterior limits of the extension and on the date of the filing of the application. No French extension is an issue in this part of the Mozambique canal<sup>200</sup>.

<sup>198</sup>Following the enactment of the decree of February 3, 1978 creating the EEZ around Tromelin, Mauritius protested on March 1st of the same year reiterating that the Island of the maritime zones makes an integrating part of Mauritius. December 18, 2009 France files with the United Nations a list of geographical coordinates of the points defining the exterior limits of the EEZ off the coast of Tromelin. Mauritius protests May 17, 2011. The claims of Mauritius on Tromelin were withdrawn December 10, 2010 during its ratification of the relative fishing agreement in the south of the Indian Ocean. It was accompanied with an interpretative statement like the following: «(i) the State of Mauritius is defined in the Laws of Mauritius as including ... Tromelin... (ii) the State of Mauritius reiterates its rights to exercise complete and full sovereignty over its territory, including the territory and maritime zones of ... Tromelin as defined in the Constitution of Mauritius. (iii) (...) «, French Association for international rights (SFDI), Sentinelle Bulletin n° 310, on July 1st, 2012

<sup>199</sup>Senate, government bill n° 299 (2011-2012) authorizing the approval of the frameworks agreement between the French Government and the Mauritius Government on the economic, scientific and environmental joint management relative to Tromelin Island and its surrounding maritime areas, January 25, 2012, p. 4.

<sup>200</sup>December 5, 2001, three African countries signed an agreement delimiting their borders. It is a question of the delimitation maritime agreement between Mozambique and the Comoros Union, Tanzania and the Comoros Union, Tanzania and Mozambique and the agreement between Mozambique, Tanzania and the Comoros Union on the three spots in the Indian Ocean. See Djigou Djomeni Michel, «Les Comores, le Mozambique et la Tanzanie délimitent leurs frontières maritime communes «, SFDI, Sentinelle Bulletin n° 294, February 19, 2012.

# **Conclusion**

The extension of the sovereign rights on the natural ground resources and beneath the sea on the expanded continental self by France and authorized by the CNUDM, is in the process of completion. The fixed objective in 1998 of filing all the application extensions possible before May 2009 was only partially achieved by this date as only 5 applications out of the 9 possible were filed. In 2013, there are still 4 to be completed. The strategy set up starting in 2003 regarding the scientific, diplomatic and economic preparation of the applications was met with difficulties which filled the review of the French continental shelf extension with gloom.

Three difficulties of origin were brought up: financial, technical and diplomatic. They are at the root of the detrimental delays in the filing of the applications, deprived the undersea territories a part of the area claimed and contributed to the absence of presence of the State in the sea *a fortiori* of action in the sea. These difficulties had in addition lead to the failure of the French diplomacy in the preventive resolution of disagreements preventing the examination of some applications. They did not allow after the release of the recommendation by the CLPC the quick conclusion of the delimitation agreements necessary to the fixation and the publication of the exterior limits of the expanded continental shelf.

It is better to add the absence of the implementation, damaging to the economic development, of the 1998 decision taking note of the resources of the expanded continental shelf even if the objective of the extension concerns the exploitation and the preservation of the undersea resources of the territories.

External factors were added. Confronted by a large number of application from coastal States to be examined by the CLPC, the latter found itself confronted with an overload of work which wasn't accompanied by sufficient financial and human resources.

All these difficulties caused a delay in the victory of the extension, delay which increased dramatically bit by bit that the filing deadline for each new application extended through May 9, 2009. 3 or 4 years between the filing of an application and the release of a recommendation before 2009, 10 years for those filed in 2010 and between 15 and 20 years for those filed in 2013.

The extension allowed France to put an asset in its game, that of the affirmation by the French jurisdiction on the space of the continental shelf and its sovereign rights on the natural resources that is included. 660,000 km<sup>2</sup> which may contain resources have been conquered so far. There's only the triple to conquer.

It is urgent that at the same time of the pursuit of the conquest, plans of exploration and exploitation of the natural resources be established towards favouring sustainable development of the ultra marine territories, principal generators of the extension.

In a second chapter, it's better to take into account the assessment of the two other challenges that are highlighting this space and its resources by appropriate measures on the one hand, and their preservation as well as the marine environment by sustainable development on the other, towards the growth of the State wealth, ultramarine groups and their populations.

Table 1: Extension area of the Continental shelf beyond 200 nautical miles

Name of the Area	Location ( N 1)	Areas of maritime space below 200 nautical mile (in km²)	Area of the extended continental shelf having been the object of a recommendation (in km²)	Area of the extended continental shelf having been the object of an application or of preliminary information (in km²)	
Metropolitan France	OA	419,000	84,000		(N 2)
French West Indies (Guadeloupe and Martinique)		138,000	8,000		
Guadeloupe	OA	86,000			
Martinique	OA	47,000			
Saint- Barthelemy	OA	4,000			
St. Martin	OA	1,000			
French Guiana	OA	126,000	72,000		
Saint Pierre and Miquelon	OA	10,000		43,135	(N 3)
Reunion	OI	304,000		63,798	(N 3)
Mayotte	OI	62,000			
Scattered Islands	OI				
Of which Tromelin Island	OI	304,000			
Of which Glorioso Archipelago		51,000			
Of which Juan de Nova		71,000			
Of which Bassas da India		126,000			
Of which Europa		140,000			
Saint Paul and Amsterdam	OI	506,000		341,852	(N 3)
Kerguelen Islands	OI	547,000	423,300		
Crozet Archipelago	OI	562,000		541,288	(N 3)
Adelie Land	O An	112,000			
Clipperton	ОР	434,000		25,000	

New Caledonia	ОР	1.364.000			
Southwest file			76.000		
Southeast file					
French Polynesia	ОР	4.804.000		814,842	(N 3)
Wallis And Futuna	ОР	266,000		17,329	(N4)
Total		10.346.000	663.300	1.847.244	

Source: Websites of the Ministry of Overseas, TAAF, SHOM, IFREMER

N 1: OA (Atlantic Ocean, OI (Indian Ocean), OP (Pacific Ocean), O An (Antarctic Ocean)

N 2: area to share with Spain, Ireland and the United Kingdom

N 3: estimation by IFREMER

N 4: area to share with Tuvalu and Tokelau

# Managing the extension of the Continental shelf

The possible acquisition of sovereign rights regarding the natural ground resources and under the sea on almost 2 million km² on the expanded continental shelf thanks to the EXTRAPLAC programme, of which the review has just been established, having barely a signification if it is limited to the only satisfaction of having obtained growth of such a vast space, whether it be on the ground or under the sea. This acquired space in the process of being acquired thanks to the Overseas delegation, spread over the world is considerable. It represents 3 times the area of the national territory. This new asset is a chance for France and places our country in front of weighty responsibilities.

This imperative requires from France to reinforce its State presence in the sea, as well as the most exhaustive know-how of the resources of its seabed and marine subsoil, a delimitation and protection of the conquered areas, a legal framework for the exploration and exploitation activities which might be performed in the region, provisions adapted for the protection of the environment, specifically on the biodiversity and marine ecosystems and a strong collaboration of ultramarine authorities for the economic and social development of the concerned populations.

To conquer these sovereign rights on the natural ground and under water resources on the expanded continental shelf remains ineffective if France doesn't face its obligations and responsibilities that this conquest demands.

# Resources of the of the Extended Continental shelf, know-how and preservation

**Article 77** of the UN Convention on the Law of the Sea defines the rights of the coastal State over the continental shelf and the resources that are allocated to sovereign rights. It stipulates that:

- 1. "The coastal State exercises over the continental shelf **sovereign** rights for the purpose of exploring it and exploiting its natural resources.
- 2. The rights referred to are exclusive in the sense that if the coastal State does not
  explore the continental shelf or exploit its natural resources, no one may undertake
  these activities without the express consent of the coastal State.
- 3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
- 4. "The natural resources referred to in this part consist of the mineral and other non-biological resources of the seabed and marine subsoil together with the living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the marine subsoil."
- Such as defined by Article 77, the rights of the coastal State on its continental shelf are therefore:
- sovereign and exclusive: These rights at the end of the exploration and exploitation of the resources of the expanded continental shelf are the sovereign rights of which the exercise and the use are exclusively reserved for the coastal State. Only the coastal State can thus lead exploration and exploitation activities on the expanded continental shelf or authorize another State that can do the application;
- independent: "these rights are independents of the actual or imaginary occupation as well as all express announcements" which signify the existing rights without interventions of the State (contrary to the rights of the EEZ that the State must expressly declares);
- limit of resources: this definition of the resources of the continental shelf is a very broad definition but it excludes the fish resources. The convention was written in such a way that the States could take into consideration the not yet discovered resources. It thus doesn't exist a list of resources in the convention.

This part of the study attempts to do inventory of the resources of the expanded continental shelf. It leans on the scientific work<sup>201</sup> carried out on the continental shelf below 200 M and in the Zone managed by the AIFM.

It is question of:

- Hydrocarbon resources<sup>202</sup>;
- Hydrothermal sulphides;
- Cobalt crusts;
- Polymetallic nodules;
- Natural hydrogen;
- Rare earths;

<sup>201</sup>Scientific missions to Wallis and Futuna, IFREMER study on the Clarion Clipperton area, Fouquet Yves and Lacroix Denis, Les ressources minérales marines profondes. Étude prospective à l'horizon 2030, IFREMER, Editions Quae, August 2012.

<sup>202</sup>For the IFREMER, the *«other non-biological resources «* mentioned in paragraph 4 of article 77 of the Convention refer to hydrocarbons.

- Biological resources<sup>203</sup>
- The living organisms which appeared as sedentary species.

Today, with the predictable and progressive depletion of the onshore natural resources easily accessible, the technological progress, the emergence of the competition of the countries particularly dynamic in the investigation of the marine environment (China, India, Korea), the ocean is a vast field of wealth, still unknown, but that we know is precious and that could respond to the satisfaction and world needs in energy and to those necessary to the development of new technologies. All these countries are already situated for researching resources of this vast sea domain which occupies 71% of the earth's surface of which 60% is more than 2000 meters of depth. Also, the interest of the coastal States is measured to pursue their approach of appropriation of the maritime space in the limits of this new frontier which is made up of the expanded continental shelf.

# Energy mineral resources: Hydrocarbons

"The mineral resources" is a well known category in the international marine depths. Article 133 of the Convention indicates that these resources are solid, liquid or gas.

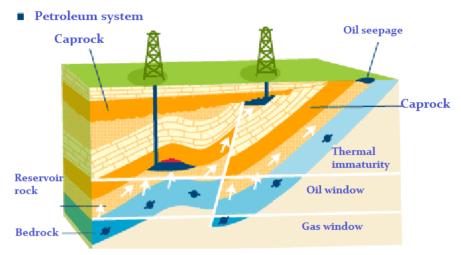
The oil results from the thermal degradation of organic material in certain rocks. It is fossilised remains of aquatic or earthly vegetation and bacteria which have accumulated at the bottom of the oceans, lakes or in the deltas. For around 10 million years, new sediment will continue to accumulate, carrying the sea rocks to the deep oceans.

Mr. Vially<sup>204</sup> reminded, during his interview before the Overseas delegation, that an oil system expels to all the geologic conditions allowing to generate and accumulate hydrocarbon. It is comprised of several elements: organic matter, namely the sea rock which is a rock rich in organic material, porous rocks which are permeable and allow hydrocarbon to accumulate, coated rocks which prevent hydrocarbon, lighter than water, to regain the surface constituting a trap which forms deposits.

<sup>203</sup> the biological resources, although not cited in Article 77 of the CNUDM, was part of nonetheless living organisms of the expanded continental shelf.

<sup>204</sup>Hearing of Mr. Roland Vially, project manager of evaluation resources and reserves within French Institute of Petroleum and new energies (IFPEN), before members of the Overseas delegation, September 25, 2012:

Schema 1: Elements of a petroleum system



Source: Institut français du pétrole-Énergies renouvelables (IFPEN).

Geologists are particularly interested in the continental margin because it's the place where the majority of sediments settle resulting in the erosion of the continents and where it is possible to find hydrocarbon. Actually, the geological conditions which allow the reparation of the susceptible sectors to generate or accumulate hydrocarbon gathers together 4 elements mentioned above: sea rock, reservoir rock, coated rock and the trap which condenses the resource. The work of a geologist consists of detecting these 4 criteria in order to situate them in the sedimentary basin. Despite the absence of systematic tracking of the resources, organised within the framework of the EXTRAPLAC programme, the applications of extension have allowed to identify the French zones the most conducive to hydrocarbon but not identified for the other resources. These are: Guyana, New Caledonia, Saint Pierre and Miquelon and Adelie Land. All these territories correspond to the zones where the thickness of sediment is extremely important varying from 1.000 to 5.000 m of thickness.

As regards to gas hydrates, in July 1996, in the Pacific Ocean, the German research ship, *Sonne*, extracted from the depth of 785 meters, quantities of hydrate and methane that resemble pieces of ice. For the first time, in March 2013, Japan also succeeded in extracting from its continental shelf an industrial exploitable quantity of Methane hydrate. The reserves of gas hydrates (methane, ethane, propane and butane), that harbour at the bottom of the sea, would be important.

#### Guyana Case

In Guyana, before the scientific work carried out within the frameworks of the EXTRAPLAC programme, the relative knowledge of the Guyana continental margin had been weak. The bathymetric maps and the seismic data showed incredible sedimentary thickness of the continental margin despite the depth of the water extremely important, favourable geological situation in the presence of hydrocarbons. In 2007, the oil field Jubilé, located in the South Atlantic Ocean, was discovered by *Tullow Oil* in the waters of Ghana. It began to produce petroleum in 2010 at 1,100 meters below the sea and today it supplies 110,000

barrels per day or the equivalent of 6 to 7 % of French consumption. By geological analogy<sup>205</sup> and thanks to the data already acquired by EXTRAPLAC, the first phase of exploration was carried out on the Guianese continental margin with the Zaedyus 1 wells which revealed the presence of petroleum. Before considering the exploitation, they must evaluate the profitability of the oil field: volume of reserves retrievable and conditions of production can actually be determined only in proceeding with drilling delineation against delimiting the oil field.

Indeed the major parts of the zone where the oil slicks are found are located below the 200 nautical mile of French continental shelf. The extension of the continental shelf is indispensable to securing the entirety of this zone, which is considered promising in hydrocarbon reserves given the thickness of the sediment discovered<sup>206</sup>. The proximity of Guyana of the important markets which represent the neighbouring countries is equally an extra asset which litigates for the development of this activity sector.

#### ☐ Saint Pierre and Miquelon Case

With regards to Saint Pierre and Miquelon, the available data are extremely precise thanks to the Canadian work on the North American continental margin. The sediment thickness is extremely important The zone of Saint Pierre and Miguelon is totally part of this sedimentary basin. During his interview, Mr. Vialy indicated that Saint Pierre and Miquelon, due to these two elements, the thickness of sediment and sharing the same basin with Canada, presents itself as a promising case. The evaluation maps show that the narrow French passage, even reduced, proves particularly interesting regarding its potential for petroleum. The unique wells of exploration, such as Bandol, recognised a zone which marked interest. In reality, the zone the most promising is located 100 to 150 km more south. This maybe the reason for which the oil company (ConocoPhillips), which works in Bandol, hastened to acquire the group of exploration licenses "trapped" the French EEZ. On the other hand, Saint Pierre and Miguelon is located in the centre of important off shore hydrocarbon reserves that Canada has largely begun to exploit (oil fields of Sable Island, Hibernia, Terra Nova, White Rose off shore oil platforms). The Canadian company KCRLLC based in Calgary became interested in an application of prospecting in the French EEZ. The application of the Bardot Group in the French EEZ published an official journal of the European Union on 1st June 2010 is still waiting for an answer from France. These simple examples show the interest which could promote the French continental shelf off the coast of Saint Pierre and Miguelon for the large North American operatives, rather than only one French operative displaying its interest for the zone, which could be regrettable. The interest of Saint Pierre and Miguelon dwells also on the fact that it is located near the large consumer countries which are Canada and the United States. The narrowness of its EEZ wouldn't miss out on being compensated by the extension of its continental shelf estimated at an increase of area corresponding to 350% of its EEZ<sup>207</sup>.

<sup>205</sup>This analogy rests on the fact that there are several millions of years, South America and Africa was one solid block and French Guyana brushed against the actual place of Ghana.

<sup>206</sup>Hearing of Mr. Julien Denègre, responsible for Business Development at TECHNIP, before members of the Overseas delegation, October 23, 2013.

<sup>207</sup> See note N°3 Ocean Mineral Resources, September 21, 2012, Ifremer/DGOM/12/DP/054/PhL.

#### ■ New Caledonia Case

The territory of New Caledonia was the first to express its interests for the knowledge of the topography of the deep sea of its economic zone and for the evaluation of the resources it harbours. A work group was set up in November 1990 It was in charge of defining the bases of a programme consecrated to the study of marine resources of the Caledonian economic zone. In 1991, the State, the Territory and the 3 Provinces associated themselves with the research institutes to construct and initiate the multidisciplinary economic Zone programme of New Caledonia (ZoNéCo). This programme had as a principal objective of gathering and rendering the necessary information of the inventory accessible, the appreciation and the management of mineral and living resources in the exclusive economic Zone of New Caledonia.

Thanks to the results of the programme ZoNéCo and EXTRAPLAC, the existence of the important sedimentary basins proved a very large depth of water. Thus there is a strong possibility of finding hydrocarbon liquid there (Fairway basin for example) or exploitable gasses in *deep offshore*. There is an equal potential of hydrocarbon in the west zone along the Lord Howe Rise according to IFREMER.

#### ☐ Adelie Land Case

In Antarctica, the French sovereignty on Adelie Land practises in the context of the treaty of Antarctica signed in Washington in 1959 which established a "freeze" of the territorial presumptions and stated the liberty of the scientific research over the continent. This treaty was supplemented in 1991 by the Madrid protocol on the protection of the environment which made this continent "a natural reserve devoted to peace and science". No exploration or exploitation of mineral resources is authorized. Nonetheless from a geologic point of view, the Antarctica was attached to the south of Australia, around 70 million years ago. Now the Australian continental margin of this zone is known and potentially interesting because the gas and oil fields have been found there. By geological analogy and leaning on the Australian data collected for documenting the extension of their continental shelf, the existence of important sedimentary basins within the Antarctic continental margin lets foreshadow potential hydrocarbon even if it's totally virtual for the moment. The actual status that attributed to the Antarctic treaty in Adelie Land doesn't let any to contemplate the possible exploration and exploitation activities in the short run and poses quite obviously the question of the presence of the environmental dimension.

In the actual context of world dependence still a major presence at the sake of the hydrocarbon (notably in the transport domain), these reserves present an important strategic challenge. But this is useful to remember that the exploration and exploitation of the hydrocarbons in the sea impact the marine ecosystems and environment, but also present industrial and environmental risks. The largest vigilance to be essential therefore as to the perturbations and damage that could drive the exploration and exploitation activities offshore. The strategic environmental evaluation (EES)<sup>208</sup> must allow a larger recognition of

<sup>208</sup> We hear from EES «the analytic and participatory approach of the strategic decision which aims at integrating the environmental considerations in politics, the plans and programs and to evaluate their interactions with the economic and social considerations «. The Economic Cooperation and Development Organisation (OCDE), the strategic environmental evaluation, handbook of best practices in the domain of cooperation for development, 2006, p. 18.

these risks. The French and European regulation is in the process of being reviewed to better integrate the environmental impacts, inadequately recognized today.

# Hydrothermal sulphides

Fluid circulation in the oceanic crust at the level of the spreading zones of 60,000 km of oceanic ridges is favoured by the presence of heat and faults contained therein. The hydrothermal activity which in result ends in an important concentration of metal present under a cluster of sulphur clumps.

In 1962, in the Red Sea, the first hydrothermal mineralisation associated with hot brines (70° C) were observed. Close to 3,000 meters deep on the East Pacific ridge that the first black smokers (350° C) were noticed in 1978. Also, at this depth located between 800 and 4,100 meters after 30 years of exploration in all the oceans, nearly 150 hydrothermal sites were discovered.

The hydrothermal sulphur is distinguished by crusts and nodules because of their strong enrichment in base metal. These sites harbour copper and zinc and are generally rich in silver and often gold. In the Atlantic, certain sites present important contents in cobalt. When it is a question of mineralisation forming above 300°C, it can be associated with copper of the rare elements: selenium, cobalt, nickel, molybdenum, tellurium, bismuth and gold. The zinc linked to the mineralisation forming between 100°C and 250°C is accompanied by cadmium, lead, antimony, germanium, indium and barium.

It is a question in general of mineral clumps of which the exploitation generates in principle little damage and of which the localization on the sea bottom doesn't require the excavation of tunnels like on land. It is by submersible and by dredging that the hydrothermal mineralisation have been studied, these two techniques allow the sampling of the surface. In addition, the infrastructures on the ships are easily moved. So many technical elements that let us think that the costs of exploitation as well as the impact on the environment of exploitation of the hydrothermal sulphur negligible.

The knowledge and the research of the hydrothermal sites, active and especially inactive, remain something to probe. The technological world leader in this domain is French, TECHNIP. In the case of exploitation, it is especially the inactive sites that would be affected.

In the Zone, under the authority of the AIFM, above the extended continental shelf, the most active countries are China, Korea, Russia and India. The missions of IFREMER are allowed to find the hydrothermal sulphur sites in the potential 350 miles to the East of Clipperton and to equally show the extensions of the Saint-Paul and Amsterdam Island which also have the potential of hydrothermal mineralisation<sup>209</sup>.

#### Cobalt crusts

These crusts exist where during several millions of years a slight rate of sediment, combined with strong currents, prevented sedimentation.. They're associated with the sub-marine Intra-plate elevations, with the isolated sub-marine mountains as well as the volcanic ranges. These crusts vary from a few centimetres to 25 centimetres of thickness and could cover a surface of several kilometres <sup>2</sup> of depth from 400 to 4000 meters

209See note N°3 Ocean Mineral Resources, September 21, 2012, Ifremer/DGOM/12/DP/054/PhL.

It's in the Pacific and notably in French Polynesia that the sediment has the strongest potential in cobalt and in platinum at a depth located between 1,500 and 2,000 meters.

The crusts are especially made up of iron oxides and manganese oxides and are on average three times richer than the cobalt and platinum nodules. We can equally located on these sites rare elements (yttrium Lanthanum, cerium, titanium, thallium, zirconium, tellurium, molybdenum) which exist at favourable concentrations.

In short, the rare land, platinum, cobalt seems to be more concentrated in the crusts than in the nodules. Scientifically and economically, the knowledge is still to be improved to better define the conditions and the possibilities of exploitation of the cobalt crusts. In this domain, but below 200 nautical mile, the most active countries are Japan, United States, Korea, China, Brazil and France. In most of the zones of the French continental shelf, the extension could affect the existing crusts on all hard substratum or the nodules.<sup>210</sup>.

# Polymetallic nodules

The nodules are obscure balls from 5 to 10 cm in diameter that are found under the marine floor in all the oceans from 4 000 meters deep. The fields with the strongest density were recorded from 1973 in the zone of Clarion Clipperton in the North Pacific.

They especially contain manganese hydroxides and iron hydroxides are frequently enriched with nickel, cobalt and copper. They are introducing, notably in the Clarion Clipperton zone, interesting contents in copper (0.8%), nickel (1.2%), manganese (25.4%) and were the subject of the granting of numerous permits. These nodules are two times more concentrated that those of the Andean mines which supply 34% of the world's production. They are considered as strategic reserves of base metal and of certain rare metals (cerium 0.1%). The technologies of exploitation still uncertain and the important depths don't leave us to envisage a possible development before 10 or 20 years.

# Natural hydrogen

The scientific research, in particular the work of IFREMER, emphasised the hydrogen stocked in the ocean rock minerals and the role that it plays in the redox reactions taking place during the interactions sea water with the rock in the hydrothermal circulation. Also thanks to the hydrogen of numerous elements of metal (i.e. titanium, vanadium, chromium, cobalt, molybdenum, tungsten, uranium, thorium, gold) could circulate in the mantle. The scientists have also discovered the production of hydrogen in large quantities off the coast of the oceanic ridges and in the subduction zones. But the global floods of hydrogen are actually not well known and still require a deepening of knowledge of the ground and of the marine underground.

#### Rare earths

The rare earths are these mineralisation which affect around 15 metals already mentioned in this study: selenium, molybdenum, tellurium, cadmium, germanium, barium, etc.

<sup>210</sup>See source IFREMER, note N°3.

These rare earths are associated with different mineralisation found in the depths: cobalt crusts, sulphur piles, Polymetallic nodules; the concentrations are very mixed depending on the zone.

These rare earths are extremely researched because of their "chemical properties, essential high tech electromagnetic, semi conductors in the defence industry passing through the telephone, but also renewable energies, like a kilogramme of Neodymium necessary for construction of the motor of Prius, a hybrid car from Toyota, not including solar and wind mills<sup>21</sup>".

Thanks to these elements, the Smartphone has a calculation power that would require a considerable volume of materials 30 years ago and that is held today in the palm of the hand. The technological innovations associated with the sustained development also implement these elements. We find the neodymium in the windmills, electric cars containing often up to nine types of rare earths. The yttrium allows the formation of compounds thanks to the LED screens and the fluorescent light bulbs emitting light.

# **Biological resources**

It should be stated that the biological resources in spite of article 77 of the Montego Bay Convention doesn't mention them specifically as the resources of a continental shelf. During his interview, Mr. Bersani <sup>212</sup> justified "an intense life" existing 4,000 meters deep. The study of IFREMER <sup>213</sup> highlights "an exuberant and extraordinary life" around the hydrothermal chimneys and the biological wealth of the sedimentary environment of the abyssal plains comprised of small invertebrate organisms (around 10th of microns to a few millimetres) and of micro-organisms. An American study carried out on the slope of the North West continental Atlantic located between 1,00 and 2,500 meters deep estimated that there exists close to 10 million living benthic species at this depth. Generally speaking the scientists acknowledge the ampleness and incertitude as a number of benthic and deep sea species could be found in the oceans. Indeed it is estimated that currently only 5% of the oceans have systematically been explored.

This biological vitality obviously attracts the large industrial and commercial groups active in the very profitable markets of medication and cosmetics. "The genetic resources of the deep sea are potentially enormous for a variety of commercial applications, notably in the medical sector, in the industrial process or in bioremediation. Research in the relative data bases of the patent office showed that the compound of deep sea organisms have been used as the base of powerful medications intended to fight against cancer, commercial dermatological products providing a larger resistance to ultraviolet rays and heat, anti inflammatory dermatological products, detoxification agents against snake venom, antiviral substances, anti allergenic agents and anti coagulant agents, and in the industrial applications to reduce viscosity. The fact that all the major pharmaceutical companies have marine biology divisions shows the commercial importance of the genetic marine resources. The high cost of scientific marine research and

<sup>211</sup>Poirier-Coutansais Cyrille, «L'Eldorado maritime: entre prédation et gestion concertée «, *in* revue *Études*, tome 415/3, September 2011.

<sup>212</sup>Hearing of Mr. Bersani in private interview with Mr. Grignon, rapporteur of the study, November 26, 2012

<sup>213</sup>Fouquet Yves and Lacroix Denis, *Les ressources minérales marines profondes. Étude prospective à l'horizon 2030*, IFREMER, Éditions Quae, collection «Matière à débattre & décider «, August 2012.

the small chance of success (only 1 or 2% of the preclinical candidates are commercialised) are compensated by the potential benefits. Actually, the worldwide sales of all products derived from marine biotechnology in 2000 was estimated at 100 billion US dollars<sup>214</sup>."

Besides the necessary effort of research, knowledge and inventory of the ecosystems and the biological resources of the marine environments, France must develop regulations adapted<sup>215</sup> to the objectives of the international convention.

## Living organisms belonging to sedentary species

"The natural resources referred to in this part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil." This word would signify that the coastal State practise its sovereign rights on the free swimming species as well as the exploited benthic species (flat fish, shellfish). These living organisms pertaining to the sedentary species, in or under the deep sea, where they are unable to move without keeping physical contact with the marine floor, who are included in this definition are the molluscs, such as abalones, oysters, scallops, various shellfish such as lobsters and crayfish, sea cicadas and crabs, as well as the echinoderms like sea urchins, starfish, sea spades, sea sponges, coral and other worms. The exploitable vegetal species equally make up part of these resources for example, seaweed and algae <sup>216</sup>. A more complete inventory of these different resources of an extended continental shelf remains to be carried out. Certain debates exist, regarding shellfish relative to their quality of species relating to article 77, paragraph 4 of the Convention, based on a conscientious analysis to know if as they move, they lose contact or not with the marine floor. We can imagine that the shellfish and certain shells make up part of the targeted species obviously, the subject calls for clarification.

Finally, the extended continental shelf occupies a space on the marine floor and under the marine floor above 200 nautical mile offering a potential for rich resources, various and important for the economic development for the countries and regions concerned. **But these resources and the environment in which they evolve are still largely unknown.** 

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<sup>214</sup>United Nations Programme for the environment (PNUE) Marine and coastal biological diversity – situation and dangers to which are presented the deep sea genetic resources located out of the limits with the national jurisdiction and identification of the technical options for their conservation and their sustainable utilisation, note from the Executive Secretary of the Convention on the Biological Diversity (CDB), UNEP/CDB/CBS/TTA/11/11, 22 July 2005.

<sup>215</sup>Poirier-Coutansais Cyrille, "L'Eldorado maritime: entre prédation et gestion concertée", revue Étude, tome 415/3, September 2011.

<sup>216</sup>Prescott Victor, Resources of the continental margin and international law, in Continental Shelf Limits: the scientific and legal interface, P. J. Cook and C. M. Carleton (eds.), Oxford University Press, p. 80.

In conclusion, it emerged different people interviewed, and in particular the executives of scientific and technical organisms (IFREMER, IFP, TECHNIP, Eramet...) that despite the scientific missions committed but covering still the areas too limited to be sufficiently exhaustive, the knowledge and identification of the resources of the extended continental shelf and more particularly of the extended continental shelf remaining very incomplete and demanding a more ambitious investment. Furthermore, the association with these different missions of private interests (in particular oil tankers), surely the only private initiative, carry a certain confidentiality as the publicity of the information on these resources acquired whereas diverse mission and scientific work clearly leave to emerge the hope that elicits the wealth of the ground and underground marine floor.

The conquest of these new rights on the exploration and exploitation on the extended continental shelf sets our country in front of the responsibility to watch and control these spaces with, for the purpose of knowing and protecting the resources that it includes. If the State is not intended to give way to the interests of private research, it shall be responsible, particularly thanks to its first class operators <sup>217</sup>, to increase its know-how on the resources of its seabed and marine subsoil, of the ecosystems surrounding the same and the impacts and incidences associated with human activities. This knowledge can be improved through a coordinate programme involving the entire group of the social-economical actors who gather precious data from their activities. These efforts regarding research and development need important human, technical and financial resources In this context, and providing the fact that these stakes go beyond the straight national border, it matters, on the one hand, that these actions are to be linked together with the international and community matching programs - especially the Technological Research and Development Main Programme (TR&DMP), and, on the other hand, they fully fit in a real strategy of local cooperation, on the scale of each regional area of cooperation.. This responsibility obviously leads to mention the legal supervision in which the exploration and operation/exploitation activities can be led to on the extended continental shelf.

# Which legal framework with regards to the exploration and exploitation activities (EEA) of the resources of the extended continental shelf?

The Montego Bay Convention provides no indication in relation to the legal framework of exploration and exploitation activities (EEA) of the resources of the extended continental shelf<sup>218</sup>. Nevertheless its Part XII is devoted to the protection and preservation of the marine environment.

The coastal country is therefore free to establish by itself the conditions for exploration and exploitations agreements and to define the technical specifications referring to the obligations of the contractor with regards to the State and the concerned authority, the

<sup>217</sup>IFREMER, SHOM, Agency for Marine Protected Areas, IRD, CNRS, universities, BRGM, ONEMA, water agencies, Météo-France, IGN, CNES, MNHN, IFPEN, CEA, CEMAGREF, IPEV, CEDRE.

<sup>218</sup>Interview of Mrs. Virginie Tassin, Doctor of Law, by Mr. Grignon, rapporteur, October 8, 2012.

provisions establishing the respect and the protection of the environment, the social exploration and exploitation conditions.

## The specific situation of the extended continental shelf within the maritime areas

### ☐ The extended continental shelf and the open sea

The circumstances in which the EEA will take place on the extended continental shelf are very different from these on the continental shelf beneath 200 nautical miles. Indeed, if beneath 200 nautical mile the continental shelf is overhung by a water column which belongs to the coastal state's EEZ (article 56 of the Convention of Montego Bay), the extended continental shelf is overhung by the open sea, international area of Liberty (article 87 of the Convention). These EEA of the extended continental shelf cannot happen without troubling the seafloor and the water column it is overhung by. The works destined to these activities on the continental shelf are allowed by the article 80 of the Convention, which refers to the article 60 that defines them (artificial islands, implementation of works assigned to the foretold ends in article 56 or to other economical ends)

If the settlement practicable to the continental shelf beneath 200 nautical mile can only affect the coastal sovereign country in its EEZ, it is different for the EEA on the extended continental shelf, which can trouble and disturb the activities practised freely by other countries on the open seas (navigation, fishing etc...) or even limit the settlement of freedom, proper to the open sea status, and result in conflicts of use

For these reasons, the legal framework with regards to the EEA on the extended continental shelf cannot be *stricto sensu* the extension of the applicable legislation beyond 200 nautical mile, as it should consider the customary practices for the free area which is the offshore dominated by the same.

### ☐ The extended continental shelf and the Zone

The other particularity of the extended continental shelf is to be close beyond its external edge to the Zone, managed by the International Seabed Authority (ISA)

The activities regarding the mineral resources of the Zone are ruled by the part XI of the UNCLOS and by appendix III about *the "basic conditions of prospecting, exploration and exploitation"*.

A first regulation about the prospection and exploitation of Polymetallic nodules has been adopted in July 2000. A second one regarding the EEA concerning the hydrothermal sulphides has been adopted in May 2010. These regulations are based on the important directives of the international regime establishing the principle of the common patrimony of mankind in article 136 of the UNCLOS. The regulation regarding cobalt-rich crusts is still in elaboration. However questions remain regarding the means used by the ISA in order to control the respect of these regulations.

Thus, the ISA in charge of the Zone is on the way of elaborating an authentic international mining code regarding the activities of exploration and exploitation of the mineral resources belonging to the common heritage of humanity<sup>219</sup>.

In an opinion of February 1<sup>st</sup>, 2011, the chamber for the regulation of conflicts of the International Tribunal for the Law of the Sea implies that the coastal countries could take inspiration from regulations established by the ISA during the elaboration of their own regulation regarding the EEA.

Thus, even if the coastal country is sovereign regarding the exploration and exploitation of its natural resources, the closeness of its continental shelf with the Zone cannot lead to ignore the international regulation, but, on the contrary, to take inspiration from it or even consider it in the establishment of its own.

By taking on this approach, our country would display anticipation and would even be a model in the matter.

This duty of the coastal State to legally frame the EEA on the extended continental shelf must also take consideration of the requirements regarding marine biodiversity and the stakes of the environment of the seafloor.

## The necessary adaptation of the Mining Code to the extended continental shelf

Currently the legislation applies to permits which may be granted on the extended continental shelf off the coast of Mainland and Overseas departments, the legislation on the continental shelf below 200 nautical mile, that is to say the mining code, including the amendment, called *Auberger*, adopted in 1993 abolishing the legal provisions of off-shore hydrocarbons exploitation. As it is admitted obsolete, it is currently being reformed. Among the overseas departments and territories, only New-Caledonia has a specific mining legislation.

According to the current legislation, exploitation permits are delivered nearly free of charge by France to enquiring oil companies, without any restrictive engagement regarding economic, social or environmental actions towards the regions concerned. These exploitation permits grant the rights of exploitation with no licence-fee to the licensor State in case of a discovery. With the adoption of the Auberger amendment, France is the only country in the world presenting such a legislation in favour of the oil groups working off-shore.

The recently growing awareness on the hydrocarbon potential of certain French regions, more specifically in the Overseas territories, should be a further stimulus for the State for a rapid and exhaustive reform of the mining code without going halfway through the taking of urgent measures, as is shown by the recent example.

With no preliminary study, an amendment establishing a licence-fee worth a maximum of 12% of the production has been adopted with the law about corrective finances for 2011. Georges Patient, senator of Guyana, as a part of an Overseas delegation, had the chance to remind the Senate, on Wednesday 16 of January 2013 that "from January 1 st 2014, regarding deposits in the sea located on the edge of the continental shelf, the owners of mines of

<sup>219</sup> Senate, Department of the Parliamentary initiative and delegations. Note about the deep marine mineral resources: Polymetallic nodules, crusts and hydrothermal sulphides. Brazil - United States - Cook Islands - Fiji - New Zealand - Papua New Guinea, conducted at the request of the Senate delegation to the Overseas Territories, LC 234, March 2013.

hydrocarbon liquid or gaseous will have to pay an annual license-fee based on their production. It will be determined by applying a gradual rate to each part of the annual production. This rate will be set in accordance with several factors: nature of the products, continent where the deposit is off the coast, depth of the water, distance from the deposit to the coast and amount of the granted expenses during the period of exploitation and development, within the limits of 12%. 50% of the tax income will be affected to the State and the other 50% to the region whose territory is the closest to the deposit. "Apart from this fiscal disposition linked with the exploitation of off-shore hydrocarbons, the only other existing disposition is the possibility for the Territorial Council of Saint-Pierre and Miquelon to lift a license-fee of which the basis and the rate are established by the local Assembly to the advantage of the archipelago.

It is urgent for our country to review its mining legislation, more particularly in the off shore EEA areas by taking on board the current elements: new spaces, new resources, new needs, new technologies, new environmental demands and practical social law<sup>220</sup>. The recent communication of the Council of Ministers of February 7, 2013 seems to engage in this direction.

These necessary reforms should take in account the evolution of the European legal frame and the community jurisprudence which set their sights on establishing more standards regarding the activities related to the continental shelf. In the note from March 2012 *Preventive environmental risk management: the safety of offshore oil rigs, the* Economic, Social and Environmental Council reminds that these European evolutions, especially with the publication in 2011 of the project of regulation of the European Commission regarding the safety of off-shore activities in Europe<sup>221</sup>. This project insists particularly on the necessity to implement more rigorous conditions to deliver national permits to industries. Regarding the evolution of the law, the jurisprudence of the Court of Justice of European Union (CJEU) tends to strengthen the applicability of the community norms to the activities related to the continental shelf. Indeed, in a note from January 17, 2012, the Court decided that the law of the Union henceforth applies to an employee of a rig located above the continental shelf of a member State.

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To conclude, the Overseas delegation is aware of the difficulty to define a regulation towards activities of exploration and exploitation of resources insufficiently identified, known, quantified, located and situated in environments and ecosystems of great depths also unknown.

In addition, the operations of exploration and exploitation of mineral resources of the seafloor of the continental shelf or of surface (following the products collection of the exploitation) are extremely various and complex.

<sup>220</sup>See Communication by Council of Ministers on February 7, 2013 regarding *«the main principles of the mining code reform»*.

<sup>221</sup>Beall Jacques et Feretti Alain, *De la gestion préventive des risques environnementaux: la sécurité des plateformes pétrolières en mer*, opinion of the ESEC, Editions of the Official Journals, N° 2012-08, March 2012.

Besides, in France, the ecosystems and concerned marine environments were not the subjects of public scientific studies advanced enough to allow the setting of better legal and regulatory norms to preserve them.

Finally, the exploration and exploitation of resources appeal advanced technologies to take in account in any legislation.

# The Coastal State facing its responsibilities and its duty to protect the environment of the soil and subsoil

The report the Overseas delegation concerns the extension of the jurisdiction of our country on the floor of its extended continental shelf and the gain of sovereign rights for the exploration and the exploitation of mineral resources, other biological resources and living organisms which belong to the sedentary resources contiguous to the seabed. These rights,, once their perimeter defined following the publication of their external limits to the United Nations, leave to the coastal State the entire liberty to allow drillings, dragging, to scrape off the seafloors, to dig galleries, to implement different equipments and works on the seabed as well as on the water column to the lifting up the surface of resources, to settle artificial islands; etc

These activities cannot be implemented without causing important perturbations within the related environments, namely the seafloor and the water column which overhangs it and, as it happens the open sea when it concerns the extended continental shelf. Besides, they are executed at the depth beyond 1,500 meters, even up to 4,000 meters down to the seafloor.

If the study cannot deal with this aspect of the subject very precisely, it is our role to establish the context and draw some conclusions.

What is this about? Preserving the biodiversity and the marine ecosystems of the great depths, the marine environment in a general way and the resources on which we have claimed rights of exploration and exploitation on the extended continental shelf and bringing a fresh look on the existing legal framework which the coastal State can rely on to deal with its responsibility towards this environmental stake. Indeed, apart from active hydrothermal sites, very few data about the nature and the layout of the fauna related to the oceanic dorsal and back-arc volcanic systems exist In these systems, the exploitation of the sulphur deposits might have a direct impact on the benthic ecosystem of inactive metallic sediments (destruction of the living environment and square) and indirect impacts linked to the spreading of sedimentary variety (modification of the physical and chemical characteristics of the environment for the pelagic ecosystem)<sup>222</sup>.

<sup>222</sup>Fouquet Yves et Lacroix Denis, Les ressources minérales marines profondes, étude prospective à l'horizon 2030, IFREMER, Éditions Quae, pp. 28-30.

## Dangers caused by the marine biodiversity and ecosystems as part of the EEA.

The definition of the biological diversity is specified in chapter XV of Agenda 21 (also known as Action 21) adopted by the Conference of Rio in 1992 as being "the variability of living organisms of any origin, including, inter alia, the terrestrial ecosystem, the marine and other aquatic ecosystems and the ecological complexes of which they are a part. It includes the diversity among species and between species as well as those of ecosystems." (article 2)

The ecosystem is defined as "the dynamic complex made of a community of plants, animals and micro-organisms and their non-living environment which, by their interaction, constitute a functional unit" (Article 2 of the Convention on biological diversity).

Yet, we know that the marine world of the great depths is extremely rich in living species in the form of micro-organisms, but these species are little known, unidentified, as the ecosystems of which they are a part.

Studies of the French Research Institute for Exploitation of the Sea point out "the exuberant and extraordinary life" around hydrothermal stacks. These ecosystems related to ejections of hydrothermal fluids shelter exuberant and extraordinary communities as their development is based not on photosynthesis as almost all form of life on our planet, but on chemosynthesis. Micro-organisms building these systems include hundreds of invertebrate species, mostly large-sized and newly discovered. The knowledge of these environments and of the life existing in there is very incomplete The potential exploitation of the natural hydrogen from hydrothermal air vents would have consequences on the chemo-synthetic ecosystem; it would directly affect the energy source at the origin of the ecosystem and would chemically modify the environment. Regarding the seamounts, the knowledge of biological communities associated to encrust rich in cobalt also is extremely rare. The exploitation of resources in these environments would translate into direct and indirect consequences that would probably compare to those described above regarding the sulphur deposits. The exploitation of Polymetallic nodules would also have direct (destruction of the environment on the exploited zone) and indirect (redeposit of the variety of sediments on a larger zone) consequences on the ecosystems of the zone. The re-colonisation and restoration of population processes might as well last for years or even decades.

Generally, the mining activities in a deep milieu would have different levels of impact on the environment and the biodiversity, including the local destruction of associated ecosystems and environments, but also the perturbation of the milieu (water column and seabed) and biological diversity in a larger area and a much longer time than the exploitation itself<sup>223</sup>.

Technologies linked to these activities in deep waters are currently the subject of extremely precise studies from countries which measured up the vital and strategic importance of these resources and the needs of protection to the marine environment. Consequently in Hawaii and Polynesia, some sites spotted by a Japanese team have been identified as strategic reserves and result in a real competition to submersible equipments. Jiaolong, a Chinese submarine, specialised in the exploration of the abyss approximates

<sup>223</sup>Fouquet Yves et Lacroix Denis, Les ressources minérales marines profondes, étude prospective à l'horizon 2030, IFREMER, Éditions Quae, pp. 28-30.

more and more the performance of French Nautilus. Indeed, it reached during summer 2010, a depth of 3,759 M, showing China's ambitions regarding territorial expectations compared to neighbouring countries in matter of technological knowledge France must become a pioneer in this area of expertise

## The responsibilities and obligations of the State towards the environment

The article 192 of the Convention of Montego Bay states that "the States have the obligation to protect and preserve the marine environment".

The Convention of Montego Bay does not deal specifically with the biological diversity or the marine genetic resources. It defines a general frame for the whole range of activities practised in marine areas, whether they are placed under the States jurisdiction or beyond' This is clearly translated in the paragraph 4 of the foreword, where it is stated that "it is desirable to establish a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilisation of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment". The Convention in 82 is in fact a frame convention calling the development of complementary rules. Therefore, it refers to other instruments of global or regional application likely to apply to the marine biodiversity. Among the most important are the Convention about biological diversity (CBD) of 1992, the MARPOL Convention of 1973 and the OSPAR Convention.

→ The Convention about biological diversity of 1992

The Convention about biological diversity (CBD) admits, for the first time, that the conservation of the biodiversity is a "matter shared by the humankind" and an integral part to the development process. It concerns the biological marine and terrestrial resources, under the jurisdiction of the state. Its objectives include access to genetic resources and the fair and equitable sharing of the benefits associated with their use. The resources affected on the marine level are located in the waters and areas under sovereignty or jurisdiction (territorial sea, EEZ, continental shelf).

Considering the previous developments, and in particular the very incomplete knowledge of the marine ecosystem and the species associated, it appears obvious that **the caution approach and the ecosystem approach** from chapters XV and XVII of Agenda 21 seem totally fitted to characterise the attitude which is to adopt toward the resources related to the extended continental shelf.

Lacking any advances scientific data, the Convention about biological diversity clearly insisted on the necessity to promote an approach of anticipation rather than an approach of reaction.

Notice also that the Convention about the biological diversity was completed by a protocol adopted in Nagoya (Japan) on October 29, 2010 regarding the access to genetic recourses and the fair sharing of the advantages resulting of their use. This protocol determines the precise conditions of access to the genetic resources, provides a sharing of the advantages and aims to affect the conservation and the sustainable use of these resources.

The MARPOL Convention of 1973 modified by the protocol of 1978

The activity of exploitation of mineral resources of the seafloor includes their shipping from the bottom of the sea to the surface, but no text foresees their process on the surface and their shipping from the sea to the shore.

Article 194 of the Convention of Montego Bay wants the States to take measures to limit as much as possible the pollution resulting from ships accidents, and, if/where required, provide safety for the operations by sea, prevent rejections, and regulate the conception, the arming and the exploitation of the ships.

The States can also rely on the dispositions of the Marpol Convention which contains the main rules and norms related to the prevention reduction and the control of pollution by the ships.

## ☐ The OSPAR Convention

OSPAR is the mechanism by which fifteen governments<sup>224</sup> of the coasts and the western islands of Europe, with the European Community, collaborate to protect the marine environment of the North-East of the Atlantic. This collaboration started in 1972 with the Convention of Oslo about immersions. Its field was extended to the pollutions of telluric origin <sup>225</sup> and to the oil industry by the Convention of Paris in 1974. Finally, both conventions were standardised, updated and expanded by the OSPAR Convention<sup>226</sup> in 1992. The new annexe about biodiversity and ecosystems was adopted in 1998 in order to cover the non-polluting human activities who may have a negative impact on the sea.

The OSPAR Commission is the forum by which the contracting powers collaborate. It gets together once a year. Generally, the work of the OSPAR Commission is led by the ecosystem approach <sup>227</sup> in order to reach an integrated management of the human activities in the marine environment. This approach is supported by a general obligation of the contracting powers to apply: **precautionary principle; polluter pays principle; best available techniques** (BAT) and **best environmental practice** (BEP), **including clean technologies.** The Commission is supported by five principal boards dealing with the following issues: biodiversity; environmental impact caused by human activities, dangerous

<sup>224</sup>The fifteen governments are the following: Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great-Britain and Northern Ireland.

<sup>225</sup>Notice that telluric pollution, of terrestrial origin, is part of 80% of the whole marine pollutions.

<sup>226</sup>A succession of annexes is included in the OSPAR Convention and deals with the following subjects: prevention and abolition of pollution coming from telluric sources (annexe I); prevention and abolition of pollution caused by operations of immersion or abolition (annexe II); prevention and abolition of pollution coming from off-shore sources (annexe III); evaluation of the quality of the marine environment (annexe IV) and any human activity which might harm the marine environment in the North-East Atlantic (annexe V).

<sup>227</sup>The ecosystem approach is defined as "the integrated and complete administration of human activities, based on the best available scientific knowledge of the ecosystem and its dynamic, in order to identify and act on the pressures which are detrimental to the health of marine ecosystems, producing the sustainable use of resources and services of the ecosystems and the maintenance of the integrity of the ecosystem ", internet website of the OSPAR Convention."

substances and enrichment of water<sup>228</sup>; offshore industry and radioactive substances. The board related to the environmental impact caused by human activities must "promote the integrated administration of human activities in the marine environment; ensure that the effects of human activities, both individuals and cumulative, do not have any detrimental impact on the services of the ecosystems or the habitats and species and take specific measures regarding the waste and noise". The Convention also foresees a certain amount of applicable dispositions regarding the activities of exploration and exploitation.

During the ministerial meeting on Sintra in 1998, the contracting powers of the OSPAR Convention accepted to **promote the implementation of a protected marine zones network.** After a period of preparatory works, they adopted, in Bremen in 2003, a recommendation in order to establish a ecologically consistent network of protected marine zones well managed in the North-East Atlantic for 2010. The goals of the OSPAR network of protected marine zones are:

- Protect, retain and restore the species, the habitats and the ecological processes affected by human activities;
- Prevent the deterioration and the damages to species, habitats and ecological processes, following the precautionary principle;
- Protect and retain the zones which represent the most the variety of species, habitats and ecological processes in the naval area.

During the ministerial meeting in Bergen back in September 2012, the contracting powers of the OSPAR Convention also took the initiative to create six protected marine zones<sup>229</sup> in the region of the North-East Atlantic beyond national jurisdictions, that is to say in open sea. These six protected marine zones cover a surface of 285,000 km<sup>2</sup>. During his interview, Mr. Laroussinie<sup>230</sup> pointed out that in both cases, Iceland and Portugal, the protected marine zones are located above an extended continental shelf. This particular configuration was not a problem for Portugal. Indeed, located above its exclusive economical zone but in a zone claimed within its application of extension of the continental shelf, the seafloor of these ecosystems were classified as a protected area by the Portuguese authorities, the latter inviting the OSPAR Commission to protect the over arching water column for which the open sea system applies. The protection of these zones stands on a double legal basis: the Portuguese legislation regarding the seafloor and the OSPAR regulation regarding the water column. However, before accepting this sorting as protected marine zone, Iceland was reluctant for two years, stating that this ratification would prevent it from exploring and exploiting the resources of a part of its continental shelf. Finally, the only nomination of the protected marine zones would not be sufficient and must necessarily be followed by

<sup>228</sup>The enrichment of the sea if the modification and the damage of an aquatic environment, generally linked to an excessive input of nutritional substances (nitrogen coming mostly from agricultural nitrates and wastewater, and then automobile pollution, and phosphorous, coming from the phosphates contained in wastewater), which increase the production of seaweed and aquatic species, and sometimes the turbidity, depriving sometimes the bottoms of the water column of light.

<sup>229</sup> The Milne seamount, Charlie Gibbs southern zone, the Altair Seamount, the seamount Antialtair, the Josephine Seamount and the Mid-Atlantic Ridge north of the Azores.

<sup>230</sup> Hearing of Mr. Olivier Laroussinie before members of the Overseas delegation, November 27, 2012.

the adoption of fitted management plans to the threats weighing on the ecosystems and opposable to the largest number<sup>231</sup>.

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To conclude, the Overseas delegation reckons the necessity to adopt an ecosystem approach of precaution before going deeper into the scientific knowledge about biodiversity and habitat of the marine environment. Such a scientific approach assumes greater significance and its results must imperatively be communicated to the executives of the concerned territorial authorities. Only the most perfect knowledge of all the ecological data can allow the adoption of appropriate rules and the necessary measures, and also the creation of the most capable institutions to the management of the marine zones.

The Overseas delegation to the French Economical, Social and Environmental Council also states a proliferation of complex international rules often unfamiliar, several drafts and agreements concluded at an international and regional level with no positive results on the marine environments. Furthermore, Mrs. Annick de Marffy-Mantuano<sup>232</sup> writes that "the causes that prevent the effective application of the rules take place in two levels; the first one finds its origin in the absence of an integrated national marine policy, which prevents the implementation of efficient mechanisms of control; the second one resides in the absence of an ability of the States, particularly of the emergent States, to implement rules which demand means in terms of people, administrative structures and financing<sup>233</sup>."

# The Overseas Territories in the foreground of this management

The ultramarine authorities, due to their geographic localization, gather the majority of the naval stakes. These territories which allow our country to possess immense maritime zones and to the European Union to have active frontiers in zones with a great potential growth must be fully associated to the elaboration of a maritime policy of our nation and participate in the realization of the defined goals. The advantages and challenges of these huge marine zones are first and foremost for ultramarine populations which must benefit from resources of the continental shelf. In the case of these resources it is a fact that the different currently applicable legislations deprive our country and its ultramarine authorities from the significant spin-offs that they are entitled to expect.

<sup>231</sup>Rochette Julien et Druel Elisabeth, Les zone marines protégées en haute mer dans le cadre de la Convention OSPAR: état des lieux et perspectives d'avenir, IDDRI, March 2011.

<sup>232</sup>Mrs Annick de Marfy-Montuano was head of the division of marine affairs and law of the Sea at the legal bureau of the United Nations. She is the president of the economic law of the Sea. She was heard in a private interview with Mr. Grignon, rapporteur of the study, on Friday, November 9th, 2012.

<sup>233</sup>Marffy-Mantuano Annick de, *Gouvernance internationale de la biodiversité marine dans une perspective de développement durable*, Annuaire du droit de la mer 2010, tome XV, Institut du droit économique de la mer (INDEMER), Éditions Pédone, 2011, page 177.

These territories are confronted with major challenges in terms of economic and social development. High rates of unemployment, particularly for the young people, attaining unbearable levels, and the sluggishness of the economy characterized by the weak private investments must lead the national and local public powers to fully grasp the importance of this potential making available the human, legal and financial resources to all the actors for the elaboration of sustained development projects.

The association of the ultramarine population to the administration of the continental shelf resources happens with the knowledge of them, their wealth in terms of biodiversity and their fragility. The potential of exploitable and future revenue must be the subject of extended studies in order to enlighten the local public powers and populations. In this regard, the implementation of a monitoring and consulting commission regarding oil in Guyana organised around four thematic work groups which "objective is sharing the information and discussing with every stakeholder conditions to make the oil exploration, and its potential exploitation a lever of economical and social development for Guyana, while ensuring the operations roll out in the strictest respect of safety and environment", constitutes an initiative the other ultramarine territories concerned by these stakes could get inspired from.

The caution in this area of expertise is appropriate and makes Mr. Jean-Yves Perrot state, during his interview, that it would be illusory to imagine that the only quantitative extension of our sovereignty area would trigger an extension of the possibilities of development both in the mineral resources area and the living resources. Indeed, even if interesting perspective exist, without any series of support measures, the only extension of our jurisdiction would not answer, in a precise time-related horizon, to the expectations provoked by this "marine Eldorado".

Any real evolution cannot happen without strong politic will followed by tangible effects.

# A reform of the regulation in matters of exploitation of the marine resources including the Overseas Territories. taking their interests into account

As it was previously stated, the legal framework applicable to the mineral substances located in the French seabed is currently complex. It is principally constituted by the law N° 68-1181 of December 30, 1968 linked to the exploration of the continental shelf and the exploitation of its resources, and its order of application N° 2006-798 of July 6, 2006 regarding prospecting, searching and exploiting substances of fossils contained in the public seabed and metropolitan continental shelf and by the mining code. Reformed several times, this mining code is clearly not sufficient, not adapted to offshore activities and does not allow a precise consideration of the stakes related to ultramarine authorities, particularly the Overseas departments. This mining code deprives clearly these authorities, in the hypothesis of the exploitation of resources in continental shelf and the extended continental shelf, which would besides benefit from an abnormally advantageous fiscal tax process to the one applied in other countries.

Besides, it is necessary to highlight that the application of this legislation in the Overseas territories depends on the legislative process proper to each authority.

The Overseas departments and regions ruled by article 73 of the constitution must indeed be different (legislative identity principle) from the Overseas authorities (rules by

article 74 of the constitution) and New Caledonia and the TAAF (authorities with a particular process), the latter being under the principle of legislative speciality.

Regarding the Overseas departments and regions the law n° 2000-1207 of December 13, 2000 of orientation for the Overseas foresees the transfer of the skill to the delivery of mining titles to the benefit of the authorities. But this competence was never transferred to the regional executives without any order of application. Concretely, the minister in charge of mines stays relevant in this matter. This situation is not satisfying and the preliminary works to the reform of the mining code must allow to solve this situation in order for the competence to be *in fine* actually transferred. In parallel, the transfer of this competence must foresee financial measures of support and training of qualified personnel.

Thus, the current legal framework does not associate the Overseas departments to the elaboration and implementation of a regulation of the exploration and exploitation of the resources of the continental shelf and extended continental shelf. Besides, rules by the principle of legislative identity, these authorities do not have, for most, the possibility to set license-fees for potential marine deposit, without any fiscal autonomy.

Regarding the authorities governed by the article 74 of the Constitution and the authorities with a particular status (notably TAAF and New Caledonia), it is necessary to recall that they benefit from an extended status of autonomy and important competences specified in their respective organic law.

Thus, French Polynesia (*see* art. 47 of the Organic Law N° 2004-192 from February 27, 2004), Saint-Barthelemy (see art. L.O. 6214-6 du CGCT), Saint-Martin (*see* art. L.O. 6314-6 du CGCT), and New Caledonia and its provinces (*see* art. 22 and 46 of the organic law n° 99-209 of March 19,1999) are competent to regulate and apply the right of exploration and exploitation of the resources of the seafloor of the EEZ.

Regarding Saint-Pierre and Miquelon, for instance, the dispositions of article L.O. 6414-3 of the general code of territorial authorities states that "subject to the international engagements of France and the dispositions taken for their application, the State gives the territorial authority, in conditions precisely foretold by order of the State Council with this advice of the territorial council, the application of competences in matter of exploration and exploitation of natural resources, biological and non-biological, of the bottom of the sea, its floor and the over arching waters. Provided the same conditions, it also gives it the application of competences in matter of delivery and administration of the mining titles regarding the bottom of the sea and its floor". It is necessary to underline the fact that this competence does not apply in absence of an application order<sup>234</sup>.

Apart from these competences, it is important to remind that the Overseas authorities benefit from fiscal and customs autonomy. Which theoretically allows them to settle licensefees of which they can determine the rate and the basis? For St Pierre and Miquelon, article L. 652-2 of the mining code states that "regarding the French exclusive economical zone by sea off the coast of Saint-Pierre and Miquelon, a specific license-fee, owed by the owners of gaseous or liquid hydrocarbons mines permits, is established to the benefit of the territorial authority<sup>235</sup>".

<sup>234</sup>The project of order presented to the State Council in 2003 was rejected because it did not embrace the practise of the police (see note n° 367.199 of the section of the public works of the State Council of January 14, 2003).

<sup>235</sup>Grignon amendment adopted by the National Assembly during the review of the Finance Bill 1998.

For TAAF, the article L. 663-1 of the mining code states that "the owners of gaseous or liquid hydrocarbons mines permits in the TAAF have to pay a yearly license-fee on the production to the TAAF"

Generally, it is necessary to underline that whatever the degree of autonomy planned by the constitution and the organic laws, the ultramarine territorial authorities have no competences in matter of exploration and exploitation of resources on the extended continental shelf. <sup>236</sup>. Beyond the problematic related to the necessary legal framework (previously developed) with activities linked to the exploration of resources, and beyond the modifications that should be made to the organic laws, the reform of the mining code must clearly allow "a better consideration of the particularities of the Overseas authorities"<sup>237</sup>. The Overseas delegation of the Economic, Social and Environmental Council believes it is not about considering particularities of the Overseas authorities, but again to implement the basis of their economical, social and environmental development from resources available on their territories and those located off the coasts.

## An economic environment that needs to be strengthened for greater competitiveness and employment

In most ultramarine territories, the ratio between emerged surface/marine surface is lower than the metropolitan one. Consequently, it is necessary to admit that the prosperity of the Overseas Territories could also come from the exploitation of resources of the seafloor and these authorities might then be characterised by a real and effective marine vocation. However, reality shows that the sea and the seafloor are, nowadays, for the different political and economical reasons, and within the public opinion, more a parameter, than an asset. Proof is that the deficiency in matter of sustainable exploitation of fishing resources because of a lack of political will in the discussions in the EU and with the big fishing countries, but also, because of a lack of means to develop fishery and safety in the EEZ The ultramarines authorities must clearly lead their social and economical development to marine economy. There is a real issue here in terms of job creation.

Our country must reinforce the modernisation of our marine economy, particularly by a better economical integration of the harbour and shipping activities on our territories.

Regarding the ports, the creation in 2008 (with an application in January 1<sup>st</sup>, 2013 for Reunion, Martinique, Guyana, and Guadeloupe) of big marine harbours replacing independent harbours represents a progress. This new organisation of the Overseas ports must allow to answer the demands, performance and competitiveness toward the evolution of the international marine trade and competition with foreign ports. These evolutions must promote training and social climbing of the personnel of these different port platforms.

It increases the weight of territorial authorities within the Council of observation of big marine ports, in order to keep a consistency between the development of Overseas ports and the evolution of the territories on which they are implemented. This new frame must favour the investment and creation of harbour infrastructures projects in the Overseas. All the possible applications of the sustainable exploitation of the many resources of the

<sup>236</sup>The elements of the answer by General Delegate to Overseas Territories, January 23, 2012.

<sup>237</sup>The reform of the mining code, communication in the Council of Ministers on September 5, 2012.

continental shelf must be supported by developed and adapted harbour infrastructures. Indeed, a port is not only a crossing point or a warehouse for goods, it is also a place where wealth can be created and industries can be implemented in harbour zones. It is a place where employment is created in many sectors (refining, steel industry, food industry, fertiliser industry etc...) The careers in the marine and para-marine sector are indeed quite extended.

We should recall that the unemployment rate in Overseas Territories is higher than in Mainland France and especially the unemployment rate of their youth. The exploration and exploitation of hydrocarbons and ores on seafloor of the extended continental shelf lay be in the future a breeding ground for the ultramarine. There is a real effort to make in order to concentrate the means to the benefit of the refined trainings and reinforce the courses of excellence. The big companies which benefit and will benefit from permits to exploit resources must, through precise specifications, fully participate to these efforts of training the local populations to these jobs. Once again, the discussions around the renovation of the mining code must integrate the problematic of employment and the financial repercussions the territorial authorities may receive from exploiting companies for their productions.

# Reinforce the international influence of our country and the EU in the naval areas by reinforced regional cooperation with the Overseas Territories

The lack of consultation, and association of the territorial ultramarine authorities and the actors of civil society (social partners, nongovernmental organizations, Regional Economic, Social and Environmental Councils (RESEC etc...), in the discussions regarding the administration of the resources of the marine areas can be detrimental to territories and their population, and, *in fine*, weaken the position of our country in some regional zones. The reinforcement of this regional governance must allow this bigger association, in order to answer better to the stakes. This concern was expressed in the note and account of the ESEC *For a reinforcement of the regional collaboration of the Overseas*<sup>238</sup>.

The State must strongly support the transfer of human and financial means to allow ultramarine authorities to fully assume their responsibilities and their reinforced participation to the action of the SG Mer.

Fundamentally, while great powers such as the United States or China understood quickly the interest and importance to increase their influence and ability within their marine areas, France must be in the front line in this area, thanks to marine collaboration with neighbouring States from Pacific, West Indies, Indian Ocean and North Atlantic. Associated with the reinforcement of the participation of our ultramarine authorities to the forums and enclosures of regional collaboration and to the big regional research programmes, the reinforcement of the means of action of the State in the sea must constitute indivisible priority.

<sup>238</sup>Budoc Rémy-Louis, For stronger regional cooperation in the Overseas Territories, opinion and report by ESEC, Editions of the Official Journals, N° 2012-09, May 2012.

## Conclusion

To conclude, France must not satisfy itself with the extension of its sovereign rights on the natural resources of the seafloor on almost two million km2 on the extended continental shelf with its potential of additional resources.

France must take the necessary dispositions to take on its responsibility and fulfil its duties. It must seize the opportunity to manage the potential of new resources of the seafloor given by this newly acquired or yet to acquire marine area beyond its 200 nautical mile, by implementing and knowing the means to preserve and exploit them sustainably to benefit the ultramarine populations of our country.

Owning the jurisdiction on marine zones and sovereign rights on resources of the second marine area in the world is not enough. The crucial point is to implement the affirmed will of a real marine policy. The size of the French marine area and the potential of resources that it holds require our country to take responsibilities and duties. It must provides itself to the means to assume them by creating from now the steps of the economical, social and environmental development of the ultramarine territories based, partly, on the potential resources of the extended continental shelf.

## **Annexes**

# Annex 1: List of members of the Delegation for Overseas Territories on the voting date

✓ <b>President:</b> Gérard GRIGNON
✓ <b>Vice-Presidents:</b> Joëlle PRÉVOT-MADÈRE and Pierrette CROSEMARIE
☐ Agriculture Group
✓ Jean-Michel LEMÉTAYER
✓ Françoise HENRY
☐ Associations Group
✓ André LECLERCQ
☐ CFDT TRADE UNION GROUP
✓ Evelyne PICHENOT
☐ CFE-CGC TRADE UNION GROUP
✓ Jean-Claude DELAGE
☐ CGT TRADE UNION GROUP
✓ Françoise GENG
✓ Pierrette CROSEMARIE
☐ CGT-FO TRADE UNION GROUP
✓ Didier BERNUS
✓ Marie-Alice MEDEUF-ANDRIEU
☐ Cooperation group
✓ Marie de L'ESTOILE
☐ Enterprise Group
✓ Joëlle PRÉVOT-MADÈRE
☐ Environment and nature Group
✓ Jacques BEALL
✓ Marie-Paule JEANNEL DABRY de THIERSANT

□ Overseas Group
✓ René ARNELL
✓ Rémy-LOUIS BUDOC
✓ Gérard GRIGNON
✓ Eustase JANKY
✓ Christian LÉDÉE
✓ Marcel OSENAT
✓ Daourina ROMOULI-ZOUHAIR
☐ Qualified Individuals Group
✓ Jean FRÉMONT
✓ Laura FLESSEL-COLOVIC
□ UNAF GROUP
✓ Christiane BASSET
✓ Christiane THERRY

# Annex 2: List of personalities interviewed in delegation or received in private conversation by the rapporteur

## In order to inform itself further on the issues, the section heard the views of:

✓ Mr. Walter Roest

Head of the geosciences and deep ecosystems sector and head of the EXTRAPLAC (Reasoned extension of the continental shelf) project within the French Institute of Research for the exploitation of the sea (IFREMER)

√ Mr. Élie Jarmache

lawyer, responsible for Law of the Sea Mission to the General Secretariat of the Sea (SG MER);

✓ Mr. Serge Ségura

Deputy leader in charge of the law of the Sea, the fluvial law and the Poles law in the ministry of Foreign and European Affairs, attended with Mr. Jerôme Sautier, councillor of foreign affairs.

✓ Mr. Roland Vially

Head of the Evaluation of the resources and reserves project within the French Institute of Petroleum

✓ Mr. Jean-Yves Perrot

CEO of the French Research Institute for Exploitation of the Sea (IFREMER), accompanied by Mr. Philippe Lemercier, Delegate General for Overseas Territories in the IFREMER;

✓ Mr. Julien Denègre

Head of the commercial development at TECHNIP

✓ Mr. Cyrille Poirier-Coutansais

Deputy Head of Office Law of the Sea to the Chief of the Navy;

✓ Mr. Claude Girault

Assistant general representative of the Overseas, attended with Mrs Carine Parra, leader of the international and European mission to the DéGéOM and Mrs Marie-Pierre Campo, head of the fishina and naval affairs to the DéGéOM:

✓ Mr. Olivier Laroussinie

Head of French Marine Protected Areas Agency (AAMP).

### Otherwise, the rapporteur discussed with:

✓ Mrs. Virginie J. M. Tassin

Doctor of law, specialist of the law of the Sea;

✓ Mr. Vincent Trélut

vice-president of Corporate Business Development at ERAMET;

✓ Mrs. Annick de Marffy-Mantuano

Vice-President of the Board of the Institute of Economic Law of the Sea (INDEMER), Monaco;

✓ Mr. Bruno Frachon

CEO of French Navy, Hydrographical and Oceanographic Service (SHIM);

### √ Mr. Pascal Bolot

Prefect, Senior Administrator French Southern and Antarctic Lands (TAAF);

### ✓ Mr. François Bersani

head of the subject of the subsoil within the General Council of Industry, Energy and Technology and Secretary General of the Committee for strategic metals.

## Besides, the rapporteur also had exchanges with the following representatives of the ultramarine territories:

## ✓ Mr. Bruno Magras

President of the Territorial Council of Saint-Barthelemy;

#### √ Mr. Robert Laufoaulu

Senator of Wallis and Futuna islands, Mikaele Kulimoetoke, president of the finance commission of the territorial Assembly of Wallis and Futuna islands, and Patalione Kanimoa, member of the Overseas group in the French Economic, Social and Environmental Council, for Wallis and Futuna islands;

#### ✓ Mr. Harold Martin

President of the Government of New Caledonia

### ✓ Mrs. Yolaine Costes

Vice-President of the Regional Council of Reunion, delegated to the territorial continuity, mobility and TAAF;

## ✓ Mr. Serge Larcher

Senator of Martinique, president of the Overseas Senatorial delegation.

### ✓ Mr. Jean-Claude Fruteau

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The president, the rapporteur and all the members of the Overseas delegation appreciate greatly all the people for their precious contribution to this note.

Mr. Grignon, rapporteur, is keen to express his gratitude to Mr. Richard Meese, doctor of Law, honorary lawyer, for the expertise and the precious support he provided to the creation of the rapport.

# Annex 3: Articles 76 and 77 of the Montego Bay Convention

## ▶ PART VI Continental shelf

## Article 76: Definition of the continental shelf

- 1. The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.
- 2. The continental shelf shall not extend beyond the limits provided for in paragraph 4 to 6.
- 3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.
- 4. "a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:
  - i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 % of the shortest distance from such point to the foot of the continental slope; or
  - ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.
- 4. b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.
- 5. The fixed points comprising the line of the outer limits of the continental shelf on the sea-bed, drawn in accordance with paragraph 4(a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2 500 metre isobath, which is a line connecting the depth of 2 500 metres.
- 6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.
- 7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth

- of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.
- 8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.
- The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic datum, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.
- 10. The provisions of this Article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

## Article 77: Rights of the coastal State over the continental shelf

- 1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
- 2. The rights referred to are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
- 3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
- 4. The natural resources referred to in this part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

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## **Annex 5: Table of Acronyms**

AAMP French Marine Protected Areas Agency
EEA Exploration and exploitation activities
ISA The International Seabed Authority

BAT Best Available Techniques
BEP Best Environmental Practice

BRGM French Geological and Mining Research Survey

CACIMA Chamber of agriculture, commerce, industry, and crafts at Saint

Pierre and Miquelon

CBD Convention on Biological Diversity

CEA Commission for Atomic Energy and Alternative Energies
CEDRE Centre of Documentation, Research and Experimentation on

Accidental Water Pollution

CEMAGREF Centre national du machinisme agricole, du génie rural, des eaux

et des forêts (National Centre of Agricultural Machinery, Rural

Engineering, Water and Forestry)

ESEC Economic, Social and Environmental Council

RESEC Regional Economic, Social and Environmental Councils

CGCT General code of local authorities

CIMER Interdepartmental Committee on the sea
CJCE Court of Justice of the European Communities

CJEU Court of Justice of the European Union

CLCS Commission on the Limits of the Continental Shelf

CNES National Centre for Space Studies
CNRS National Centre for Scientific Research
UNCLS UN Convention on the Law of the Sea

DIMENC Department of Industry, Mines and Energy of New Caledonia

SEA Strategic Environmental Assessments

EPIC Industrial and commercial public establishment

EXTRAPLAC French programme for reasonable extension of the continental shelf

IFPEN French Institute for Petroleum and new energies
IFREMER French Research Institute for Exploitation of the Sea

IGN French National Institute of Geographic and Forest Information

INDEMER Institute of Economic Law of the Sea
IPEV French Polar Institute Paul-Émile Victor
IRD Institute of Research for Development
ITLOS International Tribunal for the Law of the Sea

JO French Official Journal

LGDJ General library on law and jurisprudence

M Nautical mile

MAE French Ministry of Foreign Affairs

MNHN National Museum of Natural History

OECD Organisation for Economic Cooperation and Development
ONEMA National Agency for Water and Aquatic Environments
PCRDT Research and Technological Development Programme

PLURIEL PLUme-Ridge Interaction and EvoLution
UNEP United Nations Environment Programme

UNTS United Nations Treaties Series

SFDI French Society for International Law

SG MER General Secretariat of the Sea

SGNC Geological Service of New Caledonia

SHOM French Navy, Hydrographical and Oceanographic Service

TAAF French Southern and Antarctic Lands

TIDM Tribunal international du droit de la mer (International Tribunal for

the Law of the Sea)

EU European Union

EEZ Exclusive economic zone

ZoNéCo Economic zone of New Caledonia

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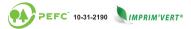
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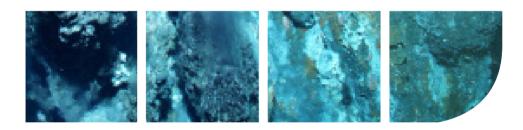




The Convention of Montego Bay of 1982, «true constitution of the oceans», and more precisely its article 76, gives the coastal states the possibility to extend the continental shelf beyond 200 marine miles. Thus, France thanks to its overseas territories can expect to expand its sovereign rights on the natural resources of the seafloor by about 2 millions km2.

The note from the French Economic, Social and Environmental Council tends to complete the EXTRAPLAC programme which France made in order to reach this goal. It also aims to draw conclusions from the acquisition of these sovereign rights in terms of knowledge of the marine environment and its resources; their preservation and their exploitation; the legal framework of the activities implemented on the ultramarine territories as part of their sustainable development.

The ESEC recommends the definition of a real naval policy appropriate for a country present on every ocean thanks to the overseas territories. The extension of the continental shelf beyond 200 nautical miles is a huge asset that France cannot ignore.



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