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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 N° 58-1360 from 29 December 1958 as amended, concerning the organic law relating to Economic, Social and Environmental Council. The office has charged the Delegation for Overseas Territories with drafting an opinion and a report with the title *Extension of the continental shelf beyond 200 nautical miles: an asset for France*. The Delegation for Overseas Territories, 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 Opinion¹

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

What is the Extended Continental shelf?

For France which already occupies the second largest maritime area in the world after the United States, with 11 million km² 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 subsoil over approximately an additional 2 million km²;
- To acquire sovereign rights for the exploration and exploitation of natural resources over these new areas;
- To increase its geostrategic power.

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

The 1982 United Nations Convention on the Law of the Sea, “a true constitution of the oceans”, and more precisely Article 76 thereof, gives coastal states the possibility to extend their continental shelf beyond 200 nautical miles. With this aim, France has implemented the EXTRAPLAC programme.

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:

To finalise the EXTRAPLAC programme

Identify and secure funding for the completion of the EXTRAPLAC programme

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

¹ **The entire draft opinion was adopted unanimously by open vote**
(see the result of the vote in the annex).

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

File submissions which have been the object of preliminary information

The Council recommends:

- **To file before the Commission on the Limits of the Continental Shelf (CLCS) the submission concerning Saint-Pierre and Miquelon before the end of 2013, in accordance with the commitment made by the President of the Republic on 24 July 2013.**
- **To file before the CLCS, the submission concerning French Polynesia at the beginning of 2014. In addition, whereas currently geophysical studies have been performed only for the Marquesas Islands, the ESEC recommends that scientific studies be conducted regarding the whole of the Polynesian archipelago, particularly in view of the positive results of the first campaigns which took place in the Marquesas archipelago;**
- **To file before the CLCS, the submission concerning Clipperton.**

Resolve diplomatic problems preventing the Caledonian case being process

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

The Council recommends that the Department of Foreign Affairs intensifies its negotiations with Vanuatu in order to solve this dispute and to finally enable the Commission on the Limits of the Continental Shelf to provide their recommendations on the submission 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 and publish, within the shortest time periods possible, the maritime limits based on the recommendations of the CLCS, in accordance with the provisions of article 84 of the United Nations Convention on the Law Of the Sea to be effective against third countries and thus confirming the sovereign rights of France over the natural resources of the seabed and subsoil of its extended continental shelf. Hereto the ESEC recommends intensifying diplomatic relations with the countries in question in order to complete all of the delimitation agreements which are indispensable for the definitive conclusion of the submissions.**

This recommendation aims:

- **For the Bay of Biscay, the conclusion of treaties between France and Spain as well as with the United Kingdom and Ireland;**
- **For Guyana, the conclusion of treaties 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 the Kerguelen Islands, 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 be allocated to the SHOM.

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

The Council, considering the waiting times as prohibitive, recommends that France pleads strongly with the States that are party to the Convention and before the General Assembly of the United Nations to obtain a remarkable strengthening of the budgetary and human resources from the Commission on the Limits of the Continental Shelf so that this Commission can respond in an efficient manner and within acceptable time frames on cases which are submitted to it.

👉 An exemplary France with regards to a new maritime area

The Council recommends:

- To protect and supervise the areas in question by strengthening the presence of the French navy on the oceans while providing means for permanent control and observation using new technologies and intensifying regional cooperation schemes.
- To enshrine in the Law, provisions regarding the objectives of the Convention on the Biological Diversity (CBD), notably of the Nagoya Protocol, and work at the international level to adequately consider a high protection level of the marine ecosystems in the various additional protocols to UNCLOS.

The obligation of knowing the resources and marine ecosystems

The Council recommends:

- To initiate a national, multidisciplinary and ambitious programme with regards to the knowledge, identification and quantification of the seabed and subsoil resources of the extended continental shelf. The implementation of this programme should go jointly with the recruitment of primarily young doctoral students 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 Marine Protected Areas may lead to the mastering of privileged

areas for the scientific research with regards to the sea environment beyond the extended continental shelf.

- **To inform the European Union regarding and to associate it with the various French maritime policy programmes related to knowledge 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 EU 2020 Strategy aimed at the creation of “*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 leading experimenting country in this field, serving as an example with regards to the protection of the marine environment;**
- **To establish, within the shortest time periods possible, a legal framework for the exploration and exploitation activities and scientific research on the extended continental shelf and more particularly to reform the mining code to adapt it to the specific situation of the extended continental shelf within the realm of the maritime areas. The mining code shall also integrate within exploration licenses, the provisions stated in the technical specifications and establishing the commitments (social measures, training measures, local procurement expenditure, etc.) regarding the affected local authorities, as well as the financial spin-offs originating from possible exploitations. These spin-offs must be shared between the State and the overseas local authority according to the negotiated terms and conditions.**

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

The Council recommends:

- **To strengthen regional cooperation of the Overseas Territories with regards to the management (knowledge, preservation, surveillance and exploitation) of the resources of the sea with their neighbouring countries and to possess the extended powers to do so²;**

2 We observe that New Caledonia submissions the transfer of State competence regarding the sovereignty on the extended continental shelf.

- **To constantly inform and closely involve the executives of the different overseas local authorities in all decisions and operations dealing with maritime policy³. The actors of the civil society should also be associated;**
- **To take measures 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 regulatory provisions with regards to the jurisdictions of the Overseas Territories shall be adapted and effectively applied;**
- **reflect on the establishment of an inventory of the training intended for the young people in the Overseas Territories in the future activities which might be generated by the exploration and exploitation of the resources of the extended continental shelf (including research activities) and to mobilize the human and budgetary resources required for the implementation of such training; and**
- **Anticipating a structural accommodation and equipment plan (particularly, port 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 entitled *Which means and which governance for a sustainable management of the oceans?*, the Council has already recommended:

- *To "significantly strengthen and reform the role of the Secretariat General for the Sea. The ecosystem, collaborative and collective approach for maritime issues, their strong interdepartmental and international dimension, the deployment of budgetary loans dedicated thereto, should indeed lead to a maritime policy management being envisaged by a High Commissioner, with the rank of Minister, based on the administration of a strengthened Secretariat General for the Sea, under the direct authority of the Prime Minister (...)."*

Concluding its reflection, the Council also recommends:

- **Developing an important law on the oceans in order to bring together all the legislation and regulations defining and accompanying the development of the maritime policy of our country;**
- **That in the absence of implementation of a single "maritime" budgetary mission, this being an option which is difficult to realize, every year a transversal policy document should be drawn up by the government with the title "maritime policy of France", in order to better inform the Parliament on the necessary overall 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 of preparing this transversal policy;**

3 We observe that the majority of the executives 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 local authorities.

- **Organising every year a long debate in Parliament on the issue of French maritime policy, on the basis of a transversal policy. Indeed, it seems abnormal to the ESEC that such an extension of the sovereign rights over the natural resources of the seabed and marine subsoil would be at stake without Parliament being informed and associated up until now;**
- **That the completion of the EXTRAPLAC programme would systemically be included on the agenda of the annual CIMER (Joint Ministerial Committee of the Sea) meeting⁴. 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 EXTRAPLAC programme, whereas France was obliged to imperatively submit the all the files on 13 May 2009.**

4 In its report and opinion with the title *Which means and which governance for a sustainable management of the oceans?* submitted by Mrs. Catherine Chabaud on behalf of the environment department, the Council has recommended that CIMER meets 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 Grignon

Opinion

Introduction

Following the Truman Proclamation of 1945, the signatory States to the Geneva Convention of 1958 on the continental shelf, launched in the course of energy resources, agree that the coastal State can exercise sovereign rights over the continental shelf for the purpose of its exploration and the exploitation of its natural resources. These resources are understood as mineral resources and other non-biological resources of the seabed and its subsoil, as well as the living organisms which belong to sedentary species.

More ambitious than the previous convention of 1958, the United Nations Convention on the Law of the Sea⁵, adopted in 1982, as its introduction states, aimed to institute a global process aiming to deal with *“all problems regarding the law of the sea (...) aware that 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 international communication and promoting 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 there therefore attempts to balance the rights and duties of States and includes consideration of economic, social and environmental concerns.

Indeed, article 76 of 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)⁶. The continental shelf henceforth extends up 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 Economic 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 responsibilities deriving there from within the framework of the respect for the marine environment and sustainable development, are the object of this opinion.

Specifically, this enables France to extend its jurisdiction and to acquire sovereign rights over the natural resources of the seabed and subsoil over an additional surface of nearly 2 million km².

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 subsoil beyond 200 nautical miles is to be considered, whereas a balance should be made

5 The 1982 United Nations Convention on the Law of the Sea, which France ratified in 1996, is hereinafter referred to as UNCLOS.

6 The nautical mile is a unit of measurement equal to 1,852 meters and its usual abbreviation is M.

of the steps taken by France in order to establish its rights off the coasts 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 knowledge, preservation, exploration and exploitation of its resources, as well as the impacts on the development of the Overseas Territories and their involvement regarding 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 French jurisdiction over the area of the continental shelf and its sovereign rights over its natural resources**

This establishment of rights enables precise and certain information to be provided and challenges to third parties to be made with regards to the limits of the sovereign rights of the Coastal State over the continental shelf and its rights of ownership over the resources of the seabed and its subsoil. This allows French presence in the world to be underpinned. 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 knowledge of the resources and the marine environment for sustainable development is then required**

Management requires knowledge. The cartography of the seabed and the inventory of the resources, the ecosystem approach and evaluation of the impacts of the activities are the prerequisites for the sustainable management and exploitation of the extended continental shelf. The extension allows the coastal State to exercise police powers acknowledged by UNCLOS in order to ensure the fight against pollution, while respecting the necessities of economic 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 French jurisdiction beyond 200 nautical miles contributes to strengthening the required protection of the marine environment.

➤ **This involves the enhancement of the area of the continental shelf and the resources contained therein for the benefit of the overseas authorities and populations**

The *Livre bleu Stratégie nationale pour la mer et les océans (National Strategy for the Sea and the Oceans)* of December 2009 recalls that our country must “fully regain its maritime vocation” and specifically states that “the assets of France in the first place are for the overseas populations: the biological, mineral and industrious resources in these areas must benefit in

7 Livre bleu, Letter from the Prime Minister dated 7 December 2009.

*the first place the populations of the overseas territorial communities and contribute to their economical and social development*⁸.”

The extension of the continental shelf allows exclusive exercise by the coastal State of sovereign rights over the latter for 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 territorial communities in question 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 that, these issues fundamentally refer us to the marine challenge of France, which consists in dealing with our own French paradox: occupying the second largest marine area in the world thanks to the Overseas Territories, yet not asserting ourselves as a true maritime power. This opinion, through the challenges of the continental shelf extension aims to offer answers to this paradox and fully endorses the economic, social and environmental Council in the debates on the conduct of the maritime policy and the required maritime transformation of our country.

The conquest of the continental shelf resources: Difficulties encountered

The International Legal Framework

Planet Earth has five oceans that cover 71% of its surface, which is 360 million km². These legally complex areas are defined and governed by the law of the sea which deals mainly with navigation, the registration of vessels, security provisions, the exploitation of the resources and the preservation of the marine environment .

The United Nations Convention on the Law of the Sea of 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 20th century, notably within the scope of the 1958 Geneva conventions and the 1982 United Nations Convention on the Law of the Sea.

The third Conference on the Law of the Sea convened by the UN adopted on 10 December 1982 at Montego Bay, in Jamaica, the United Nations Convention on the Law of the Sea, including 320 articles and 9 annexes. This Convention has been characterised

8 Livre bleu, *Stratégie nationale pour la mer et les océans*, Prime Minister, December 2009, p. 49.

as the “complete constitution for the oceans which stand the test of time”⁹. It establishes the system of different marine spaces based on international custom and the practice of States. It regulates activities while considering the demands of the economic development, the principle of freedom of navigation, the territorial submissions of the coastal States and protection of the environment. It assesses the control of the bordering States over marine area, which is evidence, for instance, of the creation of the exclusive economic 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 examining extension submissions in order to provide recommendations regarding the outer limits claimed**¹⁰. This article also establishes the principles and regulations ruling the seabeds and oceans beyond the national limits, constituting the common patrimony of humanity which is subject to the International Seabed Authority (ISA).

UNCLOS entered into force on 16 November 1994. France ratified it in 1996. To date 165 States, including the European Union (EU), are parties 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 latter is comprised of, firstly, 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 slope which is a zone of weak declivity between the beginning of the continental bank and the deep 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 its subsoil that extend beyond its territorial sea across the extent of the natural continuation 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.

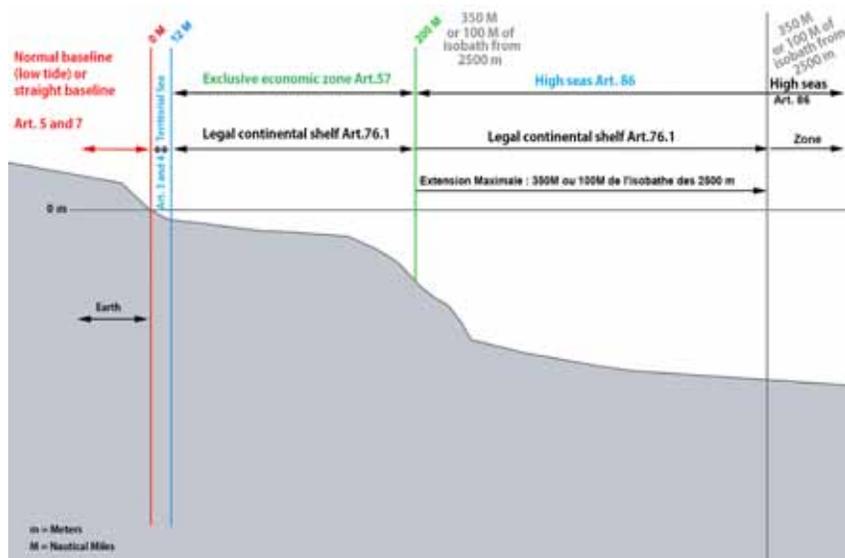
The legal continental shelf has a minimum breadth of 200 nautical miles from the coasts. It is surrounded by several other maritime areas. From the coast, adjacent to the land territory, the sea territory, comprising the seabed and the waters above, extends on a breadth of 12 nautical miles. Beyond,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

9 Comments by Mr. Tommy T. B. Koh, President of the Third United Nations Conference on the Law of the Sea, final session of the Conference in Montego Bay, 10 December 1982.

10 See, in Annex 3, page 164, article 76 of UNCLOS, paragraphs 1 and 2.

11 See, in Annex 3, page 164, paragraphs 4 and 6 of article 76 of UNCLOS.

Diagram 1: The main maritime areas defined in UNCLOS



Source: Mr. Olivier Walter – DPO Architectes.

Commission on the Limits of the Continental Shelf (CLCS)

UNCLOS has given a central role to the Commission on the Limits of the Continental Shelf in order to control the extensions of States over the rights to the resources of the extended continental shelf. The same has also created the International Seabed Authority (ISA), which is an organization by means of which the party States organize and control the activities performed in the Zone. The same has finally established an International Tribunal for the Law of the Sea (ITLOS) charged with hearing 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 rules of procedure and scientific and technical guidelines in 1999, the same became operational in 2000. The 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 76 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 coastal State in question, 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 submitted in writing to the coastal State which submitted the submission 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.

It is important to note 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 dispute concerning a land or maritime border, the Commission does not examine the submission filed by a State party to this dispute and does not pronounce itself on such a submission.

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

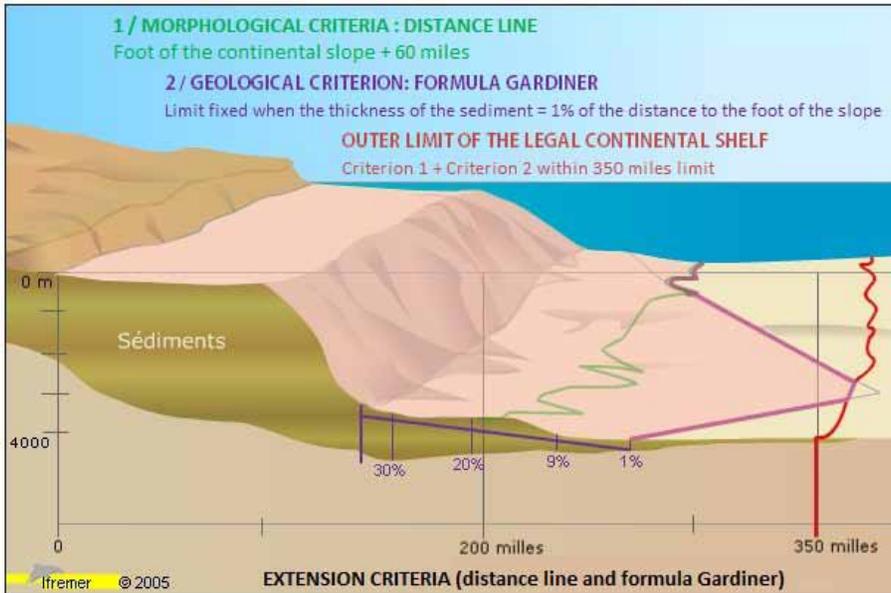
It is up to the coastal State to prove to CLCS the outer limits of its extended continental shelf beyond 200 nautical miles according to the criteria established in paragraphs 4, 5, 6 and 7 of article 76 of UNCLOS¹². In this regard, CLCS issued on 13 May 1999, the scientific and technical guidelines 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:

- The 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;
- The 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 2,500 metre isobath.

¹² See, in Annex 3, page 164, article 76 of UNCLOS.

Diagram 2: The criteria for extending the Legal continental shelf



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

When the line of the 100 nautical miles isobath¹³ is situated at a distance of more than 200 nautical miles from the baselines, in other words, beyond 350 nautical miles, and the line deduced 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 localised beyond 350 nautical miles on the line situated at 100 nautical miles from the 2,500 metre isobath¹⁴.

Implementation by France of the Programme for the reasoned 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 recognition of a conquest of sovereign rights over natural resources located mainly off the coast of its Overseas Territories.

The Joint Ministerial Committee of the Sea (CIMER) of 1st April 1998 for the first time envisaged the development of an overseas oceanographic exploration and research

13 A Line connecting points of equal depth on the chart.

14 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. Optimization of the submission* Editions Pédone, 2004, pp. 66 and 67. See also in the report diagram 2 "criteria for extension of the legal continental shelf", p. 18.

programme with regards to the delimitation of the continental shelf. Without naming it, this CIMER announced what would become the EXTRAPLAC programme.

It is the CIMER of 29 April 2003 which manifest the government's intention to implement the provisions of UNCLOS in its domestic law and equip itself with adapted its guaranteeing 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 was affirmed that France could legally submission the extension of its continental shelf beyond 200 nautical miles. This submission, in accordance with the rules established by the CLCS, as stated above, would be based on a technical file and **formulated before 13 May 2009**, which was the deadline fixed by the United Nations. France which at the time could hope for estimated extensions of 700,000 km², specifically with regards to the Overseas Territories, has established the EXTRAPLAC programme for the collection of the data with regard to the potential extension areas¹⁵. CIMER has provided it with annual funds for 2.5 million Euros up until 2009. **It has established the objective that it was necessary to re-evaluate knowledge of the resources of the seabed and the subsoil of the national continental shelf**¹⁶.

Ten years upon the launching of the EXTRAPLAC programme, 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 submissions have been filed which have been the object of the recommendations by CLCS instead of the 9 which had initially be scheduled. Four submissions were awaiting examination before CLCS, one of which had just been submitted in December 2012 and two submissions of submissions were announced for 2013 and beginning of 2014 following preliminary information lodged in May 2009, one set of preliminary information had been filed then withdrawn, one file was subject to requests for reserved rights in the future, six files had not been lodged. Therefore, the immediate penalty for the State is a considerable delay in the processing of the files by the CLCS, which may take 25 to 30 years. France has not established merely a single 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 an additional 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.

15 See, page 73, the chart showing the extension of the French continental shelf.

16 See the article by Mr. 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 Mr. Hubert Levet, « La France délaisse son ' or bleu ' », *Le Figaro* of 5 April 2002. This reflects Élie Jarmache's thoughts, who at the time was responsible for international relations at 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"*.

The filed submissions which have been the object of recommendations of the CLCS

□ *The joint submission relating to the Bay of Biscay and the Celtic Sea*¹⁷

This submission made by France, Ireland, Spain and the United Kingdom was filed on 19 May 2006. The CLCS recommendation was issued on 24 March 2009, following a 34 month instruction delay for an overall extension of 84,000 km²¹⁸. The publication of the outer limit before the United Nations and ISA 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 submission relating to Guyana*¹⁹

The French submission was filed on 22 May 2007. The CLCS issued its recommendation on September 2, 2009, following a 28 month instruction period for an overall extension of 72,000 km². The publication of the outer limit before the United Nations and ISA has not taken place yet, since the delimitation agreements with Brazil and Surinam have not been finalised yet.

□ *The submission relating to New Caledonia*²⁰

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

□ *The submission relating to West Indies*²¹

This submission was filed on 5 February 2009. Following a 38 month instruction period the CLCS gave their recommendation for an extension of 8,000 km² on 19 April 2012. The publication of the outer limit before the United Nations and ISA has not taken place yet. Hereto the prerequisite is to reach a further agreement on the delimitation with Barbados.

17 See, page 89, the chart relating to the joint submission made by France, Spain, Ireland and the United Kingdom.

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

19 See, page 92, a chart relating to the submission made by France for Guyana.

20 See, page 96, the chart relating to the submission made by France for New Caledonia.

21 See, page 98, the chart relating to the partial submission made by France concerning French West Indies.

□ The submission relating to the Kerguelen Islands²²

This submission was filed on 5 February 2009. Following a 38 month 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 ISA has not taken place yet, as this requires an *addendum* to the 1982 agreement between France and Australia, also affected by the presence of the Heard and Mc Donald Islands.

Simultaneously with the submission for Kerguelen, through a notification of 5 February 2009 from the permanent French mission before the United Nations, France has reserved the right to file a submission for the future for Adélie Land recalling the principles and objectives shared by the Antarctic Treaty and UNCLOS. This notification has led to reactions from the Netherlands and Japan, as no country could make a submission for any territorial sovereignty in the Antarctic according to the aforementioned treaty.

The submissions to be examined by the CLCS

□ Joint Submission for the Crozet Archipelago and the Prince Edward Islands²³

This joint submission was filed by France and South Africa on 6 May 2009 for an extension of 541,288 km². No delimitation agreement has been concluded yet between the two countries. The submission 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 submission relating to Reunion²⁴

This submission was filed on 8 May 2009 with the CLCS. It was presented at the session of the CLCS in July and August 2013. Bearing number 40 in the order of submission of submissions, examination of this case would not have to be made before 2025/2030. This submission requests an extension of 63,798 km².

□ The submission relating to the islands of St. Paul and Amsterdam²⁵

This submission was filed by France on 8 May 2009 with the CLCS. It was presented at the session of the CLCS in July and August 2013. Bearing also number 40, the examination of this case would not require to be made before 2025/2030. This submission is asking for an extension of 341,852 km².

22 See, page 101, the chart relating to the outer limits of the continental shelf off the coast of Kerguelen Islands.

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

24 See, page 107, the chart relating to the outer limits of the continental shelf off the coast of Reunion.

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

□ *The joint submission relating to Wallis and Futuna*²⁶

This submission was filed with the CLCS on 7 December 2012 by France, Tuvalu and New Zealand on behalf of the non-autonomous territory of Tokelau for an area of 17,329 km². It bears number 62 and was presented at the session of the CLCS in July and August 2013. The examination of the submission would not require to start before 2030, since the three states should agree on a maritime delimitation agreement.

The Preliminary information filed

Due to the fact that the developing countries lack sufficient means to drawing up complete dossiers, in 2008 the CLCS resolved to authorize coastal States to file preliminary information, pending the elaboration of the definitive dossier. France has taken this opportunity and filed preliminary submissions with regards to Saint-Pierre and Miquelon, French Polynesia and Clipperton²⁷.

□ *Preliminary information concerning Saint Pierre and Miquelon*²⁸

Preliminary information concerning the continental shelf of the archipelago was filed on 8 May 2009 for an extension of 43,135 km², representing an increase of 350% of its continental shelf. This decision by France was the object of a firm protest by Canada. During the meeting of the EXTRAPLAC steering committee 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 definitive filing. On this subject it should be remembered that during a 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 also confirmed the intention of France, for this purpose, to file a submission before the Commission on the Limits of the Continental Shelf”*²⁹

□ *Preliminary information concerning French Polynesia*³⁰

Preliminary information concerning an extension of 814,842 km² was filed by France on 8 May 2009. Due to the delay in the drawing up of this submission, 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 Marquesas Archipelago. This submission

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

27 Preliminary information concerning Wallis and Futuna was transformed into a submission on 7 December 2012.

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

29 Statement from the Presidency of the Republic of 24 July 2013 following the meeting of the President of the Republic with parliamentarians from both Saint Pierre and Miquelon, on 24 July 2013.

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

thus requires full completion, as according to the reports by IFREMER 7 zones around Polynesia could lead to extension. Delimitation agreements with the neighbouring states of Kiribati and the Cook Islands will require to be completed upon filling of the application to cover the extension of the continental shelf.

□ *Preliminary information concerning Clipperton*³¹

The preliminary information concerning the continental shelf of Clipperton island beyond 200 nautical miles was filed on 8 May 2009 by France before the CLCS with a view 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 submission and the forecast submission date of the submission. The extension of 25,000 km² is located in the eastern Pacific Ocean. The coasts of Mexico are located approximately 700 nautical miles to the north-east and therefore there are no overlapping Mexican and French submissions. Nevertheless, it should be remembered that French sovereignty over Clipperton is contested by Mexico, to which submission France can naturally not submit itself to. 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 the ESEC obtaining a credible explanation for this decision.

The offshore territories for which no submissions or preliminary information have been filed

In 2003 SHOM gave EXTRAPLAC a theoretical study dealing with the possibilities of extending the French legal continental shelf beyond 200 M from the point of view of article 76 of UNCLOS. This study aimed to apply the general publicly available hydrographical and geological data 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 considered as not possessing an extended continental shelf 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 Overseas Territories of the Indian Ocean of the Scattered islands and Mayotte, no submission for the extension of the continental shelf or preliminary information indicating the outer limits of the latter has been filed with the CLCS as at the date of 13 May, 2009, as it was considered that the conditions had not been met for an extension submission (no pass of membership test for Europe or submissions from third States within the 200 nautical miles for the other ones).

Nevertheless, the Council queries this decision, as the theoretical study conducted by SHOM in 2003 indicated the possibility of a 10, 000 km² extension in the South of Europe alone while Mozambique has filed a submission on 7 July 2010. This submission covers the continental shelf south of the 200 nautical mile of Europe, to which France has renounced, since IFREMER was officially mentioned for its contribution and assistance to Mozambique by participating in the collection and analysis of additional data.

31 See, page 125, the chart relating to the indicative outer limits of the extended continental shelf off the Coast of Clipperton Island.

Managing the extension of the Continental shelf

The possible acquisition of sovereign rights over 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 over an area, however vast it may be, of the seabed and subsoil. This space acquired and in the process of being acquired thanks to the Overseas Territories, is considerable. It represents four times the surface area of metropolitan France 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 strengthen its State presence in the sea, as well as the most exhaustive knowledge possible of the resources of its seabed and its 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 overseas authorities for the economic and social development of the populations concerned.

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.

The rights and resources defined by the United Nations Convention on the Law of the Sea

Today, with the predictable and progressive depletion of easily accessible onshore natural resources, the technological progress, the emergence and the competition of particularly dynamic countries in the investigation of the marine environment (China, India, Korea), the ocean is a vast field of wealth, certainly still little known, but that we know is precious. As it was concluded in the opinion from the ESEC with the title *which means and which governance for sustainable management of the oceans?*³², 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 fuel and renewable energy, marine genetic resources, ores and rare earths). Nevertheless, the fragility of the seabeds and numerous subsisting uncertainties regarding the risks entailed, give rise to developing a prior knowledge of the same... Many countries have already taken up positions for the research of the resources of this vast sea domain covering 71% of the earth's surface, and of which 60 % is deeper than 2,000 metres.

Article 77³³ of UNCLOS provides certain indications on the nature of these resources and grants to the States the sovereign rights over the continental shelf with the objective of exploration and exploitation of its natural resources.

32 Chabaud Catherine, *Which means and which governance for sustainable management of the oceans?*, opinion and report from the ECEC, Editions of the Official Journals, N° 2013-15, July 2013.

33 See, Annex 3, page 165, article 77 of UNCLOS.

These latter 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 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 subsoil.*”

However, these resources are largely unknown. One of the main obligations imposed on our country is to acquire knowledge of the extended continental shelf resources. In the current state of knowledge and based on the scientific works³⁴ conducted on the continental shelf beyond 200 nautical miles and in the Zone managed by ISA, these resources would be the following:

- **hydrocarbon resources**³⁵ (the extension submissions have allowed for the identification of the most favourable French zones which are Guyana, New Caledonia, Saint-Pierre and Miquelon and Adélie Land³⁶);
- **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 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 a 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 yttrium, titanium, Lanthanum... It is in the Pacific, specifically in 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 a depth of over 4,000 metres. Above all these balls contain 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, the defence industry, as well as in the telephone communication sector, but also for renewable energies*”³⁷. “The technological innovations associated with sustainable development also

34 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.

35 For IFREMER, the “*other non-biological resources*” mentioned in paragraph 4 of article 77 of the Convention refer to hydrocarbons.

36 Statement of Mr. Roland Vially, project manager for the evaluation of resources and reserves within IFPEN, before members of the Delegation for Overseas Territories, on 25 September 2012.

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

use these elements: neodymium in wind turbines, often 9 types of rare earths in the construction of electric vehicles, yttrium for LED screens and fluorescent light bulbs);

- **biological resources**³⁸ (during his statement Mr. Bersani³⁹ reported on the “intense life” at a depth of 4,000 m. The IFREMER study⁴⁰ highlights “*exuberant and extraordinary life*” around the hydrothermal chimneys and the biological wealth of the sedimentary environment of the abyssal plains. An American study carried out on the North West Atlantic continental located between 1,500 and 2,500 meters deep estimated that close to 10 million benthic ⁴¹species existed living at this depth. The genetic resources of the deep seabeds 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-recovery⁴²);
- **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, crustaceans, molluscs such as abalone shells, pearl-bearing oysters, scallops ... as well as plant species for exploitation such as algae and seaweed).

In conclusion, it emerged from the different people heard, and in particular the executives of scientific and technical organisms that despite the scientific missions undertaking but still covering still areas too limited to be sufficiently exhaustive, the knowledge and identification of the resources of the continental shelf and more particularly of the extended continental shelf remain very incomplete and demand more ambitious investment.

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

UNCLOS provides no indication with regards to the legal framework of exploration and exploitation activities (EEA) of the resources of the extended continental shelf⁴³. 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 exploitation licences and to define the technical specifications referring to the obligations of the contracting party with regards to the State and the local authority in

38 the biological resources, although not cited in Article 77 of the UNCLOS, nonetheless form part living organisms of the expanded continental shelf.

39 Statement of Mr. Bersani in private interview with Mr. Grignon, rapporteur of the study, on 26 November 2012.

40 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.

41 With regards to benthos: all the organisms living on the seabeds and which have little movement.

42 Poirier-Coutansais Cyrille, article « L'Eldorado maritime : entre prédation et gestion concertée », in revue *Études*, *op. cit.*

43 Interview of Mrs. Virginie Tassin, Doctor of Law, with Mr. Grignon, rapporteur, on 8 October 2012.

question, the provisions establishing the respect and the protection of the environment, the social exploration and exploitation conditions, the taxes on 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 at less than 200 nautical miles. Indeed, if at less than 200 nautical miles the continental shelf is overhung by a water column which belongs to the coastal state's EEZ (article 56 of UNCLOS), the extended continental shelf is overhung by the open sea, international area of freedom (article 87 of the Convention). This means that in the case of the continental shelf at less than 200 nautical miles, the legal regime for the exploration and exploitation activities applicable to the continental shelf **falls exclusively within the responsibility of the coastal State**. Therefore, usage conflicts are resolved by the coastal State thanks to the legislation implemented by the same. With regards to the extended continental shelf, the exploration and exploitation activities necessarily lead to disturbances of the subsoil and the water column overhanging the same which may **therefore impede and disturb activities (navigation, fishery, etc.)** **Which are freely performed by other countries on the high seas, and would even limit the regime of characteristic freedom of the status of the high seas, 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 legislation applicable below 200 nautical miles, as it should consider the customary practices for the free area which is the high seas, which overhangs 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 Seabed Authority (ISA). It should be highlighted that the activities concerning the mineral resources of the Zone are regulated by part XI of UNCLOS and by annex III on the *"basic provisions for prospection, exploration and exploitation"*.

□ *The necessary adaptation of the Mining Code to the Extended Continental shelf and to the statutory peculiarities of each overseas authority*

At present, the licences that could be agreed concerning the extended continental shelf off the coast of the Metropolitan France and the Overseas departments are governed by the legislation in force concerning the continental shelf, in other words, the mining code including the so called Auberger amendment, adopted in the finance laws of 1993, has led to the suppression of tax regulations oriented at offshore hydrocarbon exploitation. As it is recognised to be obsolete, it is currently being reformed. For the Overseas Territories, it should be remembers that the statutory organic laws with regards to the overseas territorial authorities confer upon the same with the competence to grant 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 regulations⁴⁴.

According to current legislation, exploration licences are awarded nearly free of charge by France to enquiring oil companies, without any strong contractual undertakings regarding economic, social or environmental actions towards the regions concerned. These exploitation licences 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 legislation much more favourable with regards to the oil conglomerates operating offshore.

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 a recent example. Indeed, without a preliminary study and in order to respond specifically, in an unsatisfactory manner, to the preoccupations of the elected representatives of the Overseas Territories, an amendment proposed by the government establishing maximum royalties of 12 % on the production value has been adopted by the amending finance law of 2011 and should come into force on 1st January 2014. Apart from this tax provision relative to the exploitation of off-shore hydrocarbons, the only other existing provision is the possibility for the Territorial Council of Saint-Pierre and Miquelon to raise a license-fee of which the basis and the rate are established by the local Assembly for the benefit of the archipelago⁴⁵

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 applicable social law⁴⁶. The public authorities 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 working group on the mining code reform in order to draw up a draft bill 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 *"maintaining and further developing a mining code adapted to the special characteristics of the Overseas Territories, 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 special characteristics of the Overseas Territories in the future draft mining code.

44 Thus, the draft organic law pertaining to updating law N° 99-209 of 19 March 1999, with regards to New Caledonia, extends New Caledonia's legislative competence in mining regulations "to rare earths" maintaining the competence of the Provinces to apply regulations, specifically concerning the granting of research licenses and exploitation concession rights. In his letter of July 2013 addressed to the rapporteur of the preliminary draft opinion, the president of the Government of New Caledonia informs him that *New Caledonia has asked the State to exercise the competence regarding the management of the continental shelf situated in the EEZ extension*", within the framework of the above mentioned stated draft organic law.

45 Grignon amendment adopted by the National Assembly during the review of the Finance Bill 1998.

46 See Communication by the Council of Ministers of 7 February 2013 regarding *"the main principles of the mining code reform"*.

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

The State facing its environmental responsibility

The exploration and exploitation activities on the continental shelf shall necessarily entail significant disturbance in the marine environment, whether this is on the seabed, subsoil or in the water column. The unreasoned exploitation of marine resources could result in a recolonisation 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 knowledge 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.

Article 192 of UNCLOS states that “*States have the obligation to protect and preserve the marine environment*”. Basically UNCLOS, a framework convention, refers the coastal States to the different international and regional conventions on the environment (convention on the biological diversity of 1992, the MARPOL convention, OSPAR convention, etc.) stimulating the States to adopt an ecosystem policy approach⁴⁷ for the EEA.

Likewise, the opinion of the 1st 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 ISA.

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The provisions of article 76 of UNCLOS allow France to expand its sovereign rights over the natural resources of the seabed and subsoil over an additional 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 shed light on 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, fully associating the Overseas Territories and its difficulty to manage and defend their interests in the short and long term.

Regarding the latter point, the ESEC could indeed only note, notably through their interviews conducted with a great number of parliamentarians from the Overseas Territories and heads of local executives, the failure to inform and associate the overseas authorities with regards to the thoughts and decisions taken by the State, specifically in relation to the EXTRAPLAC programme, the reform of the mining code and the actions of the State at sea.

47 The ecosystem approach is defined as “ *the integrated and complete management 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 maintaining the integrity of the ecosystem* ”, website of the OSPAR Convention.

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 there from.

The 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 over the new maritime areas and their resources. Hereafter, before this new richly promising maritime area, France must show exemplary conduct with regards to the conservation, protection, exploration and exploitation of the maritime resources.

The completion of the EXTRAPLAC programme

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 be classified in three categories: financial, technical and diplomatic which additionally may have played a role regarding one and the same submission⁴⁸.**

These difficulties persist with regards to the submissions currently under 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 EXTRAPLAC programme

Over the period 2003/2009, the EXTRAPLAC programme was allocated 2.5 million Euros per year. To this are added the contributions 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 notes that Canada, in comparison, 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 impeded from filing all its submissions before the deadline agreed upon by UNCLOS on 13 May 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 appraisal with regards to the completion of the EXTRAPLAC programme. As a result, the government shall take necessary budgetary decisions that will allow our country to focus on its proper role.

48 See particularly, the report of the Delegation for Overseas Territories of ESEC, pp. 79 to 85 and pp. 132 and 133.

File the submissions 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 submission 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, since the CLCS does not have the mandate to deal with the extension submissions which are in dispute;
- **To file before the CLCS the submission concerning French Polynesia at the beginning of 2014. In addition, whereas currently geophysical studies have been performed only for the Marquesas Islands, the ESEC recommends that scientific studies be conducted regarding the whole of the Polynesian archipelago, particularly in view of the positive results of the first campaigns which took place in the Marquesas archipelago;**
- **To file before the CLCS the submission concerning Clipperton.** The filing of a submission for the continental shelf off the coast of Clipperton Island is justified by the required confirmation of French sovereignty over the whole of this territory, which is contested by Mexico. This position is fully contradicts the fishery agreement signed by this country with France in 2007 regarding the EEZ off the coast of Clipperton, which establishes *de facto* French sovereignty. 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 submissions.

Resolve diplomatic problems preventing the Caledonian case being processed

Following an objection by Vanuatu opposing French sovereignty on the Matthew and Hunter islands, France had to ask the CLCS not to examine its submission for the south-east⁴⁹ of New Caledonia.

The Council recommends that the Department of Foreign Affairs intensifies its negotiations with Vanuatu in order to solve this dispute and to finally enable the Commission on the Limits of the Continental Shelf to provide their recommendations on the submission in the south-east off the coast of New Caledonia.

49 Letter of the Prime Minister of Vanuatu Mr. Ham Lini Vanuarorora, addressed to the President of the French Republic recalling that Vanuatu 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 11 July 2007.

Publish the outer limits of the extended continental shelf

Article 76, Paragraph 8, of UNCLOS entrusts the fixing of the outer limit of the continental shelf to the coastal state alone. 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 submission, provides the desired publicity for the charts or lists of geographical coordinates, filing a copy of the same with the General Secretary of the United Nations and with the General Secretary of ISA, 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 speech at the Naval Academy in October 2011, expressed himself thus *“what’s the use of congratulating ourselves on our 11 million km² if these areas are being contested and therefore cannot be exploited. Why would they be contested? And are they actually being contested in many different places? Because if the limits of territorial water and the EEZ limits are outlined on our charts, the precise delimitation of baselines and these other two limits has often not been carried out. Even worse, the orders and decrees officialising these limits in domestic law have not been adopted or have been established on obsolete grounds, which mean that they predate Montego Bay. Even worse still, the notification before the United Nations is often incomplete and therefore unenforceable. And so, our Joint Ministerial Committee of the Sea has decided to restore 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 a website so that our economic players have this information easily at their disposal.”*⁵⁰ The ESEC notes with regret that none of these measures has been implemented.

No publication has occurred regarding the fixing 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 ISA, while the recommendations for certain French submissions were issued nearly 4 years ago.

The Council therefore recommends:

- **To gradually fix and publish, within the shortest time periods possible, the maritime limits based on the recommendations of the CLCS, in accordance with the provisions of article 84 of the United Nations Convention on the Law Of the Sea to be effective against third countries and thus confirming the sovereign rights of France over the natural resources of the seabed and subsoil of its extended continental shelf. Hereto the ESEC recommends intensifying diplomatic relations with the countries in question in order to complete all of the delimitation agreements which are indispensable for the definitive conclusion of the submissions.**

This recommendation aims:

- **For the Bay of Biscay, the conclusion of treaties between France and Spain as well as with the United Kingdom and Ireland;**
- **For Guyana, the conclusion of treaties between France, Brazil and Surinam;**

50 Communications and reports of the Naval Academy, N°1 (October-December 2011). Closing remarks by the Prefect Jean-François Tallec, Secretary General of the Sea, p.69.

- 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 Islands, 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 Joint Ministerial committee for the sea of 2011 which has entrusted the Navy's hydrographic and oceanographic service (SHOM) with the task of participating in a national maritime delimitation programme⁵¹.

For this purpose, **the ESEC recommends that the required human and financial means are allocated to the SHOM.**

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

The submissions of France which were not filed before May 2009, but for which a preliminary submission was made, shall not be examined by the CLCS before filing the complete dossier in accordance with the provisions in article 76 of the Convention. The earlier assessment has brought to light a delay in the examination of each future submission of about 15 to 20 years, at the current work rate of the CLCS which require confronting a heavy work burden.

The Council, considering the waiting times as prohibitive, recommends that France pleads strongly with the States that are party to the Convention and before the General Assembly of the United Nations to obtain a remarkable strengthening of the budgetary and human resources from the Commission on the Limits of the Continental Shelf so that this Commission can respond in an efficient manner and within acceptable time frames on cases which are submitted to it.

An exemplary France with regards to a new maritime area

The Council has queried the way our country would profit of its opportunity to have obtained or in the process of obtaining sovereign rights over the resources of the seabed and subsoil with regards to a surface area of nearly two million km². This two million km² extension requires exemplary conduct from France, confronts it with an obligation of protecting and surveying the acquired areas or areas in the process of being acquired, and mastering the knowledge of the marine environment and its ecosystems, within the framework of exploration and exploitation activities. This requirement for exemplary conduct and responsibility for the State with regards to the Overseas Territories, which account for 99 % of the extension of the French continental shelf, should lead it to inform

51 Statement in private interview of Mr. Bruno Frachon, CEO of SHOM, on 12 November 2012.

and involve these local authorities in order to fully integrate the same in the development of an ambitious maritime policy, in accordance with the specific competences of each territory.

More generally, the former chief of staff for the armed forces, Admiral Guillault, recalled⁵² that the Livre blanc on the defence and national security of 2008 had not sufficiently taken into account three major files: **Africa, the Overseas Territories and maritime areas**. The ESEC concludes that the Livre blanc of 2013, although it recalls the necessity for our country to “mark its sovereignty and to defend its interests 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 foresight regarding the means to be implemented within the framework of the extended continental shelf.

The Council recommends:

- **To protect and supervise the areas in question by strengthening the presence of the French navy on the oceans while providing means for permanent control and observation using new technologies and intensifying regional cooperation schemes.**
- **To enshrine in the Law, provisions regarding the objectives of the Convention on the Biological Diversity (CBD), notably of the Nagoya Protocol, and work at the international level to adequately consider a high protection level of the marine ecosystems in the various additional protocols to UNCLOS.**

The obligation of knowing the resources and marine ecosystems

From the various statement of the persons 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 to be sufficiently exhaustive, the knowledge and identification of the resources of the continental shelf, and more particularly, of the extended continental shelf are still incomplete and require more ambitious investment. No programme regarding knowledge of the resources of the extended continental shelf has been initiated, although this was envisaged by CIMER in 2003. In July 2013, the General Commission for Strategy and Planning published a working 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 research regarding submarine mining resources.”⁵³

Generally speaking the scientists acknowledge the extent of the concerning the number of benthic and deep sea species which could be found in the oceans. Indeed it is estimated

52 Article from the Express.

53 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 GCSP *Approvisionnement en métaux critiques : un enjeu pour la compétitivité des industries française et européenne ?*, N° 03 July 2013, p. 10.

that currently only 5% of the oceans have been systematically explored. Furthermore, the association with these different missions of private interests, indeed the only private initiative, entails a certain confidentiality as regards to the publicity of the information acquired regarding these resources whereas diverse missions and scientific work clearly allow hopes to emerge that the wealth of the ground and underground marine floor elicits.

If the State does not intend to give way to the interests of private research, it shall be responsible, particularly thanks to its first class operators⁵⁴, to increase its knowledge concerning the resources of its seabed and the subsoil, of the ecosystems surrounding the same and the impacts and implications associated with human activities.

The Council recommends:

- **To initiate a national, multidisciplinary and ambitious programme with regards to the knowledge identification and quantification of the seabed and sub-seabed resources of the extended continental shelf. The implementation of this programme should go jointly with the recruitment of primarily young doctoral students 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 Marine Protected Areas may lead to the mastering of privileged areas for the scientific research with regards to the sea environment beyond the extended continental shelf.**
- **To inform the European Union regarding and to associate it with the various French maritime policy programmes related to knowledge 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 EU 2020 Strategy aimed at the creation of "intelligent, sustained and inclusive growth".**

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

In July 2000, ISA 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 being developed. These regulations are based on the broad guidelines of the international regime establishing the principle of the common patrimony of humanity in article 136 of UNCLOS. Indeed, ISA establishes a true international mining code which strongly encourages the coastal countries to draw inspiration for their own regulations, which is implied by the

54 IFREMER, SHOM, Agence des aires marines protégées (Agency for Marine Protected Areas), IRD, CNRS, universities, BRGM, ONEMA, water agencies, Météo-France, IGN, CNES, MNHN, IFPEN, CEA, CEMAGREF, IPEV, CEDRE.

Advisory opinion of 1st February 2011 of the Seabed Disputes Chamber for settling 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 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 set an example. This duty of the coastal State to provide a legal framework for the EEA on the extended continental shelf must also take consideration of the requirements regarding marine biodiversity and the challenges of the seafloor and the sub-seafloor environment.

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 leading experimenting 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 operators⁵⁵, must preserve its assets;
- **To establish, within the shortest time periods possible, a legal framework for the exploration and exploitation activities and scientific research on the extended continental shelf and more particularly to reform the mining code to adapt it to the specific situation of the extended continental shelf within the realm of the maritime areas. The mining code shall also integrate within exploration licenses, the provisions stated in the technical specifications and establishing the commitments (social measures, training measures, local procurement expenditure, etc.) regarding the affected local authorities, as well as the financial spin-offs originating from possible exploitations. These spin-offs must be shared between the State and the overseas local authority according to the negotiated terms and conditions.**

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

The overseas authorities, due to their geographic position, gather the majority of the maritime challenges. These territories, which allow our country to possess immense maritime zones worldwide and the European Union to have active borders in zones with strong potential for growth, must be fully associated developing the 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 the populations of the Overseas Territories which must benefit from resources of the continental shelf. In the case of these resources it is a fact that the different laws currently applicable deprive our country and its overseas authorities of the significant spin-offs that they are entitled to expect.

55 Such as, for example, TECHNIP.

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

Caution in this field is however appropriate and leads Mr. Jean-Yves Perrot to state, during his interview, that it would be illusory to imagine that the quantitative extension of our area of sovereignty alone would trigger an extension of the possibilities both development both in the field of mineral resources and that of living resources. Indeed, even if interesting perspectives exist, without any series of support measures, extension of our jurisdiction alone would not meet, within a timescale that remains to be defined, the expectations generated by this “marine Eldorado”.

The Council recommends:

- **To strengthen regional cooperation of the Overseas Territories with regards to the management (knowledge, preservation, surveillance and exploitation) of the resources of the sea with their neighbouring countries and to possess the extended powers to do so⁵⁶;**
- **To constantly inform and closely involve the executives of the different overseas local authorities in all decisions and operations dealing with maritime policy⁵⁷. The actors of the civil society should also be associated;**
- **To take measures 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 regulatory provisions with regards to the jurisdictions of the Overseas Territories shall be adapted and effectively applied;**
- **Reflect on the establishment of an inventory of the training intended for the young people in the Overseas Territories in the future activities which might be generated by the exploration and exploitation of the resources of the extended continental shelf (including research activities) and to mobilize the human and budgetary resources required for the implementation of such training;**
- **Anticipating a structural accommodation and equipment plan (particularly, port equipment and transport) with regards to the future activities generated by the resources of the extended continental shelf.**

56 We observe that New Caledonia submissions the transfer of State competence regarding the sovereignty on the extended continental shelf.

57 We observe that the majority of the executives 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 local authorities.

The elaboration of a truly ambitious maritime policy

The ESEC has observed that certain differences in the institutions of the State existed which might have endangered the outcome of the files concerning certain submissions 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 ministries involved. The ESEC considers that the Secretariat General for the Sea does not constitute, as it stands, a truly decision making 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 will and the means implemented for its realization. It considers that there should be a close and permanent coordination between the ministries affected by 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 maritime policy budget today is insufficient and deployed between the different budgetary programmes of the ministerial missions participating in the same. This complex situation is strongly detrimental to the readability of the maritime policy conducted by our country. The issue concerns *“rectifying a historical omission. France has swept its maritime vocation under the carpet for too long (...) and to stop ignoring the spectacular maritime destiny which might belong to it”*⁵⁸.

In its opinion entitled *Which means and which governance for a sustainable management of the oceans?*, the Council has already recommended:

- To *“significantly strengthen and reform the role of the Secretariat General for the Sea. The ecosystem, collaborative and collective approach for maritime issues, their strong interdepartmental and international dimension, the deployment of budgetary loans dedicated thereto, should indeed lead to a maritime policy management being envisaged by a **High Commissioner**, with the rank of Minister, based on the administration of a strengthened Secretariat General for the Sea, under the direct authority of the Prime Minister (...)”*⁵⁹

Concluding its reflection, the Council also recommends:

- **Developing an important law on the oceans in order to bring together all the legislation and regulations defining and accompanying the development of the maritime policy of our country;**
- **That in the absence of implementation of a single “maritime”, budgetary mission, this being an option which is difficult to realize, every year a transversal policy document should be drawn up by the government with the title “maritime policy of France”, in order to better inform the Parliament on the necessary overall 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 of preparing this transversal policy document;**
- **Organising every year a long debate in Parliament on the issue of French maritime policy, on the basis of a transversal policy document. Indeed, it**

58 Speech of the President of the Republic, 16 July 2009, in Le Havre.

59 *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 on 9 July 2013, p. 28.

- seems abnormal to the ESEC that such an extension of the sovereign rights over the natural resources of the seabed and marine subsoil would be at stake without Parliament being informed and associated up until now;**
- That the completion of the EXTRAPLAC programme would systemically be included on the agenda of the annual CIMER (Joint Ministerial Committee of the Sea) meeting⁶⁰. 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 EXTRAPLAC programme, whereas France was obliged to imperatively submit the all the files on 13 May 2009.**

Conclusion

The issue of the extension of the French continental shelf is totally foreign to public opinion, unknown in political circles and generally absent from seminars and conferences on the sea, as well as in debates on the maritime policy of our country. Except for some specialists and a very narrow sphere of public figures in charge of the execution of the national EXTRAPLAC programme aimed at the extension of the French continental shelf beyond 200 nautical miles, this issue has been overlooked.

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 extend its sovereign rights over the natural resources of the seabed and subsoil of its extended continental shelf on a surface of over 2 million km².

An asset, thanks to the Overseas Territories, the French presence in all the oceans offers France and Europe active geopolitical foundations in key strategic sectors distributed across the globe.

Surely, an asset for France, although the ESEC also considers that the extension of the French continental shelf entails 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 largest maritime area in the world after the United States and ahead of Australia, which means 11 million km² of which 10.6 in respect of Overseas Territories distributed over all the oceans. This policy should be integrated into a maritime policy 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;

60 In its report and opinion named "*Which means and which governance for a sustainable management of the oceans?*" submitted by Mrs. Catherine Chabaud on behalf of the environment department, the Council has recommended that CIMER meets at least once a year.

- The responsibility and the obligation to guarantee the presence of the State in the sea for monitoring, controlling, protecting and remediating the existence of the lawless zones on the oceans;
- The responsibility and the obligation to launch scientific programmes for the knowledge with regards to the maritime environment and ecosystems at great depths and the identification of the natural resources of the seabed and the subsoil. The ESEC certainly considers that it constitutes a growth engine for the future, particularly for our overseas communities, the inclusion of which in a sustainable development model is mandatory;
- The responsibility and the obligation to elaborate 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 world economic crisis, what coastal country would not grasp the opportunity when it has access to sovereign rights over the natural resources of an additional surface of 2 million km² 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 seabeds, and particularly of these "rare earths" crucial for the development of new technologies.

Having extra high-performance scientific and technical leaders in the domain of great oceanic depths, can France allow itself to neglect this inestimable asset offered to it by article 76 of the United Nations Convention on the Law of the Sea?

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

Declaration by the Groups

Agriculture Group

The group has much appreciated the excellent work on this poorly known and complex issue. It is surprising that the continental shelf is so rarely referred to, and it is very satisfactory that the ESEC has taken the opportunity to make this issue better known and, above all to raise awareness with regards to the significant challenges related to thereto.

Increasing French territory and extending access to new resources is essential for our country. The agriculture group wishes that this opinion be widely disseminated in order to alert decision-makers and attract the attention of the populations affected, particularly in the Overseas Territories.

We agree with the recommendations 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. Overseas regional cooperation is very important. This is an essential condition for a good result of this project and above all it is a dynamic which shall only have positive effects on all the other domains too.

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

The agriculture group declared itself in favour of the opinion.

Associations Group

France occupies the second largest maritime area 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) up to the outer continental margin, enables France to extend its rights over the seabed and the subsoil over an additional surface of nearly 2 million km². Naturally it can is uncontestable not to seize the opportunity of acquiring sovereign rights for exploration and exploitation of the natural resources over these areas.

The United Nations Convention on the Law of the Sea (1982 in Montego Bay) has created a Commission on the Limits of the Continental Shelf (CLCS). This commission is entrusted with the task of examining the submissions for the extension and to issue recommendation regarding their submissions.

In order to claim 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 yet assessed the exact limits for each of its islands. The deadline for the filing of the submission was fixed at the month of May 2009, but our country has been able to benefit from a statutory derogation. Therefore, guaranteeing financing for 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 issue an opinion based on purely technical criteria. This assumes that the disputes with certain of our neighbouring countries shall be settled.

The appropriation of new areas firstly requires knowledge 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 company to intervene. The technical specifications should guarantee the preservation of the environment on the one hand, as well as the safety of 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 highlight that this opinion is harmoniously attached to the opinion *Which means and what governance for sustainable management of the oceans?* which we have recently adopted in July. The harmony of both these opinions supports our confirmation that we must provide ourselves with a true maritime policy to support a "great" law.

The group of associations insists on the crucial and urgent interest that it had in dealing with 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 national sovereignty and the delimitation of the contours of the European Union and the future of the maritime territorial communities.

In the domain of international law, ratifying the conventions and have them applied with vigilance constitutes towards better global governance. Settling boundaries by agreement between neighbouring States, based on the law of the sea, broadly justifies the recommendations in the opinion. The existing submissions for the delimitation of the shelf extension should be continued and underpinned and those files which are the subject of disputes should be re-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 knowledge regarding marine ecosystems and to start exploring the resources of the shelf, with the support of co-financing necessary research.

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 significant maritime potential into a reality for the provision of wealth and employment. For the CFDT, the private sector could also 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 the principles of sustainable development for all the future exploitation. Particularly regarding the people working in these different activities, the CFDT insists on the necessity that the welfare 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 regional cooperation, the sharing of competences with the local authorities and the participation of partnerships 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 that the marine territories and particularly, the Overseas Territories represent for France.

The extension of the continental shelf is a complex file involving the legal, diplomatic, geophysical domains, as well as knowledge 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 a euphemism.

How to explain that certain dossiers have not been filed with the Commission on the Limits of the Continental Shelf?

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

The current economic interest, and tomorrow even more, of the seabed and the subsoil 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 to scientific knowledge. To apprehend 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 young people and employees in the Overseas Territories.

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

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

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

Experts' opinions differ on the depletion dates for natural resources, but this depletion is inevitable if we do not radically change our economic attitude. Certain private interests and certain countries have already taken up positions for the exploitation of the seabed and subsoil. It is up to our country not to be surpassed, or even deprived, while it is the second largest maritime area in the world.

Scientific research and exploitation of the continental shelf make only sense, if the population of the Overseas Territories are 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 Overseas Territories and their population, a chance which should not be missed.

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

The CFE-CGC 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 constructed with the actors, including employees from the different industries affected 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 concerning the extension of the continental shelf beyond 200 nautical miles. For the diversity of the Overseas Territories this does indeed contain enormous challenges: challenges of knowledge and preservation of the ecosystems and biodiversity, and sustainable development of the resources of the seabed and subsoil.

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

The opinion particularly proposes to closely and permanently involve the executives of the local authorities in all operations and decisions regarding the maritime policy and to associate the actors of civil society. It proposes brining forward, in a maritime area planning scheme, the equipment to be constructed or installed, whether these are ports or transport infrastructures and not to forget the training and competences which should be deployed to develop knowledge of the environment and the ecosystems as well as the exploration and the exploitation of the resources of the extended continental shelf.

The United Nations Convention on the Law of the Sea actually leaves the coastal country the freedom to establish the conditions according to which the exploration and exploitation licenses are granted and to define the obligations of the contracting party with regards to the State and the authority in question through technical specifications, whereby the provisions establish the respect and protection of the environment, the social exploration and exploitation conditions, taxes on production.

This latitude must lead France to guarantee a high level of environmental protection and protection for employees 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 extending the continental shelf is of major interest for a country like France which represents the second largest maritime area in the world thanks to the Overseas Territories. Indeed, the increasing economic importance of the maritime areas in the globalization converts the sea into a political challenge, especially on the international scene. The underlying economic, 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 constitutes an opportunity for the overseas authorities, and particularly helps to reduce the structural disadvantages that characterise these territories. The acquisition of sovereign rights, for the exploration and exploitation of the natural resources over these areas should be included into the economic development plan of the Overseas Territories and thus create employment.

For the FO group the strengthening of regional cooperation of the Overseas 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 France's maritime heritage and the exploitation of its seabed and subsoil should not be conducted to the detriment of protecting the environment. Actually it is fundamental to use this opportunity in order to enhance knowledge and protection of these zones and their biodiversity. FO wishes to underline in particular the devastation caused by chlordecone on 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 to maximize the extension of their maritime area which could be a source of tension, such as the case of for example, Saint-Pierre and Miquelon 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 political awareness of this potential and this opinion, according to the said report presented some weeks ago by Catherine Chabaud, fully contributes to the same.

Globalization entails a profound mutation of the oceans: the explosion of 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 over the wealth of the seas, seabeds and subsoils. Countries like China are fully aware that domination of the oceans is closely linked to the increasing needs of States with regards to raw materials and energy 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 marine activities can of course not be dissociated from the need to protect the environment in order to reduce pollution and to preserve biodiversity. The opinion rightly emphasises the importance of identifying and quantifying the resources of the seabed and subsoil of the extended continental shelf and to develop scientific research programmes regarding the maritime areas in question.

There are important strategic, economic and environmental challenges, linked to the submission for the extension of the continental shelf and the cooperation group shares the ambition and intent 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 concerns.

The Cooperation Group voted in favour of this opinion.

Enterprise Group

Whereas access and use of the raw materials are mainly strategic, it is deplorable to see that the issue of extending 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 from this because we possess the second largest maritime surface in the world. This would give us the opportunity to acquire rights over these new maritime areas and the natural resources of the seabed and subsoil over an additional surface of nearly two million square kilometres.

In the context of the world of today, France cannot neglect this opportunity and the potential additional resources which could derive from the same. This would also be an opportunity for the development of certain French Overseas 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 a financial nature. It particularly recommends increasing the means oriented at the completion of the EXTRAPLAC programme, at the Navy's hydrographic and oceanographic service (SHOM) or at the Commission on the Limits of the Continental Shelf. While aware of the necessity to obtain essential information to justify the claims for extension, the Enterprise group recalls that it is necessary to be vigilant against raising public expenses and that it is opportune to favour the reallocation of the expenses 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 special characteristics of this zone and to plan the commitments toward the local authorities concerned.

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

It is therefore necessary to combine the different economic, 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.

The Enterprise group therefore supports the all of the propositions that would lead to the extension of the French territorial marine zone, while recalling the aforementioned reservations expressed regarding the propositions of the opinion.

The 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 for specialists, geologists, legal experts and other diplomats, but, in a few years, they might concern us all, because of the challenges related to seas and oceans.

As underlined in the recent opinion, Sustainable management of the oceans, reported by Catherine Chabaud, the future of the earth might be the sea. The rapid depletion of certain of the earth's natural resources forces us to consider the depths of the oceans as the only solution to provide ourselves with rare earths 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 high seas are a part of the common heritage of mankind, our responsibility is therefore heavy.

The opinion fits into this vision of a sustainable administration of the still unexplored marine spaces and seafloor 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 over natural resources located in the extended continental shelf, according to the provisions 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 its Overseas Territories 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 marine nation. This long and complex approach requires a long-term diplomatic and technical undertaking, in negotiation with neighbouring countries.

Financial and human means up to the stakes must be called up, and mostly, to be strengthened at the highest level of the State, in order to see through the EXTRAPLAC programme. The goal is also to strengthen 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 essential to us, and on which our three groups would like to insist are:

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

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 services they provide. It is about, among other things, identifying all the natural resources, charting the seabed, and also evaluating the impact of future exploitation activities and potential remediation options. The opinion brings up indeed a duty of knowledge, a strong responsibility.

Extension of the Continental shelf concerns above all our Overseas Territories. It outlines future development opportunities for these territories, in terms of research, employment and training, financial benefits and therefore, social integration. Associating the overseas authorities at all levels of decision-making is a necessity.

For all that, considering the stakes of the necessary ecological transition and of the latest GIEC report, of which the climatic forecast worsened, these developments only seem possible and desirable upon one condition: that France sets an example, both in the coming international negotiations and the sustainable management and protection of 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 have voted for 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 taking into account by the assembly of the overseas realities and the challenges of development of the Overseas Territories thanks to in-depth works of high quality, often talking about problems 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 Delegation for Overseas Territories, 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 overseas elected members, senior official and also scientists and specialists of the subject shows that the latter is a source of interest for the public authorities. The group regrets even more the absence of the minister for the Overseas Territories, whose diary undoubtedly 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

earths and other mineral and living resources constitute a strategic stake for companies' competitiveness and productive machinery of powers in the Overseas. *Finally*, it is about a potential of growth which must contribute to considerably reducing the structural disadvantages specific to the Overseas 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 extending the continental shelf, this extraordinary potential for the Nation made possible thanks to the exceptional heritage of the Overseas authorities spread over the four oceans. This objective being fully achieved, the group voted in favour of this opinion.

Qualified Individuals Group

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

With these works, you enlighten us on the geophysical, institutional and administrative complexity of our marine spaces. And, like you, I 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 set an example in terms of governance, and use of the oceans.

To the concept 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 with regards to a new marine space, as you correctly suggested.

First concerning our economical awareness.

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

The gigantic size of liners shipping more than 7,500 passengers, and parading in a long line in 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-storey building; the even bigger oil tankers, and the more and more sophisticated platforms.

No, man, trapped within the enthusiasm and snowballing of his activities, does not approach the sea with caution and wisdom.

The demands of shipyards greatly increase, the arctic routes open up, the sea is a new El Dorado and all want more.

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 the Kerguelen Islands a few weeks ago: The Marion Dufresnes diverted from its course 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 repairs, and without mechanic, not to its home port, but to its fishing zone, in rough seas.

No regulation would have allowed the Marion Dufresnes to intervene.

Finally, our environmental awareness.

The climate is changing, oceans acidify, and cyclones and hurricanes are becoming ever stronger and more frequent.

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 gift?

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

Isaac Newton said *"Men build too many walls and not enough bridges"*. Nowadays, we draw lines and ships 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 Economic, social and environmental Council almost three years ago, I expressed to you, dear President, my ambition to see the sea in this chamber.

Today, I can assure we have reached our goal.

It started by this link we created between the Tara galley and a plenary session of January 2012, and the plankton entered the ESEC.

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

You will allow me to affirm that 2013 was the year of the oceans at the ESEC, since the marine challenges also inculcated several other works of the sections, recently again with the follow-up opinion about biodiversity.

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

Your draft opinion efficiently completes the works we have conducted and I am pleased about it. Beyond the question of extending the continental shelf, it leads us to have a look around in our marine spaces and make more tangible the geostrategic, economical, social and environmental challenges. I predict it will also allow the overseas populations to turn resolutely towards the sea.

I will then speak about 4 points:

First point:

2013 will also be the year of the next Joint Ministerial Committee of the sea, at the beginning of December. Through your report and your draft 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 recommended a yearly meeting. So, first political message: use the tangible suggestions made by the partnership here assembled to feed the CIMER and schedule now (it may be done already) a CIMER in 2014! And join our suggestion for a High Commissioner with the rank of a minister to strengthen the national governance of the sea.

The second point deals with a subject linked directly with your draft 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 Ministry for Ecology gathered the stakeholders yesterday to review the situation of the works, a meeting at which some of us attended.

These works aim to establish the picture of:

- The deep mineral resources;
- The exploration and exploitation activities;
- The ecosystems in question;
- The risks incurred and measures of impact management.

In your draft opinion you recommend “creating a research programme about the materials and devices for exploration and exploitation, so our country becomes a leader in this area, and sets an example in terms of marine environment protection”, and I can only go along with this recommendation.

Third point: Future agency for biodiversity.

It is absolutely indispensable 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 development programme for protected marine areas, but also to provide the means for the administration.

Finally, my last point deals with the high sea, and I want to read or re-read the conclusion from the call for the high sea to you:

“The high seas are not only a matter of specialists and professionals; it is in the heart of the survival of mankind 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 future generations an innovative “blue economy”, based on the respect of ecosystems and human rights. Restructuring the relation of men with the high seas are essential to contribute to human development, and also to the resiliency of the planet and its climate. It is an intense and urgent ambition.

Life comes from the ocean, it is a living ocean that we want to bequeath to our children”.

Liberal Professions Group

France occupies the second place in the world amongst maritime powers with 11 million km² of which 97% are its ultramarine territories. Our country being present on three of the planet's oceans, the extension of its jurisdiction beyond its exclusive zone, allowed by the United Nations Convention on the law of the Sea, is a considerable advantage. It can therefore submission a sovereign right over larger areas. But this will also entail new duties in terms of protection of the environment and potential access to mineral and fishing resources.

The strategic challenge is both economic and environmental. It does not only focus on the search for new natural resources including new offshore oil deposits, but also on the protection of the seafloor and the sub-seafloor, by controlling the exploitation. The Overseas Territories indeed constitute a haven of marine biodiversity of exceptional wealth. Its protection is a major concern.

The opinion submissions 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 for a good balance between the exploration, exploitation and protection of the ecosystems. Securing the zone and the raw materials that it holds is a true question of strategy and means.

The techniques of exploitation at great depth are more and more sophisticated, but maybe they won't prevent the existence of significant 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.

It is a political challenge also, when the extension of French jurisdiction allows the National Marine (French Navy) to protect and monitor the spaces concerned, to extend its action against illegal fishing or better secure French interests. The extension of the Exclusive Economical Zone can only be granted by the UN Commission if an agreement is reached between two adjacent countries. A well informed collaboration must be sought in order to define precisely the limits of neighbouring continental shelves.

These territories, by accessing new resources and the creation of new economical activities, will be able to partly counterbalance their structural disadvantages. France has a duty to involve the overseas elected members in developing its marine policy, as the opinion recalls.

By publishing, as soon as possible, the outer limits of the extended continental shelf to be asserted against the third countries, we assure the sovereign rights of France over its seafloor and sub-seafloor. The opinion makes us sensitive to a subject offering real economic, social and environmental potential, for France and the Overseas Territories in particular.

The Liberal Professions Group voted in favour of this opinion.

UNAF Group

With this opinion, the ESEC fully plays its part in highlighting subjects totally unknown to general public but bearing strong potential in terms of development, research and also employment: as is the case with the EXTRAPLAC programme.

The UNAF group wants to highlight a few points, which drew their attention. First, the opinion recalls that the overseas spaces are essential for our country. The opinion thus very usefully highlights the duty of involving and integrating the Overseas Territories in the development of French marine policy. It is therefore necessary to organise a large debate in Parliament so all the parliamentarians are informed about this commitment.

The opinion of the ESEC from last July, *Which means and governance for sustainable management of the oceans?* was already the occasion to underline that France leads exemplary policies to preserve ecosystems and monitor resources in terms of fishing. It

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

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 not strictly speaking a family subject, its pursuit, its implementation, and its success bear potential in terms of employment, resources, preservation of spaces and biodiversity, as well as many essential areas for families and future generations.

The UNAF Group voted for this opinion.

UNSA Group

The UNSA learned with a lot of interest about the draft report and opinion dealing with *L'extension du plateau continental au-delà des 200 miles marins : un atout pour la France (the extension of the continental shelf beyond 200 nautical miles : an asset for France)*.

First of all, the UNSA wants to congratulate the Delegation for Overseas Territories of the ESEC for all the work done. The subject discussed is complex and a strong challenge 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 overseas bodies. It allows proposals to be made to the inconsistencies of the policies currently undertaken. It is true that the vision and responses given by the different governments regarding the marine strategy of France never were up to the existing potential. Likewise, it is unfortunate that the different Overseas Territories are so little associated with 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 placed a bit more on the necessary knowledge of the resources of the different continental shelves. This will have a huge impact on training 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 in the Overseas Territories.

According to the UNSA, the sectors linked to this exploitation need an innovative 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 territories concerned. They must not be to benefit multinational companies alone, whether foreigner or national, and, at the cost of these territories, their companies and their populations.

Besides, it considers that all regulatory texts regarding the Overseas Territories, not yet adopted and/or published (especially those linked to the LOOM) must be as soon as possible in order to allow the territories concerned 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 on European decisions. This is why it wants a great vigilance to be implemented: too often Overseas Territories are treated like those of continental Europe, which should not be the case.

The UNSA 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

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

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

Report

Introduction

Following the Truman Proclamation of 1945, the signatory States to the Geneva Convention of 1958 on the continental shelf, launched in the course of energy resources which were becoming rarer on the land territory, agree that the coastal State can exercise sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources as mineral resources and other non-living resources from the seabed and the subsoil, and also the living organisms belonging to sedentary species.

More ambitious than the previous convention of 1958, the United Nations Convention on the law of the Sea,⁶¹ adopted in 1982, as its introduction states, aimed to institute a global process aiming to deal with “all issues relating the law of the sea (...) conscious that the problems of ocean spaces are closely interrelated and need to be considered as a whole (...)”. To this end, the Convention wanted to establish “a legal order for the seas and oceans which will facilitate international communication, and will promote 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”. Regulation of marine areas and activities that are carried out there, 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 the 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 for all.

Article 76 of the United Nations Convention on the law of the Sea finalises the development, started in 1958, of the control by coastal States over the resources of the seabed and the subsoil beyond 12 nautical miles (M) in the territorial sea. The continental shelf henceforth extends up to 200 nautical miles from the basis lines from which is measured the breadth of the territorial sea, under the water column of the Exclusive Economical Zone (EEZ). For some coastal States, it can also extend beyond, under the high seas, as far as the outer edge of continental margin, if the latter extends beyond 200 nautical miles. It is this extension of the continental shelf beyond 200 nautical miles to the outer edge of continental margin that is the subject of this study. A treaty provision allows coastal States to file a submission to extend their continental shelf with the Commission on the Limits of the Continental Shelf (CLCS). After examination, it gives a recommendation. The coastal State alone sets the outer limits of its extended continental shelf on the basis of the latter. Then the limits set with the Area falling under the International Seabed Authority⁶² are final and have a binding nature.

61 The 1982 United Nations Convention on the Law of the Sea, which France ratified in 1996, is hereinafter referred to as UNCLOS.

62 The international Seabed Authority, hereinafter called ISA, is an organisation through which States organise and control activities conducted in the Area which is formed by the seabed and the subsoil beyond the limits of national jurisdiction.

Metropolitan 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 at around 2 million km². It adds to the 11 million km² 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 geomorphological and geophysical studies of the seabed off the metropolitan and overseas coasts. France had a period expiring in May 2009 to submit all its submissions for extension to the CLCS for examination. From 2002, France started to realise this ambition for economic development and the future well-being of the populations of the Overseas Territories by implementing a specific programme: the programme of reasoned extension of the continental shelf (EXTRAPLAC).

Ten years later, the Delegation for Overseas Territories of the economic, social and environmental Council (ESEC) 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 lies as much within the mission of this consultative assembly in charge of the preparation of opinions and studies as in the concerns of its Overseas Territories delegation considering the perspective of economic, social and environmental development of the Overseas Territories of the Republic – the source 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 submitted off the French coasts. The CLCS has already examines five of them and issued recommendations. It concerns those in relation to the Bay of Biscay on 24 March 2009, to Guyana and to New Caledonia on 2 September 2009 and to the West Indies and the Kerguelen Islands, on 19 April 2012. Three other applications are still pending or close to being examined in the Indian Ocean: Crozet Island, the Island of Reunion and Saint-Paul and Amsterdam Islands, as well as a fourth one in the Pacific ocean: Wallis And Futuna

France prepared other submissions that it has not filed yet, but which should be in 2013 and 2014 by submitting preliminary information relative to French Polynesia and Saint-Pierre and Miquelon. In 2009, there was no follow up given to the preliminary information filed for Clipperton Island and to the other files prepared for Mayotte and the Scattered Islands. A submission for Adélie Land was formally reserved.

This report has the ambition to highlight that the extension of the continental shelf is an element that can only act in favour the coastal State which conquered it with the recognition of the International Community of States. This contribution probably confirms the “maritimisation” approach illustrated by the Senate in a recent report.⁶³ The senators, for

63 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 the Armed Forces on behalf of the Working Group on maritimisation, N° 674, Senate, 17 July 2012.

whom "globalisation is a maritimisation"⁶⁴, believe "that the increasing economic, diplomatic, ecological importance of the marine spaces in the process of globalisation makes of the sea more than ever a political challenge thanks to which a State can spread and affirm its power on the international stage". They add that "a marine area (...), it is a chance, an opportunity, a strategic and political asset. Undoubtedly, however we must know the proportion of this territory we know well, an unquestioned legal delimitation, or even just a command? What percentage of this territory really is a strategic asset? Where precisely are the hydrocarbon and ore resources likely to be exploited in the next twenty years located?"⁶⁵ The report from the Delegation for Overseas Territories of the ESEC tends however to go farther by stating the advantage to the ultramarine authorities that 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 their populations. The report describes, in a first chapter, the international and national legal framework into which fits this conquest of sovereign rights over the natural resources of this area of seabed, draws up the list of the steps taken by France to assess its rights off the coasts of both Mainland France and the Overseas Territories and reports on the actions undertaken 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

👉 Affirming French jurisdiction over the continental shelf and its sovereign rights over its natural resources

This affirmation of rights enables precise and certain information to be provided and challenges to third parties to be made with regards to the limits of the sovereign rights of the Coastal State over the continental shelf and its rights of ownership over the resources of the seabed and its subsoil thus preventing the occurrence of incidents and disputes. Any extension of the continental shelf leads to a spreading of national jurisdiction and strengthening of the sovereignty of the coastal State in the area concerns and in the world. It allows the perimeter of the French State's jurisdiction to be secured at international level thanks to obtaining a recommendation from CLCS. This allows French presence to

64 *Ibid*, p. 14. For the Livre bleu, *Stratégie nationale pour la mer et les océans: "XXI^e century will be the one irreversible 'maritimisation' of the world. This development fits into the context of a globalised economy where maritime transport is the basis of international exchanges and where the rules are defined and applied at global level."*, 2009, p. 40.

65 *Ibid*, p. 10.

be underpinned. As a testimony of mastering the maritime areas, privileged support of all maritime power, this extension constitutes an instrument which cannot be dissociated⁶⁶.

👉 **Knowing and preserving the resources and the marine environment for sustainable development**

To manage, it is necessary to know. The issue of knowledge is the exercise of sovereignty over any marine space within the jurisdiction of the coastal State. The cartography of the seabed and the inventory of the resources, the ecosystem approach and evaluation of the impacts of the activities are the prerequisites for the sustainable management and exploitation of the extended continental shelf. The extension allows the coastal State to exercise police powers acknowledged by UNCLOS in order to ensure the fight against pollution⁶⁷, while respecting the necessities of economic 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 achieved thanks to the extension of the French jurisdiction beyond 200 marine miles.

👉 **Highlighting the continental shelf space and the resources it holds to benefit the overseas 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 recover its marine vocation⁶⁸, France's maritime policy challenge is to ensure the control of all marine spaces in order to exploit resources while respecting the marine ecosystem which is vital for mankind. Furthermore, *"the advantages for France are firstly for the overseas communities themselves: living, mineral and energy resources in these areas must first and foremost benefit the populations of the Overseas authorities and contribute to the economical and social development"*⁶⁹.

The extension of the continental shelf allows exclusive exercise by the coastal State of sovereign rights over the latter for 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 whose value cannot be realized in the short term as they are located at quite great depths little or not yet accessible with current technologies. They*

66 The 2008 white book about national defence had not adequately considered the Overseas Territories and the marine spaces as a strategic priority for our country. The Delegation for Overseas Territories notices that the 2013 white book, even if it recalls the necessity for our country to *"assess its sovereignty and protect its interests in the Overseas Territories"*, it does not provide any additional solutions necessary to a true presence of the State at sea, while there exists here a major geostrategic issue which the great powers have largely evaluated. Besides, the Delegation for Overseas Territories can only regret the total absence of anticipation regarding the means to implement in the framework of extending the continental shelf.

67 The overseas authorities must confront certain types of pollution, such as, for instance, that due to the use of chlordecone in the West Indies.

68 Livre bleu, Letter from the Prime Minister dated 7 December 2009.

69 Livre bleu, *Stratégie nationale pour la mer et les océans*, Prime Minister, December 2009, p. 49.

can be however over the medium or long term⁷⁰. It authorised the coastal State to provide legal certainty for the exploration and exploitation of natural mineral resources and other non living 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 that, these issues fundamentally refer us to the marine challenge of France, which consists in dealing with our own French paradox: occupying the second largest marine area in the world thanks to the Overseas Territories, yet not asserting ourselves as a true maritime 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 Economic, Social and Environmental Council in the debate on the conduct of maritime policy and the need for maritimisation our country.

The conquest of the continental shelf resources

This chapter will deal with the phase of conquest 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.

The International Legal Framework

Planet Earth has five oceans⁷¹ that cover 71% of its surface, which is 360 million km². These legally complex spaces are defined and governed by the law of the sea which notably deals with navigation, exploitation of resources and preservation of the marine environment.

The 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 20th century, notably within the scope of the 1958 Geneva conventions and the 1982 United Nations Convention on the Law of the Sea.

□ *The 1958 Geneva Convention on the Continental Shelf: the definition of resources*

Initiated in 1956, the first United Nation Conference on the law of the Sea ended in 1958 with four distinct international agreements dealing with the territorial sea and the adjacent zone, high seas, continental shelf and fishing activity and the preservation of the living

70 Statement by IFREMER in the journal Mines N° 148-2008, p. 11

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

resources of the sea⁷². The main concern at that time was to secure the fishing resources and the potential mineral resources of the seabed for national exploitation. The Convention on the continental shelf defines natural resources which fall under this area, but does not indicate its extent in a precise manner.

□ *The United Nations Convention on the Law of the Sea of 1982: the outer limits of the continental shelf*

The third Conference on the law of the sea is called by the UN⁷³ at the initiative of emerging countries. Indeed, these newly independent States contested the law of the sea that came from conventions adopted in 1958 and feared especially that they would not be able to benefit from resources (oil, Polymetallic nodules, and fishing resources) that technical progress, only available to industrialised countries, would allow to exploit⁷⁴.

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 characterised as the *“complete constitution for the oceans which stand the test of time”*⁷⁵. It establishes the system of different marine spaces based on international custom and the practice of States. It regulates activities while considering the demands of the economic development, the principle of freedom of navigation, the territorial submissions of the coastal States and protection of the environment. It assesses the control of the bordering States over marine area, which are evidence, for instance, of 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 examining extension submissions in order to provide recommendations regarding the claimed outer limits. This article also establishes the principles and regulations ruling the seabeds and oceans beyond the national limits, constituting the common heritage of mankind which is subject to the International Seabed Authority (ISA).

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

72 Convention on the Territorial Sea and the Contiguous Zone, Geneva, 29 April 1958, entered into force 10 September 1964, 516, of the United Nations Treaty Series (UNTS), 205; Convention on the High Seas, Geneva, 29 April 1958 entered into force 30 September 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 the Conservation of living resources of the high seas, Geneva, 29 April 1958, entered into force 20 March 1966, 599 UNTS 285.

73 The beginning of this new stage of codification is the resolution 2340 adopted by the general Assembly of United Nations, on 18 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.

74 Report N° 3994 made in the name of the foreign affairs commission about the draft law, adopted by the Senate, authorising accession to the protocol regarding the privileges and immunities of the international Seabed Authority by Mr. Jean Glavany, 22 November 22, 2011.

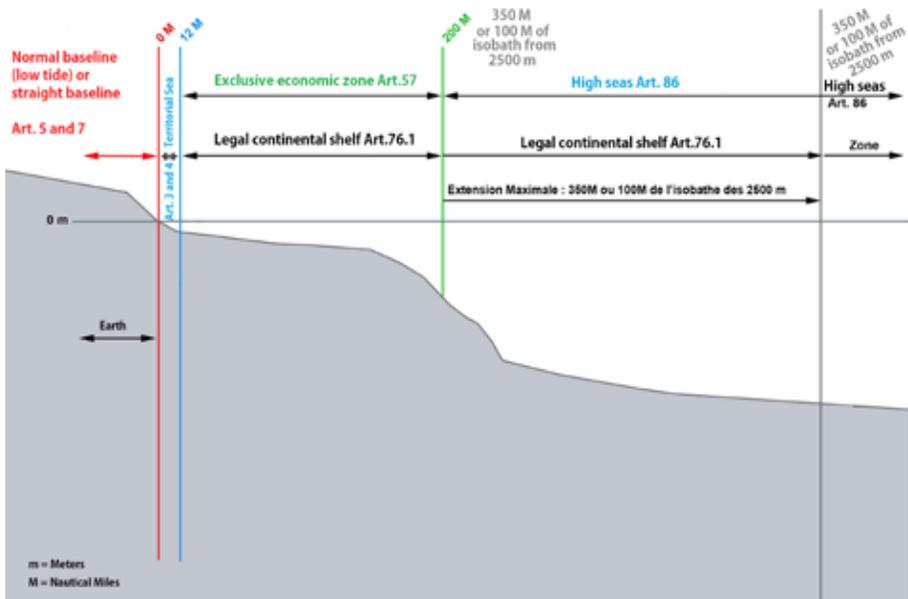
75 Comments by Mr. Tommy T. B. Koh, President of the Third United Nations Conference on the Law of the Sea, final session of the Conference in Montego Bay, 10 December 1982.

As a result of the creation of the CLCS in 1997 and the issuing of its rules of procedure and scientific and technical guidelines in 1999, the same became operational in 2000. Since this date, the coastal States party to the Convention have the possibility to extend their continental shelf beyond the 200 nautical miles limit when the outer edge of the continental margin expands beyond.

The place of the extended continental shelf in the main maritime spaces defined in the UNCLOS

The goal of the Convention is to contribute to promoting the maintenance of peace and international safety by replacing a variety of discordant demands from the coastal States by a universally accepted definition of the marine spaces⁷⁶. 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.

Diagram 1: The main maritime areas defined in UNCLOS



Source: Mr. Olivier Walter – DPO Architects.

The extended continental shelf is surrounded by various other marine spaces. From the coast, adjacent to the land territory, the sea territory, comprising the seabed and the waters superjacent, extends on a breadth of 12 nautical miles. Beyond, over a distance of 200 nautical miles, the legal continental shelf and the exclusive economical zone are superimposed on each other. Even beyond that, further out to sea, is the extended legal continental shelf upon which is superimposed the high seas. Finally, the seabed of the Area under the jurisdiction of ISA is also covered by the high seas.

⁷⁶ Comments by Mr. Tommy T. B. Koh, President of the Third United Nations Conference on the Law of the Sea, final session of the Conference in Montego Bay, 10 December 1982.

□ 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 seabed and subsoil"*. 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"*. 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 exclusive economic zone, 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 superjacent to the seabed 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 exclusive economic zone, 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 seabed and subsoil shall be exercised in accordance with Part VI [Continental shelf]."

Article 57 indicates that *"The exclusive economic zone 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 other States in the exclusive economic zone and notably specifies that they *"enjoy (...) the freedoms of navigation and over flight and of laying 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 latter is comprised of, firstly, 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 slope which is a zone of weak declivity between the beginning of the continental bank and the deep seabed.

Legal experts do not define the continental shelf in the same manner as the scientists. Indeed, legal bodies approach it as the whole scientific continental margin and believe it is not only limited to the scientific continental shelf. 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 article 76: *“1. The continental shelf of a coastal State comprises the seabed 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 paragraphs 4 to 6.*

The legal continental shelf has a minimum breadth of 200 nautical miles from the coasts. It is recalled that the extension of the shelf beyond 200 nautical miles up to the outer edge of the continental margin is the subject of the report.

□ *The High Seas*

Article 86 of the Convention states that the high seas are composed of *“all parts of the sea which are not included neither in the exclusive economical zone, the territorial sea or the internal water of a State, nor in the archipelagic waters of an archipelago State”.*

□ *The International Seabed Area (Area)*

The recognition of the great seabed as “common heritage of mankind” had been defended since the end of the 1960s by emerging countries and accepted since 1970 by Resolution 2749 (XXV) of the general Assembly of the UN (Declaration of the principle governing the seabed and the subsoil, beyond the limits of national jurisdiction). It should enable the potential benefits from potential wealth of the seabed to be shared equitably. 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, competing submissions⁷⁷.

First Article of the Convention means by *“Area’* the seabed and ocean floor and subsoil thereof 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 Seabed Authority. *“The Area and its resources are the common heritage of mankind”* (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 conducted are in the interest of the whole of mankind (article 140.1).

77 Glavany Jean, deputy, *Report N° 3994 report on behalf of the Committee on Foreign Affairs on the draft the bill passed by the Senate, authorizing accession to the Protocol on the Privileges and Immunities of the International Seabed Authority*, National Assembly XIIIthParliament, 22 November 2011.

The international authorities and the seabed

UNCLOS has given a central role to the Commission on the Limits of the Continental Shelf in order to control the extensions of States over the rights to the resources of the extended continental shelf. The same has also created the International Seabed Authority (ISA), which is an organisation by means of which the States Parties organise and control the activities performed in the Area. The same has finally established an International Tribunal for the Law of the Sea charged with hearing 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 on the Limits of the Continental Shelf, sole 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 States Parties to the Convention among their citizens given the necessity to ensure a fair geographic representation. They perform their functions individually. They are elected for a five years mandate and can be re-elected. The Commission is above all an assembly of experts appointed by the coastal States, remunerated and paid by the latter.

□ Functions of the CLCS

The functions of the Commission are:

- to examine the data and other information submitted by the coastal States in regard to 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 76 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 produce, at the request of the coastal State concerned, scientific and technical opinions in order to establish the data mentioned in the previous letter.

The Commission now works through four sub-commissions composed of seven members appointed in a fair way given the specific elements of each submission 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 submitted in writing to the coastal State which submitted the submission 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 the delimitation of boundaries between States with opposite or adjacent coasts. Paragraph 8 of article 76 specifies that the establishment of outer limits do not anticipate 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 submissions

are reviewed in compliance with annex I. The latter acknowledges that the competence regarding the questions related to the conflict which may arise from the setting of the outer limits of the continental shelf reverts to the States and that **in case of a marine or terrestrial conflict, the Commission does not examine the submission lodged by a State which is a party to this conflict and does not adopt a position regarding this submission.**

□ *The International Seabed Authority (ISA)*

The international Seabed Authority aims to manage the common heritage of mankind that is the international zone of the seabed beyond national jurisdictions. This entity organises and controls the activities conducted in the Area, especially for the purpose of the administration of its resources⁷⁸. The Authority is also in charge of promoting and encouraging scientific research in the Area and spreading the results.

□ *The International Tribunal for the Law of the Sea and the Chamber for Settling Disputes relative to the Sea-bed*⁷⁹

Part XV of the Convention defines a global system for the settling of disputes which might arise from its interpretation and application. This system requires the States Parties to settle their disputes with peaceful means, as the United Nations Charter states. The mechanism provides four means to choose from: The international Tribunal for the law of the sea (ITLOS) the status of which is established by annex VI of UNCLOS, the international Court of Justice, arbitration in accordance with the provision of annex VII of the Convention, or special arbitration in the framework of annex VIII of the Convention.

The international Court of the law of the sea, located in Hamburg, Germany, is composed of 21 independent members, appointed on geographic criteria among people having acknowledged skills in the field of the law of the sea. Its statute created a Chamber for the settling of disputes related to the seabed composed of 11 members. It is open to party States, to the Authority, to the Enterprise⁸⁰ and to legal or natural persons conducting authorised activities in the Area. It is competent to solve some categories of conflicts regarding activities conducted in the Area. “[it] has the exclusive task of interpreting part XI of the Convention and relevant annexes and regulations which constitute the legal basis of the organisation and the administration of the activities conducted in the Area⁸¹.”

The Chamber gives advisory opinions at the request of the Assembly or the Council of Authority. At the request of the latter, on 1st February 2011 it issued an advisory opinion on the *Responsibilities and duties of States which people and entities sponsor as part of activities conducted in the Area*. On this occasion, it determined, among other things, the meaning to give to the terms of activities of exploration and exploitation conducted in the Area, the content of the obligation for the States to adopt appropriate measures in the national

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

79 Website of The International Tribunal for the Law of the Sea (*International Tribunal for the Law of the Sea*, ITLOS): <http://www.itlos.org/index.php?id=2&L=1>.

80 “UNCLOS creates the Enterprise, an organ of the Authority, which can conduct activities of exploration and exploitation and activities of shipping, processing and trading of minerals extracted from the Area”

81 Advisory Opinion on the *Responsibilities and duties of States which people and entities sponsor as part of activities conducted in the Area*, ITLOS, N° 25, 1st February 2012, p. 15.

legal system in order that the activities be conducted in accordance with 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 conducted in the Area. It therefore indicates a certain number of legislative, regulatory and administrative measures, which might inspire any internal legislation applicable to the activities conducted on the extended continental shelf.

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

It is up to the coastal State to prove to 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 CLCS on 13 May 1999. *“They aim to specify the parameters and the level of detail of the admissible elements of scientific and technical proof that the Commission requires when it reviews submissions in order to make recommendations⁸².”*

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 7⁸³ by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent 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 breadth of the legal continental shelf: *“The fixed points comprising the line of the outer limits of the continental shelf on the seabed, 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 points at a depth of 2 500 metres.”*

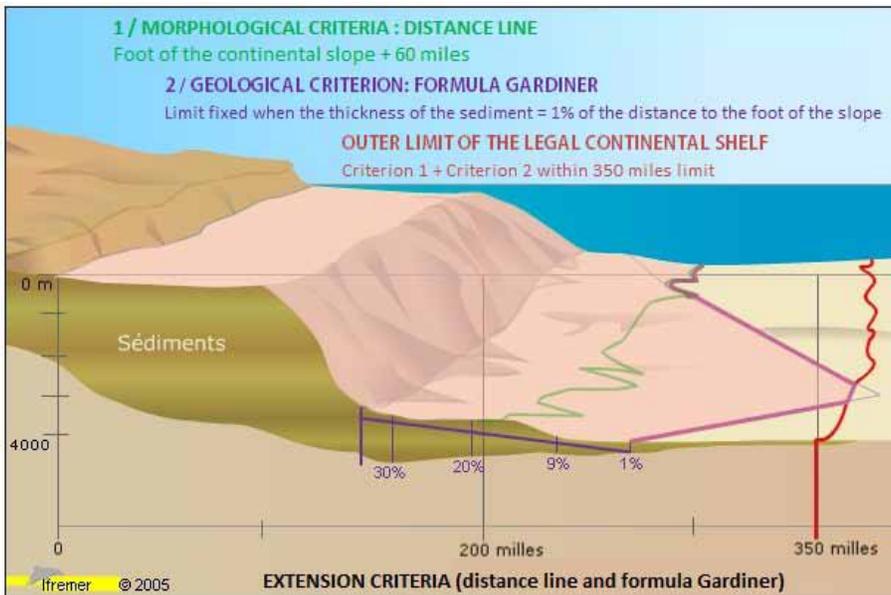
82 CLCS/11, CLCS/11/Corr. 1, CLCS/11/Add. 1. See also *Manuel de formation à l'établissement du tracé des limites extérieures du plateau continental au-delà des 200 mille marins et à la formulation des demandes adressées à la Commission des limites du plateau continental*, Division for Maritime Affairs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

83 Paragraph of the article 76 of UNCLOS: *“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.”*

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:

- the 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 (formula line);
- the second line, as per Gardner formula (1% of sediment thickness). It links outermost fixed points at each of which the thickness of the sedimentary rocks is at least 1% of the shortest distance from such point to the foot of the continental slope (formula line);
- the 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 from the 2,500 metres isobath (constraint line).

Diagram 2: The criteria for extending the Legal continental shelf



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

When the line of the 100 nautical miles isobath⁸⁴ is situated at a distance of more than 250 nautical miles from the baselines, in other words, beyond 350 nautical miles, and the line deduced from the formulae (60 nautical miles from the foot of the slope and 1% of the

84 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.

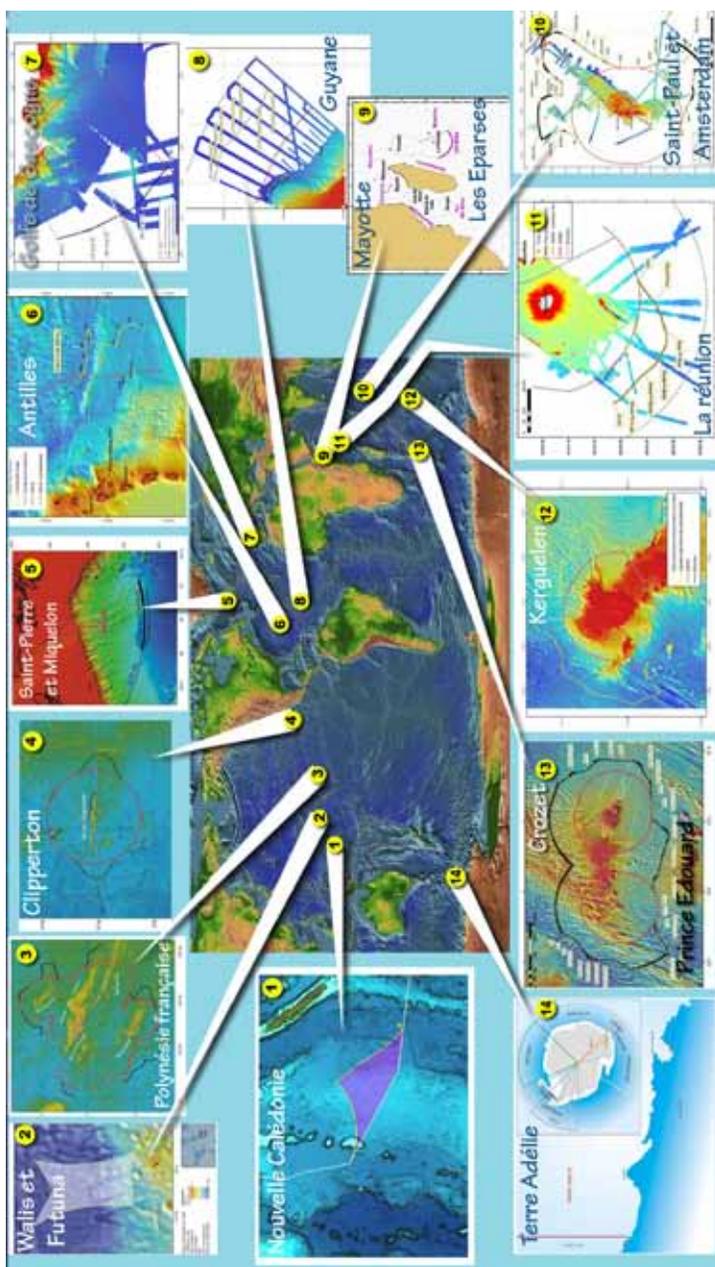
sediment thickness) also exceeds 350 nautical miles, the outer limit can be localized beyond 350 nautical miles on the line situated at 100 nautical miles from the 2,500 metre isobath⁸⁵.

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 recognition of a conquest of sovereign rights over natural resources located mainly off the coast of its Overseas Territories.

85 Submissions with recommendations: charts N° 1, 6, 7, 8 and 12; submissions pending, or awaiting review: maps N° 1, 2, 10, 11 et 13; reserved submissions: chart N° 14; preliminary information: charts N° 3, 4 and 5 and extension not considered: chart N° 9.

Chart 1: The extension of the French Continental shelf⁸⁶



Source: Mr. Olivier Walter – DPO Architectes.

86 Submissions with recommendations: charts N° 1, 6, 7, 8 and 12; submissions pending, or awaiting review: maps N° 1, 2, 10, 11 et 13; reserved submissions: chart N° 14; preliminary information: charts N° 3, 4 and 5 and extension not considered: chart N° 9.

The map obviously shows that French territories spread over the world can constitute an advantage for France to the extent that the potential of extended continental shelf that they create is claimed. France reserves its rights to later file a submission for extension of the continental shelf for Adélie Land recalling the principles and goals shared by the Antarctic Treaty and the UNCLOS.

The Legal Framework

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

The evolution of the national legal system of the continental shelf followed, with some hesitation, the evolution of international law.

France had a performance qualified as *“cautious towards the emergence of the concept of continental shelf to the extent this one will be the source of an extension of the rights of States bordering the high 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 field”*⁸⁷. The ratification of the 1958 Geneva Convention on the continental shelf of 1958 will only occur until 1965 so that exploitation and definition of the continental shelf not remain without a legal basis, and this again with reservations, one of them excluding crustaceans from sedentary resources.

Article 1 of the Law of 30 December 1968 on the exploitation of the continental shelf provides: *“The French Republic has, in accordance with the Geneva Convention on the continental shelf of 29 April 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 remained reserved on the criteria of depth and exploitability of the 1958 Convention, but the law of 1968 implicitly adopted them (article 1).

From 1971, within the seabed commission, France supported *“the extension to 200 miles of the zones reserved for the exploitation of the coastal State”* while reproaching the said concept of the economic zone *“for jeopardizing the liberty of fishing, and possibly the liberty of sailing”*⁸⁸.

France was listening to the submissions of the third world, while being aware of the interests presented by the Overseas Territories regarding the extension of its jurisdiction over marine spaces. As soon as the concept of economic zone was settled during the Third Conference on the law of the sea, France was one of the first countries to legislate on this subject on 16 July 1976⁸⁹. With this law voted six years before the signature of UNCLOS, *“The Republic exercises, in the economic zone spreading from the limit of territorial waters to 188*

87 Reynaud André, *Le plateau continental de la France*, Librairie générale de droit et de jurisprudence (LGDJ), 1984, pp. 24-25.

88 Reynaud André, *Le plateau continental de la France*, LGDJ, 1984, p. 31.

89 Law No. 76-655 of 16 July 1976 relative to the economic zone and the ecological protection zone off the coasts of the territory of the Republic. Decrees from the State Council create economic zones off the coast of different territories. There are published with the United Nations those of February 11, 1997: from the Belgium border to the Spanish border, of 3 February 1978: Adélie Land, the Scattered Islands, Clipperton and Reunion. Decree No. 2012-1148 of 12 October 2012 regarding the EEZ off the coast of the territory of the Republic in the Mediterranean.

nautical miles beyond this limit, sovereign rights regarding the exploration and exploitation of natural resources, living and non-living, of the seabed, the seafloor and the overhanging waters”.

The law of 11 May 1977 regarding the continental shelf planned to upgrade the law of 1968 to compliance with community law and adapt it to the provisions of the London convention of 1973 on 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 1958 convention whereas the law of 1976 on the economic zone adopts the distance criteria of 188 nautical miles beyond the 12 nautical miles of the territorial sea. Indeed, its article 2 which declares as applicable in the economic zone the 1968 law on the continental shelf expressly excludes article 1 of the latter which contains the reference to the Geneva Convention.

While leaving its legislation on the continental shelf⁹⁰ unchanged, during the Third United Nations Conference on the law of the sea, France will support the Irish theory about the extension of the continental shelf beyond 200 nautical miles *“which provides a geographic and geological justification to the extension of the continental shelf to the outer edge of the continental margin while introducing criteria intended to avoid a vague and excessive extension”*⁹¹ and the single negotiation text of 7 May 1975 which planned that the shelf would include *“the seabed and the subsoil of underwater zones (...) to the outer limit of the continental margin or at a distance of 200 miles (...) when the limit of the continental margin does not expand to this distance”*⁹².

The 1982 signature of UNCLOS allows France to claim a continental shelf spreading beyond 200 nautical mile to the outer limit of the continental margin, without changing its legislation.

□ *The application of community law to the extended continental shelf*

The European Union signed UNCLOS on 7 December 1984 with the deposit of a declaration and filed on 1 April 1998 a formal confirmation with a declaration. In its 1984 declaration, the EU indicates the matters governed by the Convention in respect of which competence was transferred to the organisation by its member States. *“The Community indicates that its member States transferred to it competence 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*

90 Following the statement of Mr. Claude Girault from DéGéOM on 27 November 2012, Mr. Vincent Bouvier, general representative to the Overseas Territories, specifies that the legal framework applicable to the mineral substances contained in the French seabed is mainly constituted by law N° 68-1181 of 30 December 1968 regarding the exploration of the continental shelf and the exploitation of its resources, and its implementing decree N° 71-360 of 6 May 1971 (amended respectively by law N° 77-485 of 11 May 1977 and its decree N° 85-1289 of 3 December 1985, with the decree N° 71-361 of 6 May 1971 - criminal provisions - and decree ° 71-362 of 6 May 1971, - authorisations for preliminary prospecting -), by decree N°2 006-798 of 6 July 2006 regarding prospecting, research and exploitation of mineral or fossil substances held in the public seabed and the metropolitan continental shelf (marine aggregates) and by the mining code. The application of these rules in the Overseas Territories depends on the legislative regime (identity or speciality) applicable in each overseas authority.

91 Reynaud André, *Le plateau continental de la France*, LGDJ, 1984, p. 31, footnote N° 87.

92 A/CONF. 62/WP. 8/Part. II, a t. 62.

expressed in the provisions adopted by the Community, and also as reflected by its participation in certain agreements". Finally, regarding the Area "the Community has competences in terms of commercial policy including the control of unfair economic practices". In its 1998 declaration, it is stipulated that in terms of the transfer of competences regarding the conservation and the administration of the marine fishing resources, "this competence applies to waters under national jurisdiction and on the high sea" and it adds that it "considers that the Convention does not acknowledge the right and the jurisdiction of the coastal State regarding the exploitation, conservation and administration of fishing resources other than sedentary species beyond its exclusive economical area". This declaration also contains as an annex a list of community acts 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 to which the Community is a contracting party. Therefore, the European rules regarding the conservation and administration of marine fishing resources on the high sea applies to the water column beyond the extended continental shelf on the one hand, and, on the other hand, the community acts regarding marine safety, prevention of pollution, protection and preservation of the marine environment, scientific research in the marine environment are applicable to the territories of the member States; but, this only to the extent that the Treaty establishing 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 EEC treaty to the continental shelf" of 18 September 1970, the European Community assessed that "the continental shelf is assimilable, as for the applicability of the treaty, to the territories of the signatory States over which they have sovereign rights" and that "the acts 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 to the extent that it directly concerns the practise of the economic activity covered by the Treaty" it applies "up to the territorial limits that the State imposes itself in a sovereign manner"⁹³. Thus, the activities conducted on the continental shelf come under the Treaty as does any other activity⁹⁴. As for the question of the fixing of the outer limits of the continental shelf, it depends on the exclusive competence of the member States.

93 Commission of the European Communities, *Memorandum concerning the applicability of the Treaty establishing the European Economic Community to the continental shelf*, SEC(70) 3095 final, Brussels, 18 September 1970.

94 See judgment of the Court of Justice of the European Communities (ECJ), Grand Chamber, 17 January 2012, Case C_347/10 *Salemik*: "As soon as the continental shelf adjacent to a member States is under its sovereignty, albeit functional and limited (...), work accomplished on fixed or floating installations located on the continental shelf, as part of the 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 said State...".

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)*

Placed under the Prime minister, the SG Mer was created by decree dated 22 November 1995. It sets the orientation of governmental action in all the fields of the marine activity. The coordination of the extension of the continental shelf was given to the SG Mer which assures its mission through a steering committee. The latter associates the ministries in charge of foreign affairs of the Overseas Territories, research, 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 submissions for 14 territories, 13 of which are Overseas Territories, was perceived very quickly upon the revelation of the budgets set by other States. Set at € 2.5 million per year, the Steering Committee had to add to this sum using its own resources, of nearly € 1 million per year, for the bodies⁹⁵ associated to the realisation of the programme. Even this extension has been insufficient to enable the complete and satisfactory preparation of several submissions in good time⁹⁶. This under estimation probably led to the non-realisation of the mission entrusted to SG Mer in 2003 to update the knowledge of the resources of the continental shelf and, at the same time, to lead the EXTRAPLAC programme⁹⁷.

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

The filed extension submission has to fulfil the requirements of article 76 of UNCLOS and the scientific and technical Directives which UNCLOS promulgated in 1999 for the establishment of the delimitation of the outer limits of the continental shelf beyond 200 nautical miles. The regime instituted for the delimitation of the outer limits combining legal and scientific concepts involves an interpretation that might be tricky for both the legal expert and the scientific expert. CLCS then clarified the meaning to be given to the terms of article 76, which had not been defined in 1982, and proposed to the coastal States, as far as possible, the following of a single practice as for the requirements of article 76 by proposing methodologies relative to geodesy, to the hydrography (determination of the 2 500 metres isobath), in geomorphology, in the determination of the base of the bank, in the oceanic

95 Notably this refers to SHOM, IFREMER, IPEV, IFPEN and other organisations of research under the administrative supervision of the ministry of Research.

96 Statement of Mr. Jean-Yves Perrot, before members of the Delegation for Overseas Territories, on 25 September 25 2012, he declared: *"The EXTRAPLAC programme is in the process of being achieved. 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.

97 Statement of Mr. Walter Roest before members of the Delegation to the Overseas Territories, on 26 June 2012.

and submarine ridges, in the sandbanks, in the geophysics (thickness of sediments), and in the outer limits.

The collection of data 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., teams) do not seem to have been able to be completely assured within the framework of the EXTRAPLAC programme and have thus prevented the establishment of a complete file prior to its filing. If the current difficulties cannot be established during this stage because of the lack of disclosure of information by the stakeholders, they can be revealed during the review of the submissions by the CLCS.

□ *French Ministry of Foreign Affairs (MAE)*

Within the Ministry of Foreign Affairs, legal and marine questions are handled in the legal department by the sub-department for the law of the sea, river law and the law of the poles. This sub-department has the particular role to watch over the respect for the law of the Sea such as it is established by the United Nations Convention on the Law of the Sea as well as by the case law of the International Court of Justice and the international Court for the law of the sea.

Subject to 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) as is specified by the circular of 30 May 1997 of the Prime Minister relative to the elaboration and to the conclusion of the international agreements and the Legislative Guide of 6 June 2005.

The realisation of the EXTRAPLAC programme required the recourse to the MAE and to its expertise regarding international relations. Jurisdiction for the issues relative to the disputes which may arise from fixing the outer limit of the continental shelf is the responsibility of the States. **States filing a submission 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 unresolved land or maritime conflicts.** They also have to provide CLCS the assurance that the submission will be handled without prejudice to issues relative to the fixing of the limits between States.

The preparation and the deposit of every French submission, - Except for the Islands of Saint-Paul and Amsterdam and Clipperton Island for which the French submissions demanding underwater territories were not astride those of another State - entailed the MAE having to respect of these two requirements.

To ensure the satisfaction of the submission for an extended continental shelf, that is to say the prevention of any refusal to examine the submission 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 add to existing ones, in order to cover all of the continental shelf and its extension.

If not, France could either submit joint or individual submissions by asking recommendations to be drafted either by not taking account of the existing limits between those States or by specifying to what extent the submission is presented without prejudice to issues about fixing the limits with another State or agreeing interim agreements for filing of the submission without prejudice questions relative to fixing the limits with another State,

or lastly, in the presence of a land based or marine dispute, to ask for the submission to be examined by presenting the preliminary agreement of all the States involved in this dispute.

The lodging of the submission tends to preserve the rights of the territory concerned while the diplomatic climate gets suitable to solve the conflict. It finally allows the submission in question and the one of the foreign State to be examined without the submitting State losing its rank in the order of examination of the submissions which are reviewed in the order in which they were filed and as soon as the disputes which prevent examination shall have been resolved. The non-filing of a submission during a dispute is not envisaged by the Procedural Rules of the CLCS since every coastal State must file its submission as soon as possible to let the third parties know the outer limits of its submission, including the ISA.

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

The Joint Ministerial Committee of the sea (CIMER), of 1st April 1998 shows the importance that France gives to the sea and the challenge of a marine policy which constitutes France's position in the Overseas Territories the resources of which need to be protected. It considers the development of a programme of exploration and oceanographic research in the Overseas Territories in terms of delimitation of the continental shelf. Without naming it, this CIMER announced what would become the EXTRAPLAC programme.

It is the CIMER of 29 April 2003 which manifest the government's intention to implement the provisions of UNCLOS in its domestic law and equip itself with adapted its guaranteeing 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 submission the extension of its continental shelf beyond 200 nautical miles. This submission must be based on a technical file and be formulated before 13 May 2009, the deadline set by the United Nations. France, which can, at this time, expect extensions equal to 700 000 km², notably in respect of the Overseas Territories, implemented the EXTRAPLAC programme to gather data related to the potential zones of extension. Reaffirming the importance of this programme, CIMER endowed it with annual financing of € 2.5 million up until 2009. It indicates the necessity to re-evaluate the knowledge of these resources and to update the inventory of the resources of the seafloor and sub-seafloor of the national continental shelf.⁹⁸

In 2003 SHOM gave EXTRAPLAC a theoretical study dealing with the possibilities of extending the French legal continental shelf beyond 200 M from the point of view of article 76 of UNCLOS. This study aimed to apply the general publicly available hydrographical and geological data 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 defining the complimentary measures to be realised as part of EXTRPLAC and the priorities. It

98 See the article by Mr. 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 Mr. Hubert Levet, « La France délaisse son 'or bleu' », *Le Figaro* of 5 April 2002. This reflects Élie Jarmache's thoughts, who at the time was responsible for international relations at 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".

then quantified the extended continental shelf at more than 1.1 million km². This assessment excludes certain territories considered as not possessing an extended continental shelf 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 with 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 UNCLOS”*⁹⁹. One can read that the *“Budget [is] €16M (2003-2009) compared with that of Canada (€40M) and Denmark (€18M)”*.

As the EXTRAPLAC programme mainly aims to prepare the files for all the potential extension zones, it could not draw up an inventory, for lack of time and money, of the natural resources present in the zones which are little known, far away from coasts and in general very deep¹⁰⁰. It worked in order to submit simple and partial submissions and joint submissions with other coastal States sharing the same continental shelf and prepared according to the methodology specified by article 76 of the Convention. The Steering Committee meets twice a year to define its objectives and priorities, approve programmes and budgets, and validate strategic options.

Under the authority of the Steering Committee, a project group assures the project management of the programme with the definition and the conduct of the studies and necessary operations for the establishment of submission files. For its part, the MAE is in charge of taking all of the diplomatic initiatives that can permit the filing of the submission while making sure that the neighbouring states do not oppose it, in which case the latter would not be examined by the CLCS. The project group is composed of IFREMER which leads it, the Ministry for 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 Ministry for Industry.

Because of the shortfall in the programmed budget, the participation of other State organizations has permitted the initial endowment to be increased. 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.)¹⁰¹, the consolidated annual budget would instead be in the range of 3.5 million Euros and the total programme budget in the range of twenty million Euros for the 2003-2009 period. The Delegation for Overseas Territories notes that, in comparison, Canada would have dedicated 100 million Euros overall to its programme for the Extension of the Continental Shelf. Denmark would have spent 40 million Euros.

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 filing of

99 Presentation by Mr. Walter Roest, Benoît Louvrieu, from IFREMER, Sami Youssef, from SHOM, Roland Vially, from IFP Énergies nouvelles and the EXTRAPLAC working group, 22 October 2004.

100 Statement of Mr. Walter Roest, “Geosciences and deep ecosystems” sector manager and head of EXTRAPLAC programme at IFREMER, before members of the Delegation for Overseas Territories, on 26 June 2012. In July 2012, Mr. Roest became commissioner to the CLCS.

101 Statement of Mr. Élie Jarmache, legal officer in charge of the “Law of the Sea” mission with the General Secretariat of the Sea, before members of the Delegation for Overseas Territories, on 26 June 2012.

French submissions was on 13 May 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 pressing"* IFREMER reminds in August 2008¹⁰². Indeed, it seemed that time did not allow for the EXTRAPLAC programme to be completed before the deadline of May 2009. Five years to make campaigns in the 14 geographic zones dispersed over all the oceans was a nearly impossible challenge to stand up to¹⁰³.

By the deadline of 13 May 2009, only 5 submissions will have been filed instead of the 9 expected. This is perfectly illustrated by the Secretary General of the Sea's declaration on 19 October 2011: *"At the beginning of 2009, first the bitter acknowledgement of 5 years without the Joint Ministerial Committee of the Sea, a symbolic acknowledgement of our country's disinterest in its naval destiny (...)."*¹⁰⁴

The programme had to be followed as it was not ended. Examination of eight submissions remained in progress by the CLCS since only one recommendation had been issued in May 2009, meetings in New York with the CLCS had yet to take place, the responses prepared to the questions posed and three sets of preliminary information had yet to be transformed into claims again before mid- 2013, with sea campaigns that their preparation entailed. Mr. Élie Jarmache points out that the prolongation of the budget had been granted by Matignon at the end of 2009/2010¹⁰⁵. 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 Euros¹⁰⁶. Concerning the preliminary information, 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 Marquesas Islands. A campaign of three days is foreseen for St. Paul and Amsterdam¹⁰⁷. In his speech at Havre, on 16 July 2009, the President of France declares: *"I came to Havre today to rectify a historical omission. 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 overseas maritime areas? How can we neglect any longer our strategic presence on three of the planet's oceans, in both 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 of the continental shelf without naming it, 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*

102 Davesne Solène, « Domaine maritime. Bataille diplomatique en eaux profondes », *L'Usine nouvelle*, 17 July - 27 August 2008.

103 Mr. Roest's response to the reporter's questions, 3 December 2012.

104 *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.

105 Statement of Mr. Élie Jarmache before members of the Delegation for Overseas Territories, 26 June 2012.

106 Elements of information provided by Mr. Élie Jarmache on 18 January 2013, in response to written questions of the rapporteur.

107 Statement of Mr. Walter Roest before the members of the Delegation for Overseas Territories, on 26 June 2012.

of marine resources, including raw mineral material. The sea can conceal considerable deposits of raw materials 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 sustainable development, or it never will be done”.

It will be necessary to await the CIMER on 8 December 2009 for the government adopts the Livre Bleu (Blue Book) that determines the national strategic guidance for the sea and coastline. It reaffirms at international level the place of France present on all the oceans. *“With this Livre Bleu (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 knowledge of 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. An inventory study of the endangered areas of the continental shelf will be carried out at the latest at the end of 2010 to arrive at a collection programme proposition for 2011-2015”.*

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

The Livre Bleu (Blue Book), while striking that *“The credibility of French maritime policy is based above all on the ability of the French state to exercise its responsibilities at sea”*¹⁰⁸, also gives a new momentum to *“the action of the state at sea”*. This concept covers the public interest missions that the state carries out at sea, with the exclusion of defence mission, specifically [resulting in] 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”¹⁰⁹. The Livre bleu (Blue Book) considers that the protection of national interest causes *“The navy [to assure] the security of French areas while carrying out general surveillance 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 its 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”*¹¹⁰.

The action of the state at sea devised in 1978 developed timidly in comparison to the 2002-2009 EXTRAPLAC programme, then was reinvigorated in 2009, in its pursuit. If it has not accompanied the period of conquest of the extension by authorizing the collection of data and information necessary for the establishment of the submission to CLCS, notably in the areas of overlapping submissions, such as St. Pierre and Miquelon and Clipperton, since 2010 it is no longer unfamiliar to the EXTRAPLAC programme insofar as it has invested,

108 Livre bleu, Stratégie nationale pour la mer et les océans, 8 December 2009, p. 73.

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

110 Adam Patricia and Vitel Philippe, deputies, information report N° 4327 L'action de l'État en mer, 7 February 2012, Assemblée nationale, pp. 8 and 9.

among other objectives, to preserve the security of maritime areas. The Livre Bleu (Blue Book) notes: *“France has thus created areas around its territories where its jurisdiction applies; however, their delimitation is not complete. On the other hand, the sovereignty and jurisdiction of France over its maritime areas is not always assured: in the case of certain areas it is even contested by third-party states. This situation limits the possibilities for effectively protecting these areas and also for developing their resources. It is not satisfactory that in so far as the responsible state is not clearly defined, the areas without boundaries constitute potential ‘lawless’ areas”*¹¹¹. Even 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 is generated by the maritime areas around Clipperton, Matthew and Hunter, and others, *“military presence is vital to exercising sovereignty”* recall the deputies Adam and Vitel¹¹².

It will be the CIMER of 2011 which 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 national jurisdiction and in the Area is currently limited to only 200 nautical miles of 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 remains 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 lack of political impetus 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 February 2002 report of the National Assembly on the action of the state at sea 2012 considers that the affirmation of the place of France in the international context entails *“for it the responsibilities that it must take on, which supposes notably a more precise delimitation of areas placed under its jurisdiction and to make available in these zones the legal and technical means that permits it provide police missions”*¹¹³. Finally, during its last communication related to maritime policy, the government recalled that France has a major card to play in this domain. But this communication does not deal with the conditions for the completion of the EXTRAPLAC programme and the follow up to be given to it¹¹⁴.

Publication of the outer limits of the extended continental shelf

Article 76, Paragraph 8, of UNCLOS entrusts the fixing of the outer limit of the continental shelf to the coastal state alone. It establishes that: *“The limits established by a*

111 Livre bleu, Stratégie nationale pour la mer et les océans, 8 December 2009, p. 58.

112 Adam Patricia and Vitel Philippe, deputies, information report N° 4327 L'action de l'État en mer, 7 February 2012, Assemblée nationale, p. 5. Statement of Mr. Cyrille Poirier-Coutansais before members of the Delegation for Overseas Territories, 23 October 23 2012.

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

114 Communication of the Council of Ministers of 21 November 21 2012.

coastal State on the basis of recommendations [by CLCS] shall be final and binding". This implies that the enforceability of the outer limits of the extended continental shelf is covered only by the coastal State, which in order to do this must, give the required publicity to the charts or lists of geographic coordinates and file a copy with the General Secretary of the United Nations and the General Secretary of ISA in accordance with Article 84 of the Convention. This latitude authorises the coastal state to file a revised submission insofar as it would consider that it is not satisfied by the recommendation of the CLCS. France could thus, to the extent it considers necessary, file a revised submission in an attempt to extend the outer limits upheld by the CLCS. It must justify this by the production of newly obtained data, for example following a new oceanographic campaign.

The 2003-2009 EXTRAPLAC programme, it seems, did not envisage the issue of the publication of the outer limits of the continental shelf extension. It will only be much later, during the CIMER of 2011, that France will begin to concern itself with the task of envisaging the establishment of a national programme for maritime delimitation and promulgation of outer limits of its state-controlled competencies, France is guilty of an enormous delay in terms of the filing of decrees for the delimitation of maritime zones¹¹⁵. The decision would not yet have been taken by the minister in charge of keeping the publications of maritime limit decrees¹¹⁶.

Likewise, following the CIMER of 2003 that had decided to transpose the UNCLOS arrangements into domestic law, the CIMER of June 2011, in relation with the EXTRAPLAC programme and in the domain of the application of the United Nations Convention on the Law of the Sea, declares *"without established boundaries, our maritime domain under national jurisdiction is not enforceable against 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 with regards to maritime areas and natural resources of (...) their seabed and subsoil"* to launch and entrust SHOM with a national programme to *"delimit maritime areas"* which gives the *"responsibility (...) of attending to collecting, updating, and making available of all the maritime boundaries of areas under French jurisdiction"*.

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

"2. The delimitation of the maritime areas

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

- To achieve as soon as possible, the determination of baselines for all overseas departments and communities;*
- To prepare a bill relative to all the maritime areas;*

115 Statement of Mr. Élie Jarmache before members of the Delegation for Overseas Territories, 26 June 2012.

116 Statement of Mr. Ségura before members of the Delegation for Overseas Territories, 11 July 2012.

- 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 this decree to the Secretary of the United Nations and to the International Seabed Agency upon its publication;
- and to launch the definition of a national 'Maritime area delimitation' programme".

The General Secretary of the Sea has explained 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 in exploitable. Why would they be disputed, and why are disputed in so many places in reality? Because if the limits of territorial water and the EEZ limits are outlined on our charts, the precise delimitation of baselines and these other two limits has often not been carried out. Even worse, the orders and decrees officialising these limits in domestic law have not been adopted or have been established on obsolete grounds, which mean that they predate Montego Bay. Even worse still, the notification before the United Nations is often incomplete and therefore unenforceable.*

And so, our Joint Ministerial Committee of the Sea has decided to restore 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 website so that our economic players have this information easily at their disposal.¹¹⁷"

During his statement, Mr. Frachon recalled that SHOM guarantees national expertise in terms of maritime delimitations complying with international law¹¹⁸. He then carried out the official publication of sea charts, documents enforceable against third-party states in the matter of maritime delimitations. He also supplied technical support to the Ministry of Foreign Affairs for negotiations with the 32 countries that share an oceanic border with France.

No publication has occurred regarding the fixing 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 ISA¹¹⁹. 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 publication¹²⁰.

It will then be up to SHOM, MAE, and the Ministry for the Overseas Territories, to set all exterior limits of the continental shelf on the basis of CLCS's recommendations in accordance with Paragraph 9 of Article 76 of the United Nations Convention on the Law of the Sea according to which, after the coastal state has set the exterior limit based on the recommendation, it *"shall deposit with the Secretary-General of the United Nations charts*

117 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

118 Statement of Mr. Bersani in private interview with Mr. Grignon, CEO of SHOM, on Monday 12 November 2012. Mr. Frachon was accompanied by Mrs. Dominique Carval and Mrs. Catherine Leidinger.

119 Statement of Mr. Ségura before members of the Delegation for Overseas Territories, on 11 July 2012.

120 Statement of Mr. Ségura before members of the Delegation for Overseas Territories, on 11 July 2012.

and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto". To date, three states have assured this publicity: Ireland, Mexico, and the Philippines. France has not yet fulfilled this obligation, because it has not yet set exterior limits on its borders, which for some of them, date back to 2009.

The results of the EXTRAPLAC action at the beginning of 2013

Ten years after launching of the EXTRAPLAC programme, results can be summarised as follows: five submissions were filed and were the subject of CLCS recommendations. Four submissions were awaiting examination before CLCS, one of which had just been submitted in December 2012 and two submissions of submissions were announced for 2013 following preliminary information lodged in May 2009, one set of preliminary information had been filed then withdrawn, one file was subject to requests for reserved rights in the future, six files had not been lodged. France has not even established a single 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 submissions and sets of preliminary information submitted by France to the CLCS have been submitted in accordance to Article 76, Paragraph 8 of UNCLOS. None have been filed on the basis of Annex II of the final Act of the Convention establishing "*Declaration of interpretation concerning a determined method of application to set the outer edges of the continental margin*" known as the "*Bengal Clause*" which any 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 miles from the coast or at 100 nautical miles from the 2,500 metre isobath. All of the French submissions remained within the limit of 350 nautical miles from the coasts, except those of the Kerguelen Islands and Amsterdam Island which combined both limits.

The filed submissions which have been the object of recommendations of the CLCS

The submissions for extension relative to the Bay of Biscay, French Guiana, New Caledonia, the West Indies, and Kerguelen Islands were submitted to CLCS and the recommendations were issued by CLCS. France has not yet set the outer limits of the expanded continental shelf on the basis of the recommendations.

□ *The joint submission relating to the Bay of Biscay and the Celtic Sea*

The joint submission of France, Ireland, Spain, and United Kingdom was submitted on 19 May 2006 to the CLCS with the aim of determining, by these four coastal states, the outer limit of their continental shelf in the Bay of Biscay and the Celtic Sea¹²¹. After an investigation of 34 months, the recommendations were issued on 24 March 2009 after the occurrence of

121 Summary of the joint submission to the Commission on the Limits of the Continental Shelf concerning the areas of the Celtic Sea and the Bay of Biscay – CLCS Website.

a problem that the CLCS had overcome by recalling 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 submission. The recommended outer limit grants a slightly smaller surface area than that envisaged by France. Four years after the recommendation, the publication of the outer limits of the continental shelf extension of metropolitan France had still not been carried out due to the failure to conclude a boundary agreement with Spain.

Data Collection: the BREGHAM Campaign

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

The BREGHAM 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 submission. 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 submissions on the extension of the continental shelf thus concerned the same maritime region. These four European countries decided to do the BREGHAM 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 Finistère). The principal 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 submission with CLCS

The joint submission was filed on 19 May 2006. The submission covers an area of about 80,000 km² of extended continental shelf. It clarifies that Mr. Peter F. Croker, member of the CLCS helped the four coastal states with the preparation of this submission. It also informs the Commission that the claimed area of the continental shelf was subject to no dispute between the requesting states and any other States. Finally, it indicates that in order to set the outer limit of the continental shelf, the lines deduced from two formulae (those of Hedberg in relation to the base of the slope and Gardiner in relation to the sediment thickness) were been used, and were inside the limit of 350 nautical miles.

The examination of the submission and the recommendations of CLCS

The first examination of the submission took place during the eighteenth session of the CLCS, on 22 August 2006, and concluded by the creation of a sub-commission in charge of examining and submitting its conclusions in a later session¹²². In the course of its proceedings, the sub-commission proposed that the requesting states revise the outer limit of the continental shelf that they had envisaged while taking account of the observations that it had prepared. The requesting states accepted this proposition *"without prejudice neither to the current submission nor to any other submission that might be filed in the future"*.

122 Minutes of the eighteenth session of the CLCS, CLCS/52 point 8, page 6 - Website of the CLCS.

During the twenty-third session of the CLCS, from 2 March to 9 April 2009, the sub-commission submitted its recommendations to the commission, and met with delegations from the four coastal States¹²³. Over the course of this meeting, Mr. Wilson, the consultant of these states, recalled *“that the four coastal states would have been able to separately submit the submissions that would have risked overlapping one another. They had judged it preferable to submit a joint request given that once the commission’s recommendations were given, they would be in a position to establish the outer limit of their continental shelf in the region before delimiting the part falling to each of them”*. The consultant returned to the issue of the difficulty encountered (combined use at 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 examination of the joint submission, the four states (...) have proposed a revised exterior limit, which [the sub-commission] has accepted”*.

For Mr. Walter Roest, the question was that of knowing whether the four countries would share the same continental margin. The commission was of the opinion that Spain would not share it with 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 submission that had lasted three years by accepting the Commission’s position with some reservations.

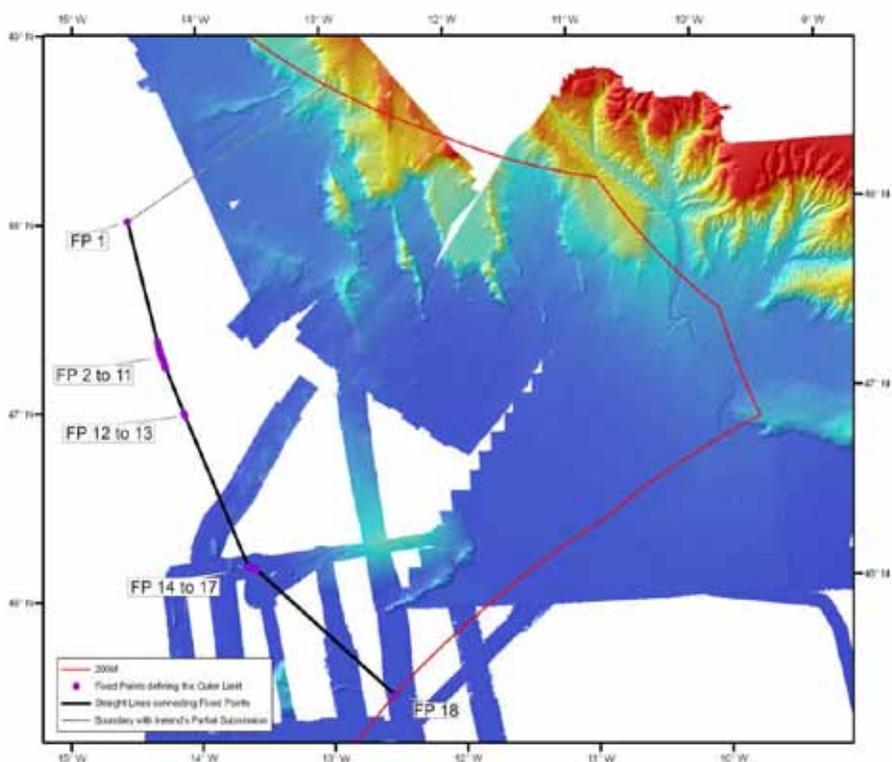
The difficulty had been stated by the CLCS as follows: *“28. (...) [T]he total surface area of the continental shelf calculated according to the outer limits proposed in one joint communication could not be greater than the sum of the surface areas of the continental shelf delimited by the external continental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

The commission then postponed the joint submission in the spirit of its creation which was to permit the examination of the submission 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 24 March 2009, the CLCS adopted by consensus the recommendations proposed by the sub-commission.

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

123 Minutes of the twenty-third session of the CLCS, CLCS/642 point 4, page 3 - Website of the CLCS.

Diagram 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 submission 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 submission was able to cover up the diplomatic difficulties encountered today to reach an agreement on the extended continental shelf between France and Spain¹²⁴.

It is now advisable to conclude the boundary agreements with the neighbouring states. But the application of equidistance is unfavourable to France and in contrast favours Spain and Ireland. If France wishes to gain more than a small triangle on this side of the outer limit, it must negotiate¹²⁵. In the west, there is still the matter of France reaching an agreement

124 Statement of Mr. Élie Jarmache before members of the Delegation for Overseas Territories, 26 June 2012.

125 Statement of Mr. Serge Ségura before the members of the Delegation for Overseas Territories, on 11 July 2012.

with the United Kingdom to join the boundary line of the Franco-British sentence of 1977, with the possibility of setting a tripoint with Ireland.

The joint submission in the Bay of Biscay shows the limits of exercise attempted by France. The recommendations were issued on 24 March 2009, nearly four years had passed and the publication of the outer limit with the United Nations and ISA had still not taken place¹²⁶. The difficulty seems to lie in the issue of delimiting the extended continental shelf falling to France and Spain. One could ask oneself why it was necessary to wait for the recommendations to be issued before initiating discussions about pursuing the line of the agreement of 29 January 1974 up to the outer limit of the respective extended continental shelves. *The negotiations risked taking several years before arriving at an agreement with Spain and consequently before assuring the publication of the outer limits*¹²⁷.

□ *The submission relating to Guyana*

France's submission was filed on 22 May 2007 with CLCS in the aim of determining the outer limits of the continental shelves in the region of the Demerara plateau. After an investigation of 28 months, the recommendations were issued on September 2, 2009 after the emergence of a problem with the localisation of the foot of a slope that the CLCS overcame by setting a location that was different than that envisaged. The recommended outer limit grants a slightly smaller surface area than that envisaged by France. Nearly four years after the recommendation, the publications of the outer limits of the extended continental shelf of Guyana have not been made because of the failure to conclude maritime boundary agreements 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 miles, but does not reach the line of 350 nautical miles. 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, still in progress and to the east by the border with Brazil.

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

□ The filing of the submission with CLCS¹²⁸

The submission 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 neighbours that of Suriname to the west and Brazil to the southeast. France informs the Commission that the continental shelf is not subject to dispute between our country and any other state (Suriname and Brazil) and that it uses the

126 Statement of Mr. Serge Ségura before the members of the Delegation for Overseas Territories, on 11 July 2012.

127 Statement of Mr. Serge Ségura before the members of the Delegation for Overseas Territories, on 11 July 2012.

128 Summary of the partial submission to the Commission on the Limits of the Continental Shelf concerning the areas of French Guyana and New Caledonia - CLCS Website.

lines deduced from the formula of 1% of sedimentary thickness (Gardiner formula) to set the outer limit of the continental shelf within the limit of 350 nautical miles.

📄 The examination of the submission and the recommendations of CLCS

The first examination of the submission took place during the eighteenth session of the CLCS, from 22 August 2007 to 14 September 2007, and concluded by the creation of a sub-commission in charge of examining and submitting its conclusions in a later session¹²⁹.

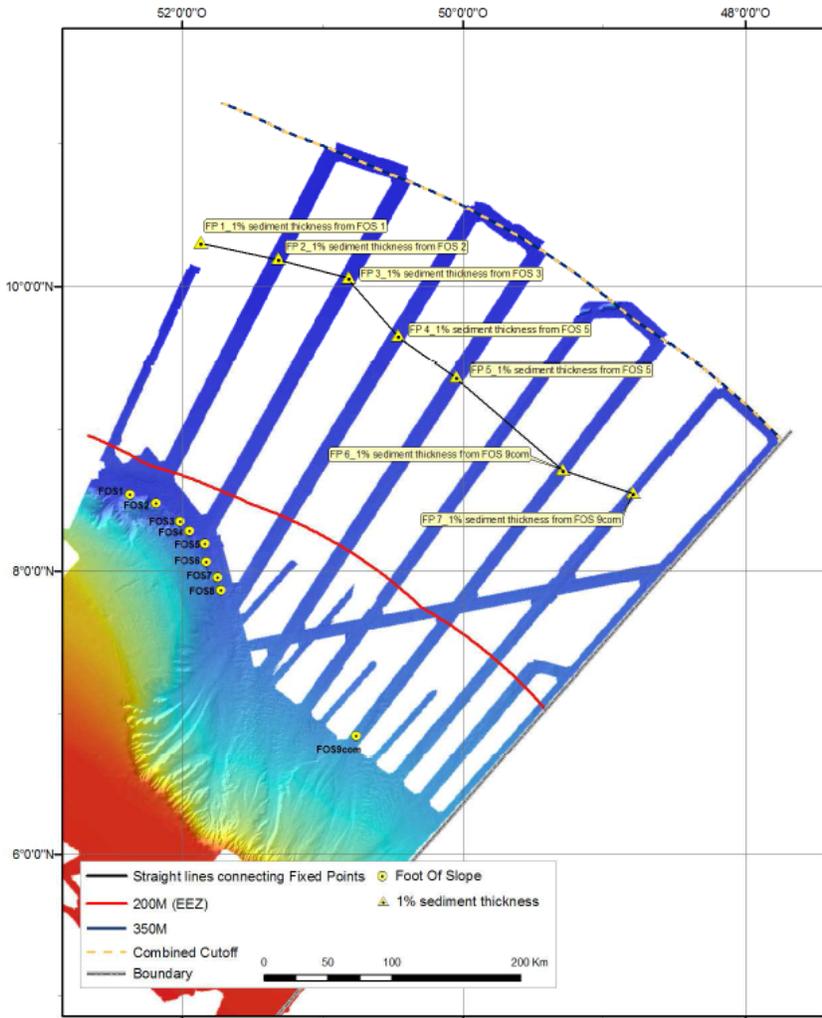
The Commission was in disagreement with the determination by France on the location of the foot of slope N°9 and demanded clarifications. The French delegation in turn requested additional information. Following numerous discussions and the provision of additional data, the sub-commission and the delegation got down to the task of finding an agreement on the approach adopted in order 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 10 August and 11 September 2009, the sub-commission presented its recommendations to the commission, and the CLCS adopted them by consensus.

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

129 Minutes of the eighteenth session of the CLCS, CLCS/52 point 8, page 6 - Website of the CLCS.

Diagram 4: The outer limits of the extended continental shelf recommended for the region French Guyana



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

Following up on the recommendations of the CLCS

The submission relating to French Guyana should not, according to the Quai d'Orsay, encounter any particular diplomatic difficulties. An agreement appeared feasible with Suriname as far as it was willing to settle it¹³⁰, which obtained its recommendation from the

130 Statement of Mr. Serge Ségura before the members of the Delegation for Overseas Territories, on 11 July 2012.

CLCS on 30 March 2011 regarding its submission dated 5 December 2008. Time is pressing as this made nearly four years that France received its recommendations (2 September 2009) and two years since Suriname received its own.

As for the delimitation with Brazil, in its submission, 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 miles of length up to the extension of the border line that will be agreed upon between France and Brazil¹³¹, until it meets with the fixed point OL 1 claimed by Brazil in the additional clause to its submission dated 17 May 2004 that was subject to a recommendation by the CLCS on 27 March 2007 which has not yet been published and formed the subject of a revised submission in 2013¹³². France readied itself to conclude the delimitation agreement with Suriname and a supplement to the delimitation agreement of 30 January 2001 with Brazil. After this new step, the two parties would be able to delimit the entirety of their respective continental shelves.

The submission relating to New Caledonia

France's submission was filed on 22 May 2007, in collaboration with the territorial authority, with the CLCS in the aim of determining the outer 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 submission to the southeast. After an investigation of 28 months, the recommendations were issued on 2 September 2009 concerning the south-western shelf, without particular problems having to be overcome. The recommended outer limit grants a slightly smaller surface area than that envisaged by France. Nearly four years after the recommendation, the publication of the outer limits of the extended continental shelf to the southwest of New Caledonia had not yet been carried out due to the failure to conclude an addendum to the maritime delimitation agreement with Australia.

Data Collection: NOUCAPLAC1 Campaigns 1 and 2

SHOM's 2003 theoretical study considered that the configurations of the maritime delimitations permitted the 2 extension zones to be envisaged, 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 was not anticipated in the negotiations between France and Australia. In case these overlaps were to be confirmed¹³³, it would require yet another negotiation between the two countries on the delimitation of this area.

131 Statement of Mr. Serge Ségura before the members of the Delegation for Overseas Territories, on 11 July 2012.

132 Statement of Mr. Walter Roest before the members of the Delegation for Overseas Territories, on 26 June 2012.

133 After the examination by CLCS of the French submission concerning the southeast zone of New Caledonia.

The NOUCAPLAC (in August 2004) and NOUCAPLAC2 (August and September 2004) campaigns took place on the ship "Atlante" in order to provide data and interpretations necessary to the extension submissions. These NOUCAPLAC1 campaign researches were relative to the nature and continuity of deep structures as well as the determination of the foot of the slope in the south-eastern area of New Caledonia. Seismic and bathymetric data from the NOUCAPLAC2 campaign were intended to confirm the continuity of the structures, in Lord Howe Rise above others, the nature and sedimentary thicknesses found as well as to clarify 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 was informed of the EXTRAPLAC file's progress.

 The filing of the submission with CLCS¹³⁴

The submission clarifies that this extension is divided into two sectors: one in the southwest and the other in the southeast. The extension of the continental shelf in the south-eastern region is situated in the southern extension of 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 submissions, the Australia submissions, and the New Zealand submissions 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 dated 4 January 1982. Due to this bilateral agreement, the entire area 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 UNCLOS¹³⁵. The filed submission 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 the one hand, and France and New Zealand on the other hand. Through these exchanges, the three states assured the commission that these submissions could be processed without prejudice to questions related to the setting of continental shelf boundaries between them. Vanuatu did not give such an assurance to France beforehand¹³⁶.

 The examination of the submission and the recommendations of CLCS

The first examination of the submission took place during the eighteenth session of the CLCS, from 22 August 2007 to 14 September 2007, and concluded by the creation of a sub-commission in charge of examining and submitting its conclusions in a later session¹³⁷.

134 Summary of the partial submission to the Commission on the Limits of the Continental Shelf concerning the areas of French Guyana and New Caledonia - CLCS Website.

135 DIMENC Department of Industry, Mines and Energy of New Caledonia (DIMENC).

136 Statement of Mr. Serge Ségura before the members of the Delegation for Overseas Territories, on 11 July 2012.

137 Minutes of the twentieth session of the CLCS, CLCS/56 point 12, page 8 - Website of the CLCS.

The submission relating to New Caledonia does not seem, to the knowledge of the Delegation for the Overseas Territories, to have met technical difficulties during their examination before the CLCS, which would have an influence over the surface area of the obtained extension.

During the submission of the French submission, 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 submission concerning the south-eastern area of the continental shelf of New Caledonia, following the objection drafted by Vanuatu with regards to Matthew Island and Hunter Island¹³⁸. Mr. Jarmache insisted that this amendment does not in any way signify recognition of Vanuatu's submissions. Finally, the south-western sector of the New Caledonia continental shelf was not subject to any dispute and the commission could consequently proceed with the examination of part of the submission which concerned it. The Services of Mines of the Office of Industry, Mines, and Energy of New Caledonia (DIMENC) participated in the presentation and defence of this file.

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

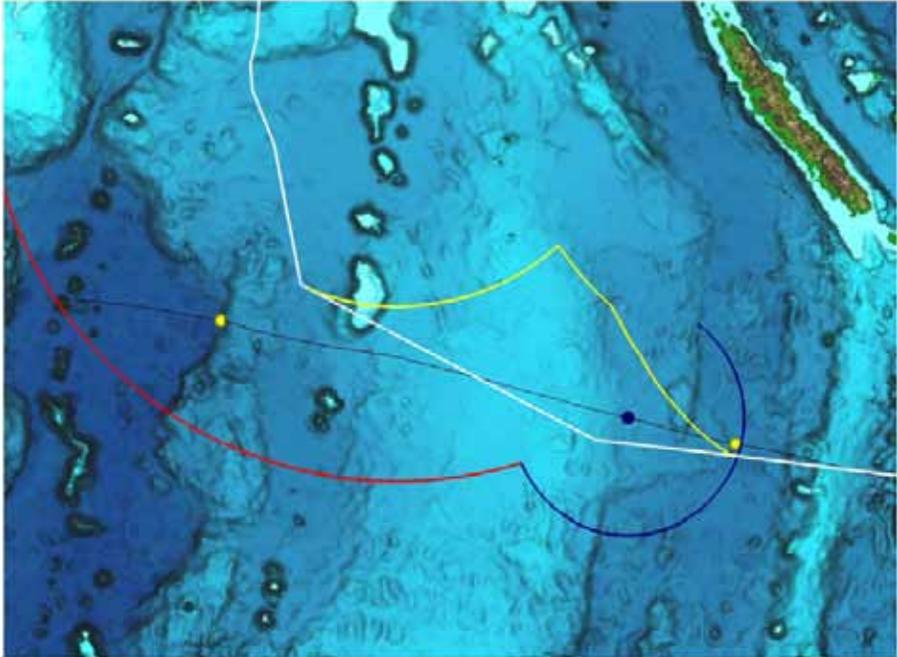
During the twenty-fourth session of the CLCS, from 10 August and 11 September 2009, the sub-commission presented its recommendations to the commission, and the CLCS adopted them by consensus¹³⁹.

Paragraph 71 of the recommendation indicates that the zone included within the French 200 nautical miles and the maritime delimitation agreement with Australia constitutes the continental shelf beyond 200 nautical miles in the western area of the submission.

138 A letter from the Prime Minister of Vanuatu, Mr. Ham Lini Vanuarorora, addressed to the president of the French republic and recalling that Vanuatu considers Matthew Island and Hunter Island as part of its territory, was brought to the attention of the CLCS on 11 July 2007, by the Minister of Foreign Affairs and Commerce of Vanuatu.

139 Minutes of the twenty-fourth session of the CLCS, CLCS/64 point 4, page 4 - Website of the CLCS.

Diagram 5: Recommended outer limits of the extended continental shelf off the coast of New Caledonia



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

Following up on the recommendations of the CLCS

The submission relating to New Caledonia was subject to a recommendation to the southwest. Before the publication of the limits, it shall suffice to make an addendum to the Agreement of 1982 to realize the extension of the shelf between the 200 nautical mile and the endpoint of the outer limit.

As for the southeast sector, the issue of sovereignty over Matthew and Hunter is unacceptable to France¹⁴⁰ and the lifting of the restraint on examination of the submission depends on the outcome of discussions with Vanuatu.

Vanuatu filed a set of preliminary information on 10 August 2009, and revised on 18 July 2012. Submitting that the continental shelf of the Matthew and Hunter Islands is subject to an old dispute with France that has not yet been settled, and the delimitations of the nautical boundary of which remain on hold, Vanuatu made this registration without prejudice to future delimitations. Martinique envisages filing a submission before 2015.

140 Statement of Mr. Élie Jarmache before members of the Delegation for Overseas Territories, 26 June 2012.

□ *The submission relating to West Indies (Guadeloupe and Martinique)*

France's submission was filed on 5 February 2009 with the CLCS in the aim of determining the outer limits of the continental shelves off the coast of Guadeloupe and Martinique. After an investigation of 38 months, the recommendations were issued on 19 April 2012 at which point the particular obstacles must have been overcome. The recommended outer limit grants a slightly smaller surface area than that envisaged by France. Nearly a year after the recommendation, the publication of the outer limits of the extended continental shelf to the west of the West Indies have not yet been carried out due to the failure to conclude an addendum to the maritime delimitation agreement 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 delimitation with Aves Island belonging to Venezuela.

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

The French West Indies are situated on an active margin, characterised 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 French West Indies have specific geological characteristics on the Atlantic Coast that allowing to expect 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 front of the accretion zone and the sedimentary thickness off the shore of this front.

□ The filing of the submission with CLCS¹⁴¹

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 to the south. France informs the commission of the possibility of overlap of its submission for extension with that of Barbados, but by common agreement, this situation does not constitute an obstacle to the examination of the respective extensions submissions of both states.

□ The examination of the submission and the recommendations of CLCS

The sub-commission was created during the twenty-sixth session of the CLCS, which met from 2 August to 3 September 2010¹⁴².

The submission relative to the shelf of the West Indies does not seem, to the knowledge of the Delegation for Overseas Territories, to have encountered notable technical difficulties during its examination before the CLCS. The sub-commission decided the amendment of the French submission regarding the fixed points FP 8 and 9, lying on the French limit of 200 nautical miles.

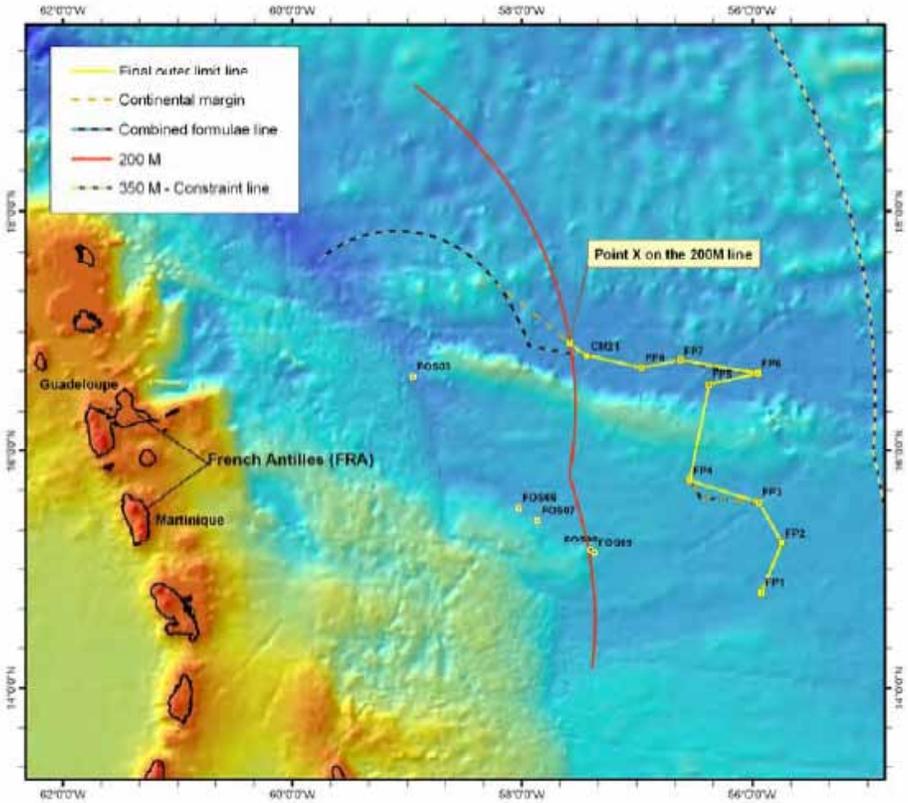
141 Partial submission to the Commission on the Limits of the Continental Shelf concerning the areas of the French Antilles and the Kerguelen Islands - Website of the CLCS.

142 Minutes of the twenty-fifth session of the CLCS, CLCS/68 point 13, page 12 – Website of the CLCS.

During the twenty-ninth session of the CLCS, from 19 March to 27 April 2011, the sub-commission presented its recommendations to the commission, and the CLCS adopted them by consensus¹⁴³.

Paragraph 44 contains the recommendation that the outer 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 miles.

Diagram 6: Recommended outer limits of the extended continental shelf off the coast of French West Indies



Source: Recommendations of the CLCS relative to the submission made by France on the 5 February 2009, concerning the 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 outer limit of the expanded continental shelf in the French West Indies region depends on the delimitation with another state. The submission relating to the French West Indies filed on 5 February 2009 leads the MAE to achieve reconciliation with Barbados and successfully conclude a maritime delimitation on 15 October 2009. This agreement took place after

143 Minutes of the twenty-fourth session of the CLCS, CLCS/74 point 7, page 6 – Website of the CLCS.

Barbados had filed its submission on 8 May 2008 and before the recommendation was issued by the commission on 15 April 2010. Following the revised submission of 25 July 2011, an additional recommendation was issued on 13 April 2012.

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

It only remains for both states 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 additional agreement with Barbados on the endpoint of their respective outer limits, France could effectuate the registration to the United Nations and the ISA provided in article 84 of UNCLOS.

The submission relating to the Kerguelen Islands

France's submission was filed on 5 February 2009 with the CLCS in the aim of determining the outer limits of the continental shelves off the coast of the Kerguelen islands. After an investigation of 38 months, the recommendation was issued on 19 April 2012 after difficulties in localizing many slope foots arose which CLCS overcame by fixing a different location than that envisaged, as well as rejecting the depth constraint line (100 nautical miles from the 2,500 metre isobath) due to insufficient evidence. The recommended outer limit grants a slightly smaller surface area than that envisaged by France. More than one year after the recommendation, the publication of the outer limits of the extended continental shelf to the west of the Kerguelen Islands had still not been carried out, due to the failure to conclude an addendum to the Maritime Delimitation Agreement with Australia. In this submission, France reserves its rights to file a submission for Adélie Land.

The extension of the Kerguelen Zone also concerns Australia (Heard and McDonald Islands), situated to the South, which had filed its submission on 15 November 2004 and which received the recommendation from the CLCS on 9 April 9 2008.

Data Collection: KERGUEPLAC Campaigns 1 to 3

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

The KERGUEPLAC (February and March 2004), KERGUEPLAC2 (September to November 2005), and KERGUEPLAC3 campaigns took place on the Marion Dufresne to gather data and interpretations necessary to the submissions for extension. This means notably to acquire the bathymetric, gravimetric, and magnetic data necessary to determine the foot of the slope of the Kerguelen plate and the detailed cartography of the 2,500 metres isobath in the key regions. This also means determining the sedimentary thicknesses on the edge of the plate and carrying out dredges to determine the source of the radial rises to the northeast of the plate. The KERGUEPLAC1 mission focused 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 submission with CLCS¹⁴⁴

The submission 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 outer limit of the continental shelf had been constructed from 885 fixed points, calculated for the most part by using the Hedberg formula (foot of the slope), and by taking the maritime delimitation agreement of 4 January 1982 into account.

Rights reserved for Adélie Land

At the same time as the submission, on 5 February 2009, via a note of France's permanent mission to the United Nations' General Secretary, France reserved its rights to file a submission in the future for Adélie Land while recalling *"the principles and objectives shared by the treaty on the Antarctic and UNCLOS as well as the importance of seeing the Antarctic system and UNCLOS 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 submission not including the continental shelf areas adjoining the Antarctic, zones for which a submission could be made later notwithstanding the arrangements relative to the 10 year period defined by article IV of annex II of UNCLOS and the decisions on its application taken by the 11th meeting of the States Parties of UNCLOS."*

This notification has led to reactions from the Netherlands and Japan. The first State recalled its position of its failure to recognise submissions in the Antarctic territories and the submissions 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 submission to territorial sovereignty in the Antarctic and, consequently, no right or submission to the seabed and subsoil adjacent to the continent.

The examination of the submission and the recommendations of CLCS

Presentation of the submission took place at the twenty-fifth session of the CLCS, from 15 March to 23 April 2010¹⁴⁵. The sub-commission in charge of examining and submitting these conclusions to the commission had been created during the twenty-sixth session of the CLCS which met from 2 August to 3 September 2010¹⁴⁶.

The Commission expressed its disagreement on the position of feet of the slope FOS 20, 210, 220, 230. France proposed other positions that were refused. Following a French communication of 23 March 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 2,500 metres isobath), France maintained that the Gallieni Ridge is a shallows that is a natural constituent of the continental shelf. For the sub-commission, it means an underwater ridge. After discussion, sub-commission concluded that uncertainties and a lack of data relative

144 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 the areas of French Antilles and the Kerguelen Islands- Website of the CLCS.

145 Minutes of the twenty-fifth session of the CLCS, CLCS/66 point 9, page 7 - Website of the CLCS.

146 Minutes of the twenty-fifth session of the CLCS, CLCS/68 point 13, page 12 – Website of the CLCS.

to the Gallieni Ridge remained and considered that France did not present any evidence of proof for its position. Sub-commission concluded that the constraint line based on depth is not justified in relation to the Gallieni Ridge and that the constraint line based upon the sole distance should be applied.

The submission relating to the Kerguelen Islands saw the CLCS oppose itself to France on the position of four feet of the slope and on the location of the constraint line of 100 nautical miles of the 2,500 metres isobath. If, from the first divergence, the difficulty had seemed to be easily surmounted, the second would not be the same. Probably, due to insufficiency of the collection of necessary data and information, and to the methods used to realise it, the CLCS considered that France did not present any evidence of proof for its position.

All of these issues lead to the reduction in obtaining the claimed surface of 40,000 km². The difficulty at the root of this surface area reduction of 40,000 km² made by the CLCS in relation to the submission resides in collecting rock samples removed by dredging with the Marion Dufresne. In order to provide evidence that the CLCS refused, drilling was necessary, but without guarantee¹⁴⁷. The alternative was the choice between an extension proposed by the CLCS or to return before the commission with a new submission. France chose the first term of the alternative¹⁴⁸.

During the twenty-fourth session of the CLCS, from 10 August and 11 September 2009, the sub-commission presented its recommendations to the commission, and the CLCS adopted them by consensus¹⁴⁹.

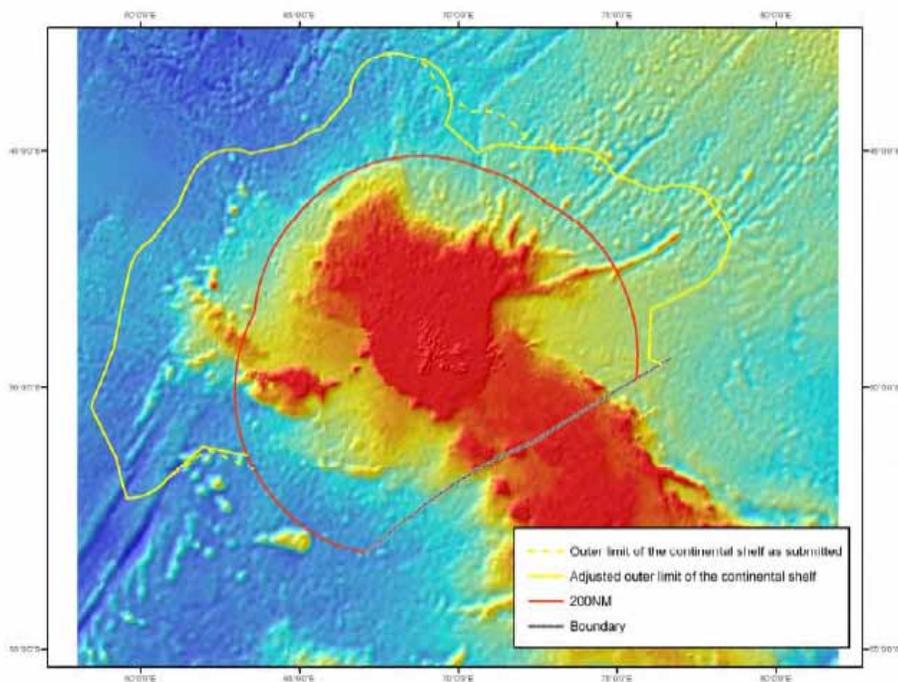
Paragraph 93 of the recommendation indicates the agreement of the CLCS on the determination of the 920 fixed points contained in the French submission, such as it was revised on 23 March 2012 and on their connection between them by straight lines not exceeding 60 nautical mile in length.

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

148 Elements of information provided by Mr. Élie Jarmache on 18 January 2013, in reply to written questions by the rapporteur.

149 Minutes of the twenty-fourth session of the CLCS, CLCS/74 point 7, page 6 – Website of the CLCS.

Diagram 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 submission made by France on the 5 February 2009, concerning the French West Indies and the Kerguelen Islands, summary, p. 81.

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

Following up on the recommendations of the CLCS

In accordance with the maritime delimitation agreement between France and Australia of 4 January 1982 that delimits the maritime areas up to the limit of 200 nautical miles, both 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 submission relating the Kerguelen Islands did not seem to have posed diplomatic difficulties in so far as a delimitation agreement had been reached with Australia for Heard Island and McDonald Island in 1982. This delimitation was limited to the continental shelf situated within 200 nautical miles.

During the examination of the submission, France probably reported a verbal agreement with Australia for the extension of the delimitation line beyond 200 miles,

because the recommendation of 19 April 19 2012 makes reference to point FP 290 on the line agreed between France and Australia. If this is truly the case¹⁵⁰, the realization of this agreement by an addition to the agreement between France and Australia of 1982 should not incite too much difficulty.

The recommendation for the continental shelf of Australia dated 8 April 2008 clarifies that, for the region of the Kerguelen plates off the shore of Heard Island and McDonald Island, when setting the outer 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 publication of the limits, 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 miles and the end point of the outer limit. After this, France could carry out the filing with the United Nations and ISA provided by Article 84 of UNCLOS.

The submissions to be examined by the CLCS

The submissions for the continental shelf extension for the Crozet Archipelago (joint submission with South Africa for the Prince Edward Islands), the Island of Reunion, and the Islands of St.-Paul-and-Amsterdam situated in the Indian Ocean was submitted in May 2009 to the CLCS and are awaiting examination¹⁵¹. Preliminary information filed on 8 May 2009 for the extended continental shelf off the coast of Wallis and Futuna in the Pacific Ocean had been followed by a joint submission submitted on 7 December 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 submission in the region of the Crozet Archipelago and the Prince Edward Islands

The joint submission of France and South Africa had been filed with CLCS on 6 May 2009 with the intention of determining the outer limits of the continental shelf off the shore of the Crozet Archipelago and the Prince Edward Islands¹⁵². The submission of the submission took place in August 2010. The applicants thus indicated reserving the possibility of presenting a revised submission in 2013 that would take into account the depth constraints (100 nautical mile of the 2,500 metres isobath) currently still under examination. The investigation 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 2003 theoretical study showed that this Island situated on the edge of an oceanic ridge does not possess an extension except insofar as it would be possible to prove the continuity between the plates of the Crozet Archipelago and the Prince Edward Islands.

150 Statement of Mr. Serge Ségura before the members of the Delegation for Overseas Territories, on 11 July 2012.

151 These requests were submitted during the CLCS session of July and August 2013, as were those relative to Wallis and Futuna.

152 Summary of the partial submission to the Commission on the Limits of the Continental Shelf concerning the Prince Edward Islands and the Crozet Archipelago. Website of CLCS

The collection of data ¹⁵³ necessary to back up the submission is based upon the results of scientific campaign with the title “*Del Dano Rise*” in 2005 on the ship Marion Dufresne II, a campaign conducted in conjunction with South Africa. A campaign with the title “*Discovery Ridge – Crozetplac*” took place in February-March 2010 on the same ship and had lead to a supplementary acquisition of data again in collaboration with South Africa.

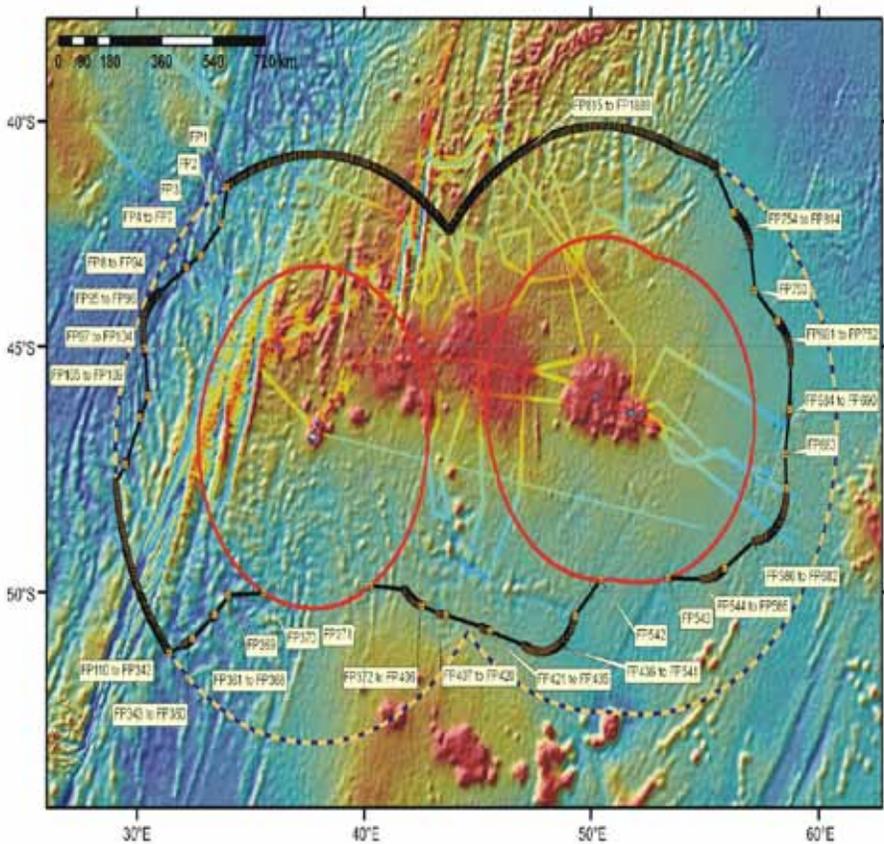
📄 The filing of the submission with CLCS

The submission 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 Islands and the Crozet Archipelago. The submission was filed without a delimitation agreement being concluded between the requesting States. Negotiations are in progress.

The final projected outer 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 miles from the foot of the slope) respecting to the constraint line of 350 nautical miles. The file was prepared in collaboration with the IPEV.

153 Accompanying note to the submission of Mr. Jean-Yves Perrot, President and General Director of IFREMER, during his statement before the members of the Delegation for Overseas Territories on 25 September 2012.

Diagram 8: The outer limits of the extended continental shelf claimed off the coast of Prince Edward Islands (on the left) and the Crozet Archipelago (on the right)



Source: Partial joint submission 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 submission

The submission of the joint request between France and South Africa took place during the twenty-sixth session of the CLCS on 2 August to 3 September 2010¹⁵⁴. During the course of this submission on 19 August 19, 2010 by Mr. Jarmache, representative of the General Secretariat of the Sea for France, and Mrs. Sandea De Wet, First Adviser in state rights, for South Africa, the former clarified that *“the submission was without prejudice to the establishment of future maritime limits between the two coastal states (...) [and that the] two states reserve the right to submit 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*

154 Minutes of the twenty-sixth session of the CLCS, CLCS/68 point 8, page 7. Website of CLCS

the realization of the depth constraint would have an effect on the outer limit of the continental shelf indicated in the submission”.

The joint submission in relation to the Crozet Archipelago and the Prince Edward Isles seems to have presented technical difficulties during its preparation, since France only completed the data and information collection relative to establishing the depth constraint line in 2010, namely after the submission was filed in 2009, and thus registered the file without having completed the entirety of the collection and analysis of this latter. The 2010 campaign was financed principally by South Africa, France making the Marion Dufresne available. A revision of the submission is already announced for March 2013. We shall then know the supplementary surface area claimed.

The submission relating to the Crozet Archipelago and the Prince Edward Islands could have been filed thanks to a diplomatic action privileging the choice of a joint submission with South Africa for the Prince Edward Islands which allowed the assurance to the CLCS that the submission would be treated by the two states without prejudice to questions relative to fixing the limit 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 submission relative to the Bay of Biscay could only curb the optimism that those who think that a delimitation agreement is easy. It is acknowledged that advantage should be taken of the time that will elapse before examination of the submission in order to conclude a delimitation treaty before the recommendation is issued, such as was the case with the delimitation agreement between the West Indies and Barbados.

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

The form which the addition to the submission could take 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 outward limit out to sea. One might think that it will be in a way such that both these states do not lose their turn for examination. This would be the third French submission based on the depth constraint of the 2,500 metres isobath, all others being based on the distance constraint of 350 nautical miles, with the exception of those relative to the Kerguelen Islands and Amsterdam Island.

The submission relating the Island of Reunion,

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

Data Collection

SHOM's 2003 theoretical study 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 submission relative to the Island of Reunion relies on the results of a scientific campaign with the title "FOREVER" (Institute de Physique du Globe de Paris - Institute of Global Physics of Paris) in 2005 and also uses the ERODER 1 (in 2005) and 2 (in 2008) campaigns, campaigns led by IFREMER and the University of Reunion¹⁵⁵.

 The filing of the submission with CLCS¹⁵⁶

The file clarifies that this extension is located 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 concerning the continental shelf of the Island of Reunion, the expanded continental shelf being located south of Reunion. A delimitation agreement of maritime zones was concluded between France and Madagascar on 14 April 2005 and came into effect on 18 June 2007¹⁵⁷. The outer limit of the continental shelf was constructed from 136 fixed points calculated by using the Hedberg Formula (60 nautical miles from the foot of the slope) within the 350 nautical mile long constraint line and a fixed point on the limit of 200 nautical miles. The file was prepared in collaboration with the Paul-Émile Victor Polar Institute (IPEV).

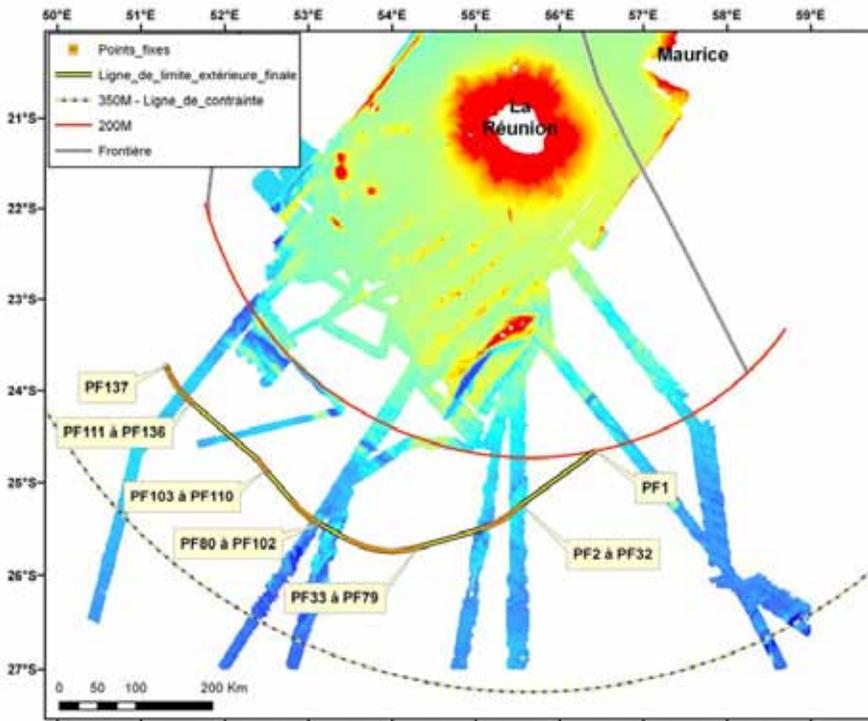
The extension of the continental shelf off the coasts of Reunion concerns Madagascar which filed its submission on 29 April 2011. This state submitted its submission on 24 August 24 2011 indicating the absence of disputes with third-party states and the existence of discussions about the bilateral delimitation with Mozambique alone. Being number 56 in the order of submissions lodged, on the basis of the current speed of files processed by the CLCS, the examination should not take place before 2028-2030. The extended continental shelf that it submissions does not overlap with that submitted by Reunion in its submission to the CLCS. The French submission stops to the west on the limit of 200 nautical miles of the coasts of Madagascar, and to the south of the last point of the 2005 delimitation agreement between both States. One could however wonder about the nearly miraculous ruling of Reunion's expanded continental shelf at the limit of 200 nautical miles of Madagascar. One could wonder if the non-objection of Madagascar would persist if France had considered in its extension submission the prolongation inside 200 nautical miles 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 miles from Madagascar. One could wonder why France did not submission its rights over the entirety of the continental shelf against the Madagascar continental shelf limited to 200 nautical miles in this zone, if not to avoid a discussion over the bilateral delimitation to the south of the April 2005 agreement.

155 Note issued in by Mr. Jean-Yves Perrot of IFREMER, during his statement of 25 September 2012.

156 The partial submission to the Commission on the Limits of the Continental Shelf concerning the Island of Reunion and the Islands of St. Paul and Amsterdam. Website of CLCS

157 Point 1 of the northern borderline is situated only 195 nautical miles from Tromelin Island. This point could be modified when the dispute over Tromelin between France, Madagascar, and Mauritius is resolved.

Diagram 9: The outer limits of the extended continental shelf claimed off the coast of Reunion



Source: Partial submission 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 submission

France had been invited to submit this submission during the twenty-fourth session of the CLCS held in August-September 2009. It decided to make this submission later; having all the time to do it; the date upon which this latter's submission could not alter the order of examination of the submissions. The submissions take place in the order that they are received. The French submission is at number 40 on the list. At the current rate of the commission's work, the submission should not be examined before 2022-2025, with the last sub-commission having been appointed at the end of 2012 only examining submission number 28.

□ *The submission relating to the islands of St. Paul and Amsterdam*

France's submission was filed on 8 May 2009 with the CLCS in the aim of determining the outer 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 2009 had been reported. The investigation which has not yet started should take place in 2022-2025. No delimitation agreement is envisaged to the extent that the French submission does not overlap with the submission of any third State.

Data Collection: the PLURIEL Campaign

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

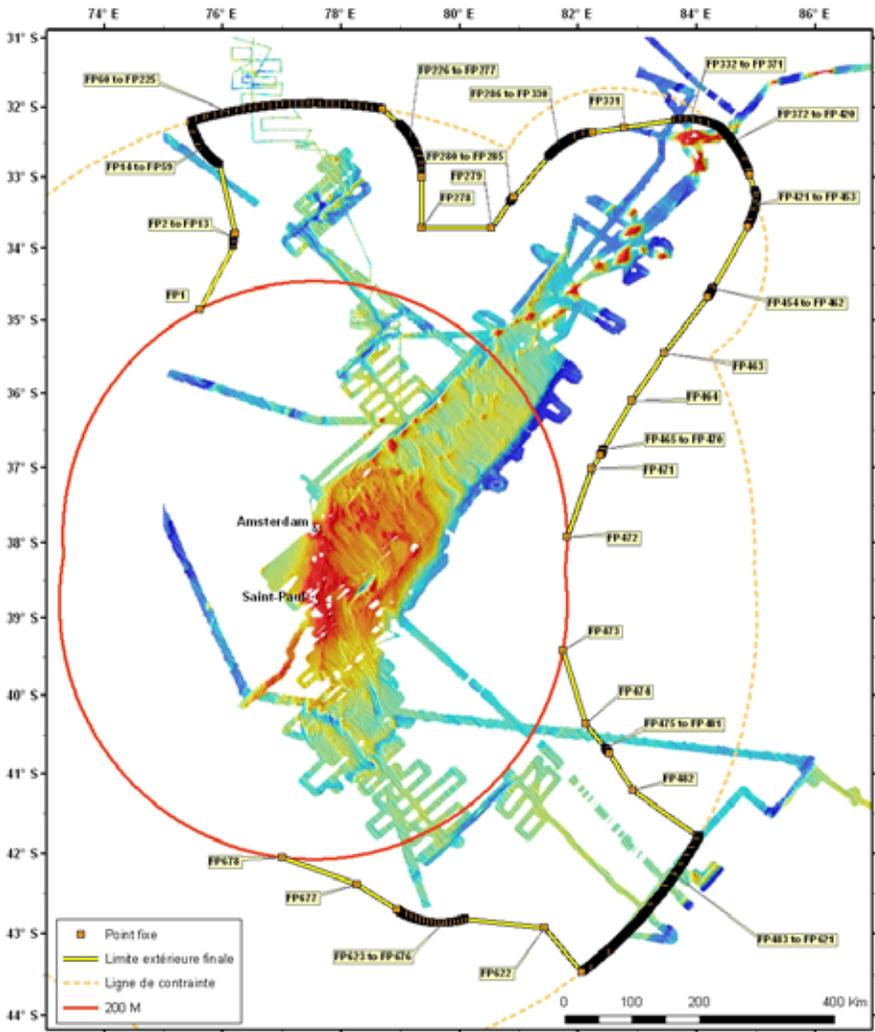
The Plume-Ridge Interaction and Evolution (PLURIEL) campaign was organised in September and October 2006 on the ship Marion Dufresne in order to gather data and interpretations necessary to the submissions for extension. The campaign permitted the acquisition of bathymetric data necessary to the determination of the slope foot of the St. Paul and Amsterdam shelves and furnished detailed cartography of the isobaths 2500 metres 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 as well as around forty dredges.

The filing of the submission with CLCS¹⁵⁸

The submission clarifies that the continental shelf extensions of these islands are situated in the south of the Indian Ocean on the Southwest Indian ridge. 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 outer 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 miles or that of 100 nautical mile from the 2,500 metres isobath, and four on the limit of 200 nautical milles. The outer limit of the continental shelf of Amsterdam Island is, at least partially, based on the formula of the depth constraints of 100 nautical milles from the 2,500 metres isobath. The file was prepared in collaboration with the Paul-Émile Victor Polar Institute (IPEV).

158 The partial submission to the Commission on the Limits of the Continental Shelf concerning the Island of Reunion and the Islands of St. Paul and Amsterdam.

Diagram 10: The outer limits of the extended continental shelf claimed off the coast of the Saint-Paul and Amsterdam Islands



Source: Partial submission 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 submission

France had been invited to submit this submission during the twenty-fourth session of the CLCS held in August-September 2009. It decided to make this submission later, having all the time to do it; the date upon which this latter's submission could not alter the order of examination of the submissions. The submissions take place in the order that they are received. The French submission is at number 40 on the list. At the current rate of the commission's work, the submission should not be examined before 2022-2025, with the

last sub-commission having been appointed at the end of 2012 only examining submission number 28.

□ The joint submission relating to the Robbie Rise off the coast of Wallis and Futuna

The joint submission was filed on 7 December 2012 with the CLCS by Tuvalu, France, and New Zealand on behalf of Tokelau with the aim of determining the outer 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 submission followed preliminary information filed on 8 May 2009 due to the delay taken in preparing the submission. For New Zealand, it followed preliminary information filed on 11 May 2009. The applicants could make a submission to the CLCS in the following months on the condition that they decide to report. The examination of the submission 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 submission for extension of the continental shelf in the region of the Robbie Rise beyond 200 M north of Wallis and Futuna was justified.

Following this study, the acquisition of supplementary data for the investigation of a complete submission has been judged necessary. The WALLISPLAC campaign had been organized in September/October 2010 on the ship *Atlante*, in the presence of observers from Tuvalu and SOPAC¹⁵⁹, in order to provide data and interpretations necessary to the submissions for extension.

The Islands 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 fossil subduction zone. They are separated by a succession of deep ditches (more than 4,500 metres) which underlines, in the procession of the ditches of the Tonga isles, the eastern ending of the fossil feature of Vitiaz. The global approach consisted of making objective 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 deep sea. 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 with the CLCS¹⁶⁰

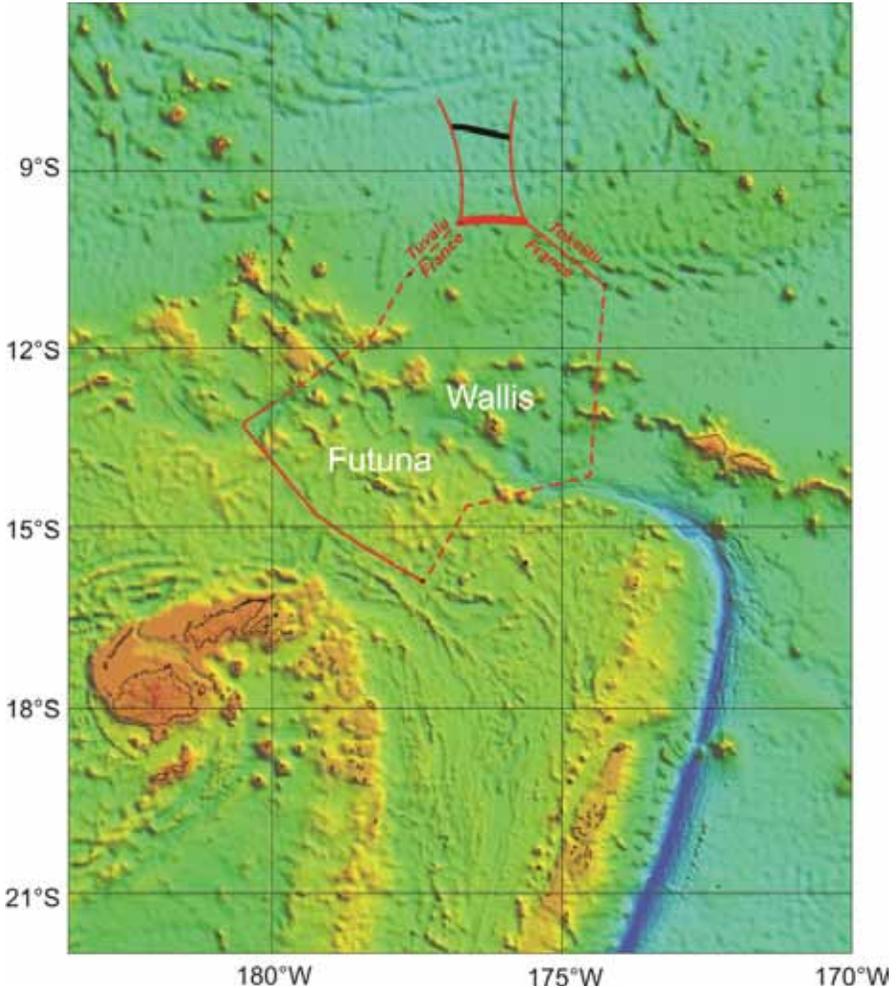
Preliminary information indicative of the outer limit of the continental shelf beyond 200 nautical miles of the Wallis and Futuna Islands, the extensions being situated in the south-western Pacific Ocean, was submitted by France to the CLCS on 8 May 2009, while referring

159 Secretariat of the Pacific Community, Applied Geosciences and Technology Division.

160 Preliminary information indicative of the outer limits of the continental shelf of French Polynesia and Wallis and Futuna, in accordance with the decision featuring in the SPLOS/183 document of the eighteenth meeting of the states part of the UNCLOS, concerning the submission received on 8 May 2009, CLCS Website.

to the meeting of the States Parties to UNCLOS (SPLOS/183)¹⁶¹. They were without prejudice to the complete submission concerning these territories that France reserved the right to file at a later date with the CLCS. The indicative position of the outer limit of the continental shelf of the Wallis and Futuna Islands relies on the Hedberg Formula (60 nautical miles from the slope's base) and is situated at a distance not exceeding 350 nautical miles from the islands. 9 fixed points have been determined separated by a distance not exceeding 60 nautical miles. The file was prepared in collaboration with the Paul-Émile Victor Polar Institute (IPEV).

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



Source: Indicative Preliminary information regarding the outer limits of the continental shelf, in

161 See much later for the significance of the “indicative preliminary information regarding the outer limits of the continental shelf as well as a description of the state of preparations and the anticipated date for filing the submission”.

accordance with the decision appearing in the SPLOS/183 document of the eighteenth meeting of the States Parties to UNCLOS, concerning French Polynesia and the Wallis and Futuna Islands, p. 5. In red (bold) French limit of 200 nautical miles. The red lines (thin) show the boundaries with neighbouring countries (the limits not being subject to agreement are indicated by dashes), As well as their indicative limits of 200 nautical miles.

In terms of this document, France undertook to lodge with CLCS the submission for extension of the continental shelf of Wallis and Futuna within a 4 year period, being in 2013. This period should allow the realization of works carried out in the aim of acquiring recent data about the islands during a sea campaign of several days. Finally, the submission was filed on 7 December 2012 so that Tuvalu observes the period of 10 years left to the coastal states to submit their submission after the date of the ratification of the United Nations Convention on the Law of the Sea, and expiring for Tuvalu on 9 December 2012.

For its part, New Zealand had submitted preliminary information on 11 May 11 2009 concerning both the continental shelf beyond 200 nautical mile of Tokelau situated to the west on the Robbie Rise and that which is situated in the east. It had foreseen the filing of a submission in 2014.

 The filing of the submission with CLCS¹⁶²

The file clarifies that this extension pertains to the southwest region of the Pacific, characterized by a series of seabed, 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 3,500 and 4,000 metres in depth. To the north, the seafloor reaches 5,000 to 5,500 meters.

The three coastal states agreed to make a joint submission, of a common nature, and comprising one document prepared in collaboration. This also means a partial submission 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 outer 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 outer limits of the area have been duly established”*¹⁶³. One will note the divergence between the texts in French (accepté - accepted) and English (*agreed*). Should it not be read as *“convenue” (agreed)* 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 5 November 1985 and coming into effect on 5 November of the same year, the two states acknowledged the equidistant line as a limit of reference while awaiting access to the charts. The limit spans around 300 nautical miles and concerns the 200 nautical miles and not the extended continental shelf. In the future, the border could then be prolonged toward the northeast.

162 Joint submission 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

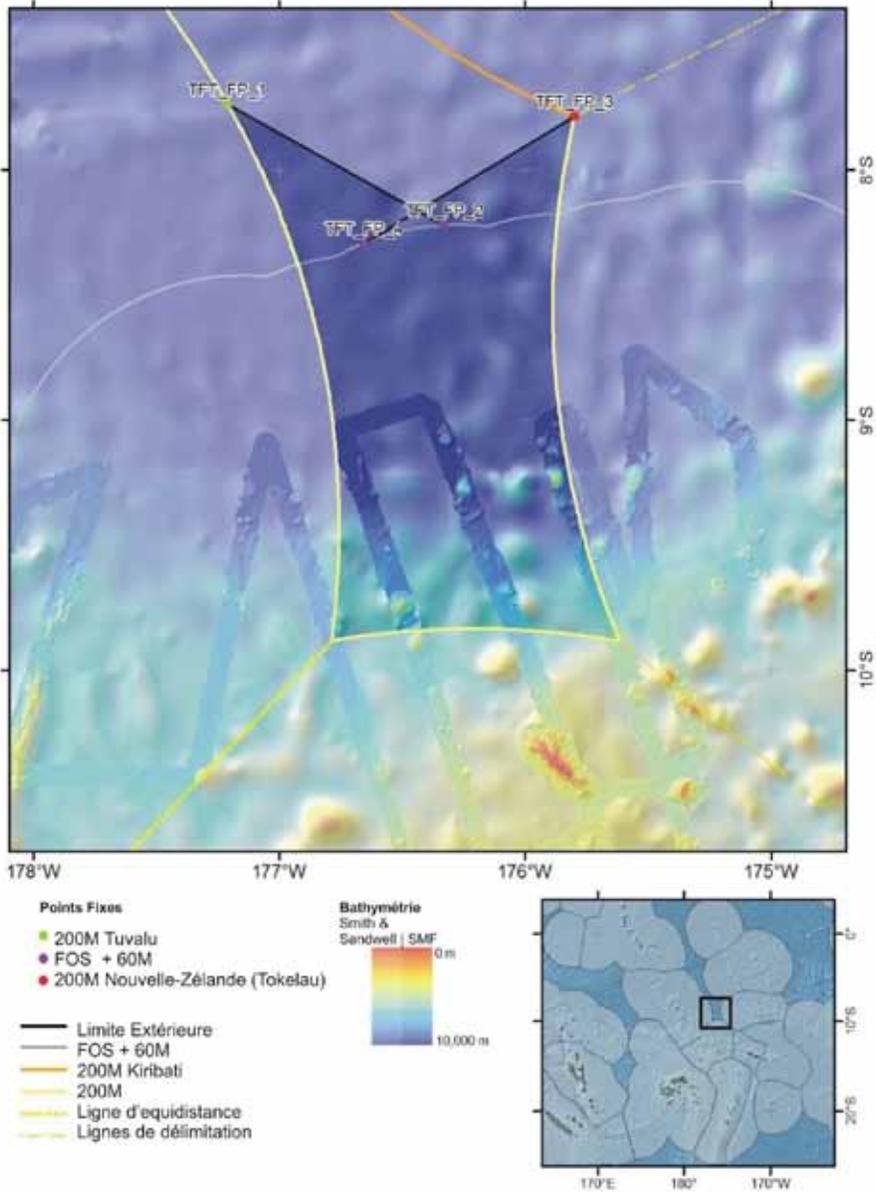
163 The English text reads as follows: *“Therefore, the delimitation of the area that is the subject of this joint Submission shall be agreed once the Commission has concluded its consideration of the Joint Submission and after the outer limits of the area concerned have been duly established.”*

The vague nature of the agreement permits the parties to reach a definitive agreement on a variant of a strict equidistance line. A tri-point should be determined between the three states.

On 20 June 2003, France and New Zealand signed an agreement concerning the maritime delimitation of the continental shelf and the exclusive economic zone within the 200 nautical miles between Wallis and Futuna and Tokelau, entered into effect on 12 November 2003. This agreement indicates that the boundary line is a line equidistant to a length of about 101 nautical miles between three points the coordinates of which 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 outer limit of the expanded continental shelf was 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 of 200 nautical miles from Tuvalu and a second Fixed Point on the Slope Base above 60 nautical miles, and the second straight segment is defined by a Fixed Point situated on the line of 200 nautical miles from Tokelau and a second Fixed Point on the Slope Base line above 60 nautical miles. The fixed point on the line of 200 nautical miles from Tokelau is situated where this limit cuts the limit of 200 nautical miles from Kiribati. The document adds, probably following the experience gained on the occasion of the joint submission in 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 Submission do not lead, as a result of this joint process, to an area of the continental shelf more expanded than the sum of the areas to which the states would be entitled individually"*.

Diagram 12: Outer limits of the extended continental shelf claimed off the coast of Wallis



Source: Joint submission to the CLCS by Tuvalu, the French Republic and New Zealand, p. 7.

📄 The examination of the submission

The submission would have had to be subject to a submission before the CLCS within three months in accordance with Article 51 of its rules of procedure. This latter could be delayed without France losing its turn at examination.

Following the submission, the CLCS indicated that the submission must wait its turn so that the CLCS can appoint a sub-commission to examine it. On the basis of the current rate of the processing submissions, this latter should not start its examination before the 2030's.

The experience acquired by the Quai d'Orsay on occasion of the submission 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 examination of the submission could not be taken advantage to adapt the existing agreements to the new outer limit claimed by the three states related to those envisaged by France in its preliminary information of 8 May 2009.

The Preliminary information filed

According to UNCLOS, ratified by France on 11 May 1996, France should have submitted all of its submissions for extension to the CLCS in May 2006. Luckily for France, which was not ready to comply with this deadline, the meeting of the states part of the UNCLOS decided in 2001 that, for a State Party that the Convention put into effect before 13 May 1999, the period of 10 years mentioned in Article 4 of Annex II of the Convention is considered as having started on 13 May 1999. Consequently, in so far as concerns France, the deadline of 10 years expired on 13 May 2009. It is this date that the French government had considered for lodging all the possible extensions when it set the EXTRAPLAC programme into motion in 2002.

In 2008, the meeting of the States Parties authorised the states that would be defaulting in respect to this period to submit instead and in place of submissions, *"indicative preliminary information regarding the outer limits of the continental shelf beyond 200 nautical miles, a description of the state of advancement of the file, and an estimate of the date on which it would be submitted, in accordance with the requirements of Article 76 of the Convention, the rules of procedure of the Commission, and its technical and scientific directives"*.

This decision permitted France to submit four sets of preliminary information a few hours before the deadline set for their submission, instead and in place of the submissions that it had been incapable of submitting in a timely manner and that it could not have submitted any later. This concerns those relating to the extended continental shelf off the coast of the Overseas Territories of Saint Pierre and Miquelon, French Polynesia, Wallis and Futuna¹⁶⁴ and Clipperton.

The immediate sanction for France is that, while awaiting receipt of a submission meeting the requirements of Article 76 of the Convention, the preliminary information will not be examined by the CLCS. In other words between 15 and 20 years delay in the examination of each future submission, at the normal rate of work of the CLCS. However, the preliminary information filed in May 2009 regarding the continental shelf off of Wallis and Futuna was transformed in a submission which was filed on 7 December 2012 with number 62 in the list of examination of submissions. It won't form the subject of a recommendation before approximately 20 years at the normal rate of work of the CLCS. The French submissions which were filed in May 2009, those of Crozet, Reunion, St. Paul and Amsterdam islands filed respectively on the 6 and 8 May 2009, will benefit from a recommendation in the next 5 years. The French continental shelf having been the subject of preliminary information at

164 This preliminary information has been transformed into a submission in December 2012.

the same date, instead of and in place of a submission, will have to await for a submission concerning it to be filed in 2013 and will probably not be addressed before about twenty years. Between 15 and 20 years late as a result of the non filing of submissions by the anticipated 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 *“developing coastal countries, including the small developing island States, [which] continue to experience particular problems regarding communicating to the Commission the information mentioned by Article 76 of the Convention... because they lack the financial and technical means, the abilities and skills or for similar reasons”*¹⁶⁵.

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 question of filing of the submission¹⁶⁶.

He added relative to the filing of preliminary information that France had used this procedure, primarily intended for the developing countries which didn't have either the resources or the means to keep to the deadline of May 2009, because of the increased work load regarding the preparation of French submissions¹⁶⁷. 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 a submission in the future¹⁶⁸.

Preliminary information concerning Saint Pierre and Miquelon

The preliminary information concerning the continental shelf of the Archipelago beyond 200 nautical miles was filed on 8 May 2009 by France before the CLCS with a view toward informing the Commission on the three points requested by the Meeting of States Parties: the outer limits of the extended continental shelf claimed, a description of the state of advancement of the file and the anticipated date of submission of the submission. 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 rejected all French submissions for maritime zones. Following the positive results of a scientific campaign carried out after 2009 because of the delay in the preparation of the submission, the decision to file a submission 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 submission was justified.

No campaign will occur before 13 May 2009 in order to provide the necessary data and interpretations for the submission for extension. Despite the assurances given by the

165 SPLOS/183 of 24 June 2008.

166 Statement of Mr. Ségura before members of the Delegation for Overseas Territories, on 11 July 2012.

167 Statement of Mr. Ségura before members of the Delegation for Overseas Territories, on 11 July 2012.

168 Statement of Mr. Serge Ségura before the members of the Delegation for Overseas Territories, on 11 July 2012.

Minister for the Overseas Territories in 2004¹⁶⁹, the petition of the inhabitants of the territory in December 2005, the assurance given by the new Minister for the Overseas Territories in 2006¹⁷⁰, the commitment from the Prime Minister on 3 April 2006 that the extension file will be relaunched with the Canadian authorities and the confirmation that the archipelago appear in the EXTRAPLAC programme¹⁷¹, the reiteration of this assurance by MAE on 2 November 2006¹⁷², the request from the territorial Council of Saint Pierre and Miquelon¹⁷³, the confirmation of 18 March 2006 by MAE¹⁷⁴, the declaration of the Minister for the Overseas Territories of 25 October 2006¹⁷⁵, neither the General Secretariat of the Sea, nor IFREMER have dispatched vessels in order to carry out seismic surveys or other necessary measures.

In addition, as indicated by the General Secretariat of the Sea, *“the case of Saint Pierre and Miquelon poses a legal and diplomatic problem due to a quite negative attitude from Canada, a neighbour which will not acknowledge a right to the extension of the continental shelf for France. Contacts were 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”*¹⁷⁶.

After filing the preliminary information of 8 May 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 submission following repeated interventions from the archipelago' elected representatives. The IFREMER ship, the Suroit, carried out scientific surveys in the framework of the EXTRAPLAC mission in July 2011. Following this mission, on 22 July during a meeting at the Chamber of Agriculture, Trade, Industry, Crafts and Artisans (CACIMA) in Saint-Pierre, it was indicated that *“according to the scientific data recorded, the French government is fully legitimized in pursuing action with the CLCS to take assert its rights”*¹⁷⁷. It emerged from this campaign that the foot of the embankment was situated at

169 See the announcement by Mrs. Brigitte Girardin, Minister of State for the Overseas Territories in November 2004, a campaign by the Marion Dufresne scheduled in early 2006 to conduct seismic surveys.

170 Declaration of Mr. François Baroin: *“France’s submission (...) must be the subject of a submission file supported by the scientific surveys which are scheduled in the framework of the EXTRAPLAC campaign”*.

171 Letter of the Prime Minister to Mr. Gérard Grignon, a deputy for Saint Pierre and Miquelon, on 3 April 2006.

172 *“Saint Pierre and Miquelon Archipelago remains on the preparatory list for filing a submission for extension of the continental shelf”*.

173 See for example the deliberation N° 17306 of 15 September 2006 of the Territorial Council requesting *“for the government to file before May 2009 at the Commission on the Limits of the Continental Shelf an application to examination of the data regarding the outer limit of the continental shelf off the coast of Saint Pierre and Miquelon”*.

174 *“I want to confirm that Saint Pierre and Miquelon is included in the EXTRAPLAC programme...”*.

175 *“the government can confirm - the Saint Pierre and Miquelon Archipelago remains on the preparatory list for filing a submission for extension of the continental shelf”*.

176 SG Mer, *Governance Espaces maritimes exploitation et extension*, 25 July 2006. <http://www.sgmer.gouv.fr/Espaces-maritimes-exploitation-et.html>.

177 <http://annickgirardin.net/category/economie/plateau-continental/>.

least 200 nautical miles 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 miles from the coast and that the conditions for a submission for extension of the continental shelf were met. For Walter Roest, the technical and scientific elements allowed the filing of a submission for extension for the Archipelago¹⁷⁸.

The technical file was sent to the General Secretariat of the Sea (SG Mer) in June 2012. Nothing was decided at the time of the Steering Committee meeting of 10 December 2012 in view of the divergence of views between the Ministry of Foreign Affairs and the Ministry of Overseas Territories. Canada requiring to file its submissions with the CLCS prior to November 2013 "*joint work of the ministry of foreign affairs and the ministry of overseas delegations is under way to review and support our submission*"¹⁷⁹.

📄 The filing of the preliminary information¹⁸⁰

The preliminary information will be filed on May 8 2009 following a difficult, if not awkward gestation. Because an arbitral decision of 1992 had settled the disagreement between France and Canada to the detriment of Saint Pierre and Miquelon in so far as concerns the continental shelf and the EEZ as far as 200 nautical miles deeming it incompetent for the continental shelf beyond that, the Quai d'Orsay considers the file closed. This decision, which fell far short of France's submissions, profoundly marked the population of Saint Pierre and Miquelon who sometimes found it unfair and an abandonment on behalf of France¹⁸¹ and the Quai d'Orsay as a second failure after that of the Minquiers and Ecrehous Case of 1953 brought before the International Court of Justice. Thereafter, on 17 May 2005, an agreement between France and Canada on the exploration and exploitation of the cross - border hydrocarbon fields was concluded on 17 May 2005. They implemented a specific regime for the joint exploitation zone coupled with exploitation in union (*unitization*) in the case of a discovery of a cross-border hydrocarbon deposit. It applies in the ten nautical miles of the maritime border defined by the arbitral sentence of 1992, without guaranteeing, however, the agreement of Canada to file an individual or joint French submission for extension.

In response to the reluctance of the MAE, and following numerous interventions of the people of St. Pierre and Miquelon to which reference is made, *the delimitation of the maritime border between France and Canada* information report of Mrs. Annick Girardin and Mr.

178 Statement of Mr. Walter Roest before the members of the Delegation for Overseas Territories, on 26 June 2012.

179 Elements of information provided by the DéGéOM on 21 January 2013, in reply to written questions of the rapporteur.

180 Indicative Preliminary information regarding the outer limits of the continental shelf of Saint Pierre and Miquelon, in accordance with the decision appearing in the SPLOS/183 document of the eighteenth meeting of the party states of UNCLOS, concerning the application received on 8 May 2009, CLCS Website.

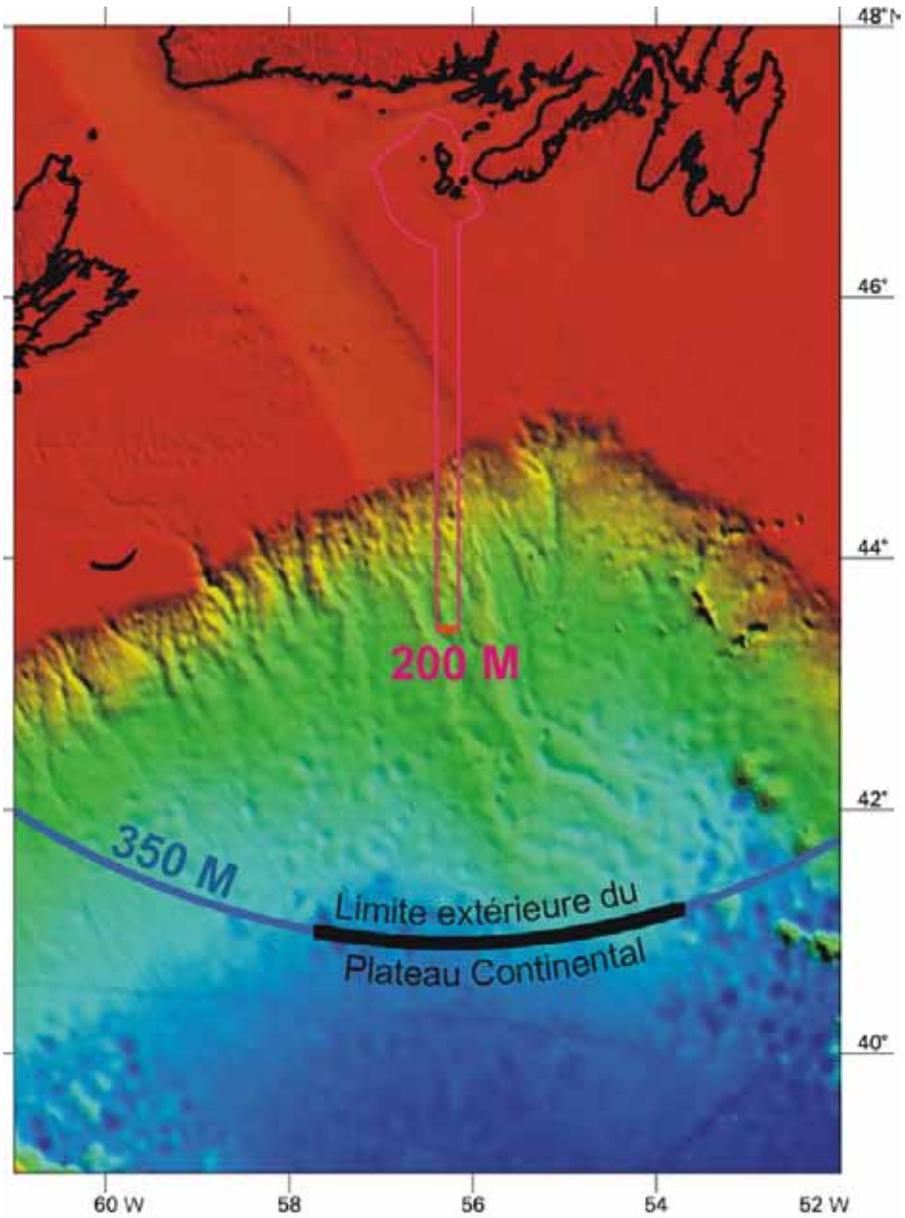
181 Lorgeoux Jeanny, André Tillard, senators, co-presidents, Beaumont René, Boutant Michel, Gerriau Joël and Paul Philippe, senators, Information report on behalf of the Committee on Foreign Affairs, Defence and the Armed Forces on behalf of the Working Group on maritimisation, N° 674, Senate, 17 July 2012, p 41.

Louis Guédon of 10 December 2008¹⁸² arrived 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 the necessary preliminary information for the subsequent filing of a submission for 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 prejudice to the complete submission concerning Saint Pierre and Miquelon, that France reserves its right to file at a subsequent date with the CLCS. The indicative position of the outer limit of the French continental shelf off the coast of Saint Pierre and Miquelon supports itself on the provisions of paragraph 4 (a) (i) of article 76 (Gardiner formula); the seismic data available in the public realm revealing a sediment thickness sufficient for applying this formula respecting the constraint of 350 thousand nautical miles.

182 See Girardin Annick and Guédon Louis, deputies, Information report on behalf of the Committee on Foreign Affairs *the delimitation of the maritime border between France and Canada* , National Assembly, XIIIth legislature, 10 December 2008.

Diagram 13: Indicative outer limits of the extended continental shelf off the coast of Saint Pierre and Miquelon



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 UNCLOS 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 rejects any submission for maritime zones by the French Republic including those zones of the continental shelf, beyond those given to the French Republic by the Arbitration Court in the Case concerning delimitation of maritime spaces between Canada and the French Republic (10 June 1992) According to the 1992 decision, to the United Nations Convention on the law of the sea and the principles of international law, the question of the submission by the French Republic of the extended zone of continental shelf off the coast of Saint Pierre and Miquelon cannot arise”*.

Gerard Grignon, the rapporteur of the this report, noting that Serge Ségura, of MAE, had previously indicated that the position of his ministry, which he indicated, was to register all the files that it was possible to register, he was told that the recent scientific campaign had given positive results that it should contemplate following up: filing or non-filing, considering the opposition of Canada.

The filing of the submission with CLCS

The preliminary information indicates that *“the work to be done leads to an estimate an estimate of four years for the time period for France to submit a complete file for the submission for extension for Saint Pierre and Miquelon”*.

Following the campaign of Suroit in 2011, the technical report concluding in favour of the extension of the continental shelf was handed back to SG Mer.

Preliminary information was supplied, according to paragraph 2, b) of Annex 1 of the Rules of Procedure of the Commission, *“without detriment to the delimitation between France and Canada”*. Canada communicated that it would file its submission for extension of the continental shelf before 6 December 2013 for all of its territories¹⁸³. Those off the coast of the Eastern Canadian provinces overlap in part with those of Saint Pierre and Miquelon. In the absence of a joint submission or the agreement of mutual non detriment, the filing of the French submission can only be done mentioning the existence of a dispute with Canada, which prevents the CLCS from examining both the French submission and the Canada submission for this area. The work load of the Commission indicates an examination of the submissions filed in 2013 in about 20 years, being after 2030. All blocks of the examination of the respective submission will impose a negotiated solution in the next 20 years.

The fact that both the future French submission and the future Canada submission 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 years¹⁸⁴, instead of expressing a renouncement to file any submissions from 2013.

183 The submission of Canada to CLCS within the UNCLOS framework («Continental shelf programme”), <http://www.dfo-mpo.gc.ca>.

184 The President of the Republic, during an interview, in July 2013, with the members of Parliament of Saint-Pierre and Miquelon, reaffirmed that *“France would defend the interests of the archipelago regarding the extension of the continental shelf off the coast of Saint-Pierre et Miquelon. He also confirmed the intention of France, for this purpose, to file a submission before the Commission on the Limits of the Continental Shelf”*

□ Preliminary information concerning French Polynesia

The preliminary information was filed by France on 8 May 2009 with the CLCS with a view towards giving information on the filing of a future submission over the outer limits of the continental shelf off the coast of French Polynesia. Due to the delay in the drawing up of the submission, this last file should be filed at the beginning of 2014. Delimitation agreements with the neighbouring states of Kiribati and the Cook Islands will require to be completed upon filing the submission to cover the extension of the continental shelf.

□ Data Collection: the POLYPLAC Campaign

A theoretical study conducted in 2003 showed that the French submission in certain zones off the coast of French Polynesia was justified.

Probably, for budgetary reasons, no EXTRAPLAC campaign in order to provide the necessary data and interpretations for the submission for extension was undertaken. Accordingly, France was obliged to file in May 2009, instead of and in place of a submission as initially planned, mere preliminary information.

Following this filing, again for budgetary reasons, the choice was made to carry out this acquisition of data across several missions. The POLYPAC campaign, organized in September 2012 on board the *Atlante*, attended to the acquisition of the necessary geophysical data off the coast of the Marquesas Islands alone. In this place, a rise extends towards the east of the Marquesas shelf beyond the limit of 200 nautical miles. The purpose was *“to study the natural prolongation of the archipelago of the Marquesas islands towards the deep-sea, along the oceanic rise¹⁸⁵”*. Other zones of Polynesia could form the subject of future operations, IFREMER having identified seven zones around this territory capable of leading to an extension of the continental shelf.

□ The filing of the preliminary information¹⁸⁶

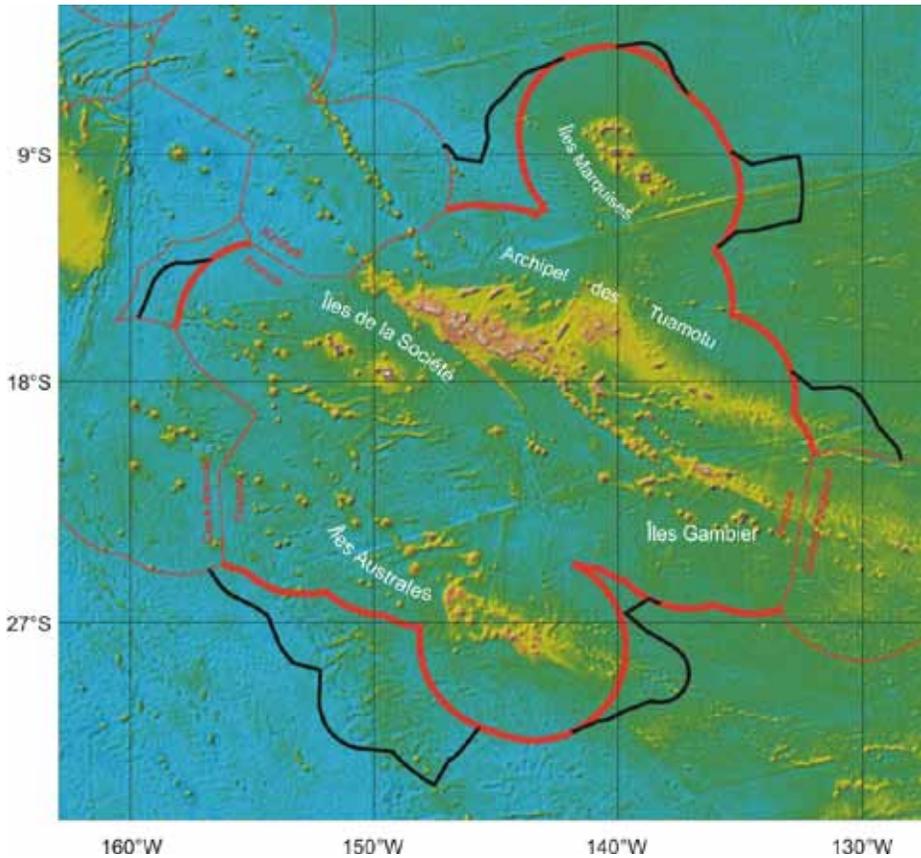
This preliminary information was provided without prejudice the complete submission regarding this territory, that France reserves the right to file at a subsequent date with the CLCS. The indicative position of the outer limit of the continental shelf off the coast of French Polynesia relies on the provisions 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 an estimate an estimate of four years for the time period for France to submit a complete file for the submission for extension for French Polynesia”*.

185 Press release, Nuku Hiva, « *Vers une extension du plateau continental en Polynésie : retour de la campagne POLYPLAC* », IFREMER, on 13 September 2012.

186 Preliminary information indicative of the outer limits of the continental shelf of French Polynesia and Wallis and Futuna, concerning the submission received on 8 May 2009, CLCS Website.

Diagram 14: Indicative outer limits of the extended continental shelf off the coast of French Polynesia (in black)



Source: Indicative Preliminary information regarding the outer limits of the continental shelf, in accordance with the decision appearing in the SPLOS/183 document of the eighteenth meeting of the States Parties to UNCLOS, concerning French Polynesia and the Wallis and Futuna Islands, 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 submission with CLCS

The Delegation for Overseas Territories of the CESE was informed that French Polynesia should see its submission filed by France during the first few months of 2014. A second POLYPLAC campaign was envisaged in 2013, in so far as the ships found themselves in the zone, to avoid transit costs. The preliminary information was provided without prejudice of delimitation between France and any other State. French Polynesia shares the same extended continental shelf with several neighbouring countries.

An agreement relative to the creation of a line of delimitation between the EEZ surrounding French Polynesia and the EEZ of Kiribati was signed 18 December 2012. This agreement in force also covered the continental shelf. A maritime delimitation agreement was signed and entered in force on 3 August 1990 between France and the Cook Islands. It covers the continental shelf and the EEZ of the two States along 1,195 km. The comparison of

the chart of preliminary information filed by France on 8 May 2009 shows overlaps with the submission of Kiribati from 24 December 2012 but not with that of the Cook Islands from 18 April 18 2009 which targets another zone. The French submission stopped, here again, on the 200 nautical mile limit of the Cook Islands, however on a limit which wasn't the object of the 1990 delimitation agreement. It is probable that the MAE preoccupies itself in order to arrive at the conclusion of a provisional arrangement with the Cook Islands capable of authorising the CLCS to examine the submission in this zone and give its recommendations. In its submission, Kiribati indicates that no dispute exists to the south over the zone of the extended continental shelf forming the subject of its submission. It is expedient to wait for the reaction of the Quai d'Orsay for verification, it being understood that the absence of some kind of agreement could prevent the examination of the respective submissions of both States in this zone.

□ The special case of Clipperton island

The preliminary information was filed by France on 8 May 2009 with the CLCS with a view towards giving information on the filing of a future submission over the outer limits of the continental shelf to the east and west of Clipperton Island. Delays having occurred in the preparation of the submission, preliminary information had to be filed. No delimitation agreement is envisaged to the extent that the French submission does not overlap with the submission of any third State. On 10 May France withdrew the filing of the preliminary information published on the CLCS site, without further announcements or fanfare. The submission could still be filed.

The status of Clipperton for a long time created a certain number of uncertainties in large parts raised by the constitutional law of 23 July 2008 which in the last paragraph of Article 72-3 of the Constitution mention Clipperton Island. This paragraph consequently provides that the law determines the legislative regime and the particular organization of Clipperton. According to the law of 21 February 2007 containing statutory and institutional provisions relative to Overseas Territories, Clipperton Island is henceforth subject to Title II of the law of 6 August 1955 defining the status of the French Southern and Antarctic Lands and Clipperton Island. This law puts the island under the principle of identical legislative arrangements and accordingly entails an automatic application of the laws and regulations of the Republic. This law as a result included Clipperton Island in the scope of the international treaties binding France. If from a statutory point of view, the island doesn't depend on French Polynesia, for practical reasons, the minister for Overseas Territories delegates the island administration to the representative for the State of Papeete.

The preliminary information concerning the continental shelf of Clipperton island beyond 200 nautical miles was filed on 8 May 2009 by France before the CLCS with a view 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 dossier and the forecast submission date of the submission. The extension for this territory is situated in the East Pacific ocean¹⁸⁷. The coasts of Mexico are located approximately 700 nautical miles to

187 The continental shelf of Clipperton Island shouldn't be confused with the area of polymetallic nodules of the oriental north pacific extending between the Clarion fracture belonging to Mexico and that of Clipperton belonging to France. Situated to the north of Clipperton Island beyond 350 nautical miles, this zone falls under the ISA and a part of it was subject to a mining permit of 75,000 km² attributed to France in 1987 as a pioneer investor.

the north-east and therefore there are no overlapping Mexican and French submissions. Clipperton Island constitutes a particular case in the French extension submissions because less than two days after the filing, France withdrew this preliminary information and this, without any explanation.

Data Collection

The theoretical study carried out by the SHOM in 2003 showed the justification of a French submission to the East and to the West of the Clipperton Island. It considered that a possibility of extension of the order of 25,000 Km² would exist for this islet on a fracture zone but resting on an interpretation of the concept of the foot of the slope which would still need to be confirmed. The continental shelf shows from east to west several breaks of the slope from the islet. This study recommends that the doubt on the choice of final location could be lifted by the bias of acquisition of additional bathymetric data for this zone.

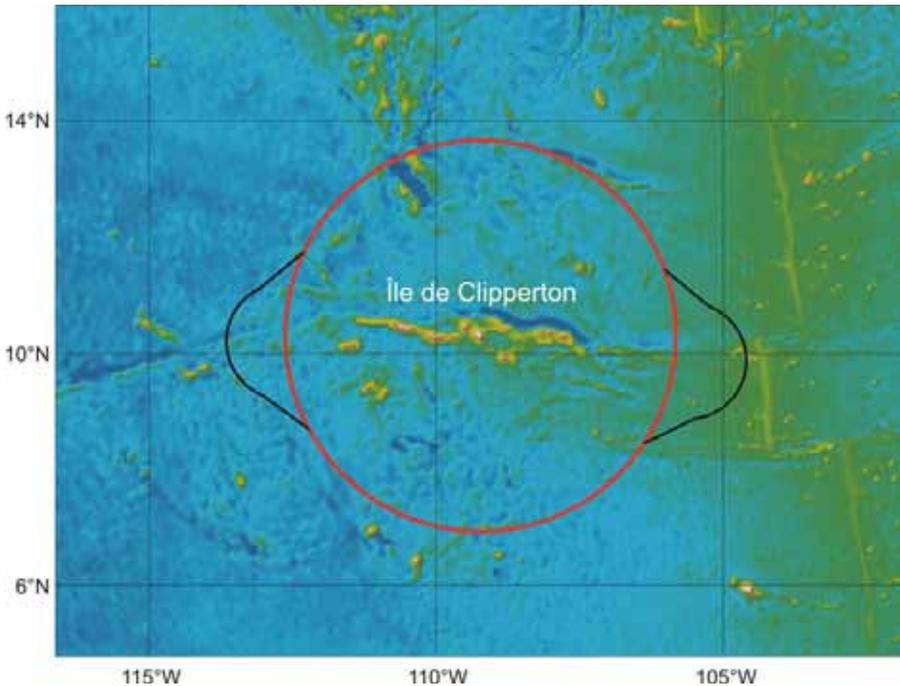
Probably for budgetary reasons, no oceanographic campaign occurred before May 2009.

The filing of the preliminary information¹⁸⁸

This preliminary information was provided without prejudice the complete submission regarding this territory, that France reserves the right to file at a subsequent date with the CLCS. The indicative position of the outer limit of the continental shelf off the coast of Clipperton was founded on the provisions of paragraphs 1 and 4 (a) (ii) of article 76 (Hedberg formula 60 nautical miles from the foot of the slope) 162 fixed points were determined for the east zone and 141 for the west zone. The distance between them doesn't exceed 60 nautical miles. The outer limit is situated at a distance not exceeding 350 nautical miles.

188 Indicative Preliminary information regarding the outer limits of the continental shelf, in accordance with the decision appearing in the SPLOS/183 document of the eighteenth meeting of the states party to UNCLOS. Clipperton. Submission received on 8 May 8 - Website of the CLCS.

Diagram 15: Indicative outer limits of the extended continental shelf off the coast of Clipperton Island (in black)



Source: Indicative preliminary information on the outer limits of the continental shelf according to the decision appearing in the SPLOS/183 documents of the Eighteenth Meeting of the States Parties to the United Nations Convention of the law of the sea – Clipperton, p. 2. (Projection: Mercator ; Bathymétrie GEBCO).

The preliminary information stated that it is necessary to obtain recent bathymetric data on the key positions, during a sea campaign of around 10 days, this zone relatively removed from normal oceanographic ship routes not being rich in public data. France considered 4 years the relevant time period for submitting a complete file. Today we can think that this campaign didn't take place as the preliminary information was withdrawn.

Nonetheless, it is appropriate to ask oneself about the reasons for which France performed such a withdrawal of the preliminary information. At the level of the submission procedure of this document, was there a dysfunction between services responsible for filing it and those making decisions whether filing or not? It is even so surprising to forward a submission to New York in order not to file. It is even more surprising to see the submission filed and then withdrawn. There was no plausible explanation given to the Delegation for Overseas Territories of ESEC despite repeated requests.

As to the underlying reason of the decision to withdraw the preliminary information, the Delegation for Overseas Territories 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 IFREMER allowed the submission which was prepared to be forwarded from Brest to New York if it was unfounded from a scientific point of view? For the SG Mer, it didn't want to upset Mexico, contrary to the statements of the MAE. What is the most surprising is that

MAE requested an arbitration of the Prime Minister on a strictly scientific file. The current study nonetheless tried to provide elements of the answer to the occurrence of this anomaly which raises substantive questions in the file of the extension of the continental shelf off the coasts of an overseas territory. The overseas delegation neither obtained nor found a satisfactory answer.

📄 A submission could still be filed with the CLCS

The French Island of Clipperton, or Passion Island, 1.7 km² of land surface discovered by a Frenchman on 3 April 1711, was the subject of a sovereignty dispute with Mexico which was ultimately settled by an arbitration of the Italian King Victor-Emmanuel III on 28 January 1931. Without the extension of the continental shelf, the area under 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)¹⁸⁹. France promulgates an EEZ by decree of 3 February 1978. Following law N° 2007-224 of 21 February 2007 and the ministerial order of 3 February 2008, French fishermen could fish in the waters of the EEZ with the authorization of the High Commissioner representing the State in French Polynesia. It is recalled that the island is not part of the territory while taking up this authority.

The information report of the Senate on behalf of the working group wrote *the Maritimisation* of 2012, maybe with some vagueness as the inspection would have taken place in 2005, prior to the 2007 fishing agreement, that “*France consider that it has an EEZ since 1998 (sic), one that never posed problems with Mexico until, three or four years ago, a French military ship confiscated an armament from illegal Mexican fishing armament and destroyed their fishing equipment. The Mexicans, relying on the United Nations Convention on the Law of the Sea, argued that Clipperton was unfit for habitation and, as a result, our EEZ unsubstantiated. As a result they threatened to take the matter before the international courts. France preferred to find an amicable agreement*¹⁹⁰”. The response of the Secretary of State of Overseas Territories published in the Senate Official Journal of 08/10/2009, p. 2370 to the written question N° 09607 by Mr. Christian Cointat published in Seante Official Journal of 17 July 2009, p. 1789, indicates: “*No French ship exploited these waters, France having concluded since 29 March 2007 an agreement for a renewable period of 10 years with Mexico which authorized ships under the Mexican flag to benefit from fishing licenses in the EEZ of Clipperton, including in the 12 nautical miles including the territorial waters. The said fishing licenses were issued by the high*

189 Jost Christian, “Clipperton. Jeux et enjeux géopolitiques et économiques dans le Pacifique nord-oriental”, *Diplomatie affaires stratégiques et internationales*, special issue N° 13. Geopolitical and geostrategic seas and oceans, August-September 2010.

190 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 the Armed Forces on behalf of the Working Group on maritimisation, N° 674, Senate, 17 July 2012, p 103. The report is not very precise in regards to the date of inspection because it mentions “*it was three or four years ago*”. 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 boat (...)*”. Source: <http://forummarine.forumactif.com/t5449-frégates-de-surveillance-classe-floreal>. It is this inspection which was the source of the 2007 fishing agreement of 2007 and not that of 2008 reported as follows. “*The Prairial also carried out (...) a patrol around the French island of Clipperton. At this time, two reports were drawn up for violations against foreign ships caught committing 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.

commissioner of the Republic in French Polynesia. The Secretariat for Overseas Territories could only regret the fact that this agreement had been signed for such a long time and didn't impose any counterpart, nor quota and net size limits 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 "application submission for a fishing authorization in the zone of Clipperton, recognized by the same as under French sovereignty"¹⁹¹ with great relief from the Quai d'Orsay. Regarding the amicable agreement, for his part, Mr. Élie Jarmache, SG Mer, stated before the Senate: "It would have 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 not without having, as a matter of form, surrounding the agreement with environmental and ecological considerations"¹⁹². The SG Mer doesn't seem to be in sync with the Secretary of State for Overseas Territories regarding 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 to Mexico. Voices in France are regularly heard to denounce "fishing by foreign armaments in the zone of Clipperton, [which] causes an impressive loss of income for the public finances"¹⁹³. 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.¹⁹⁴. In a statement of 13 January 2009 the Secretary of state for Overseas Territories, Mr. Yves Jégo, protested "we can't let the EEZ of Clipperton be plundered by the Mexican fishermen"¹⁹⁵. After the filing and the withdrawal by France of the preliminary information in May 2009, Mrs. Alliot-Marie, Minister for Home Affairs, of Overseas Territories and territorial communities, mentioned Clipperton on 9 June 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?"¹⁹⁶ On 30 November 2010, France filed a list of geographical coordinates of the points used to calculate the layout of the exterior limits of the EEZ of Clipperton Island. By a verbal note of 14 May 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"¹⁹⁷. This didn't prevent France, on 27 June 2012, from filing with

191 Jost Christian, abovementioned article, p. 55.

192 Senate information report N° 674, p. 103.

193 Yang Georges, "Clipperton, un atoll français du Pacifique (4) L'île de la Passion, de toutes les passions – Potentiel et perspectives économiques", Agora Vox, 3 December 2011.

194 Jost Christian, abovementioned article, p. 53.

195 Comments reported by Christian Jost, abovementioned article, p. 51.

196 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, 3 December 2011.

197 In translation: "The Mexican government submissions to hold in the area all rights granted to it under international law".

the General Secretary of the United Nations a sea chart showing the outer 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.

The only question that seems important is to know the legal status of Clipperton Island in the framework of UNCLOS. Is this an island in the sense of the Article 121 of this Convention and consequently benefiting from a continental shelf and an EEZ up to 200 nautical miles, as well as a continental shelf extended beyond that? Is this 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 is questioned by Mexico regarding the status of the Clipperton Island undermined by the same all the interest of this State to the sovereignty over the island: no more fishing and no more exclusive mining; only a territorial sea of 12 nautical miles!

But it remains that it is difficult to understand the position of France of not filing a submission for extension for Clipperton. Is it not illogical not to file a submission for extension of the continental shelf justified scientifically and at the same time submission a continental shelf and a EEZ in the 200 nautical miles, as France has just reiterated, conceding the fishing licenses only to Mexican ships and in filing in November 2010 and in June 2012 the outer limits of its jurisdiction over the maritime area up to 200 nautical miles and its sovereign rights regarding the resources of the continental shelf off the coast of Clipperton Island, that Mexico rejected in issuing protests?

The filing of a submission for the continental shelf off the coast of Clipperton Island appeared justified in as much as the objections of Mexico to such filing undermined the foundations of the fishing agreement in the 200 nautical miles around Clipperton concluded in 2007 between France and this State and all its submissions to rights beyond 12 nautical in the event that its submission over 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 competing submissions of any third State. The non filing of a submission would authorize an application for a license for prospecting minerals with the ISA and the grant of the latter in an area that it could therefore consider as located within the internal limits of the Area.

It is fortunate that Article 77 of UNCLOS still allows France to file a submission of extension of the continental shelf off the coast of the Clipperton Island even if it means a risk of not being examined for around twenty or thirty years.

The offshore territories for which no submission or preliminary information has been filed: The Scattered Islands and Mayotte

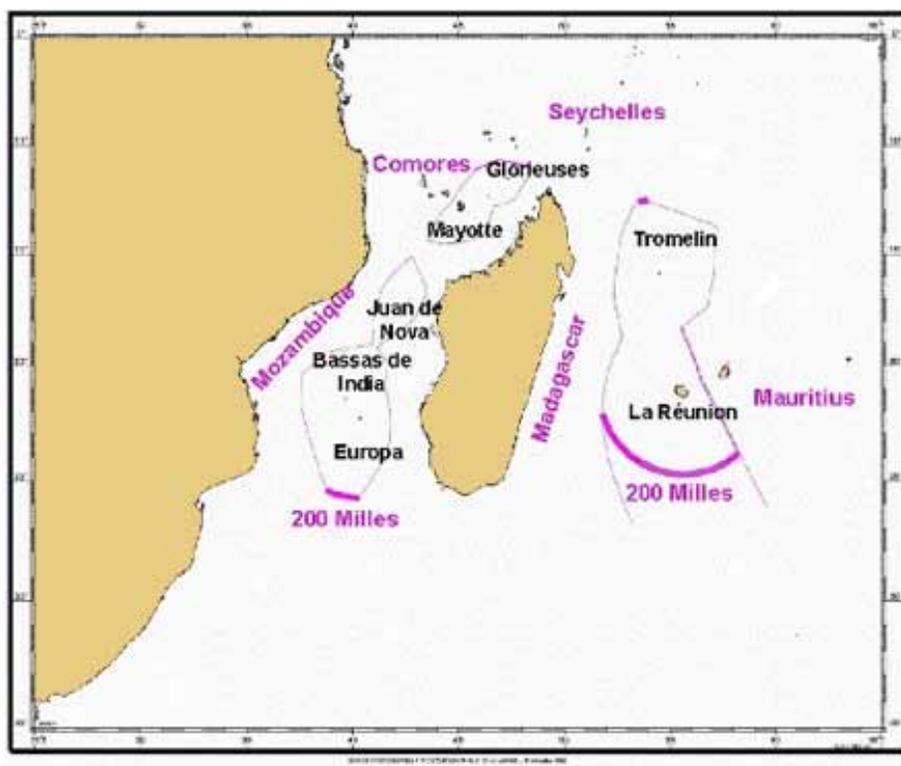
For the Overseas Territories of the Indian Ocean of the Scattered islands and Mayotte, no submission for the extension of the continental shelf or preliminary information indicating the outer limits of the latter has been filed with the CLCS as at the date of 13 May, 2009, as it was considered that the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

In the French Southern and Atlantic Lands, group *sui generis*, the fifth district is that of the Scattered Islands in the Indian Ocean : Bassas da India, Europa Island, the Glorioso Islands, Juan de Nova Island and Tromelin Island. With reference to the island of Mayotte,

it is classified as an Overseas Delegation by virtue of Article 73 in the Constitution. The geopolitical Atlas of maritime areas¹⁹⁸ geographically separates Tromelin from the Scattered Islands: “three of them are located in the Mozambique channel, Glorioso (5 km²) to the north of the Channel, Juan de Nova (5 km²) towards the centre and towards the south Europa (30 km² ...) to which it is expedient to add Bassas da India which is presented on nautical charts as a crown of coral reef 35km in circumference. Tromelin Island (1 km²) is situated in the Indian Ocean 535km to the north of Reunion and 600 km to the East of Madagascar”. For the purposes of this study, it appeared logical to group all these islands with that of Mayotte 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 submissions regarding these islands emanate either from Madagascar, the Comoros Islands, or even Mauritius.

Diagram 16: Situation of the Scattered Islands and Mayotte in the Indian Ocean



Source: Extraplac - IFREMER.

 Data Collection

198 Ortolland Didier et Pirat Jean-Pierre, *Atlas géopolitique des espaces maritime*, Éditions TECHNIP, 2nd edition, 2010, p. 116.

The theoretical study carried out by 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 a slope and on the optimistic public bathymetric data. In addition, the thickness of sediment encountered doesn't present the possibility of extension. French sovereignty over Europa Island is contested by Madagascar.

A scientific campaign was carried out in 2007 in collaboration with Mozambique on board the Marion Dufresne¹⁹⁹.

📄 No filing of preliminary information

No preliminary information had been filed by the deadline of 13 May 2009, because the scientific data collected since 2003 could not have been sufficient to justify the test of affiliation.

The Bassas da India Islands, the Glorioso Islands, Juan de Nova Island, Island of Tromelin and Mayotte were endowed by French law with a continental shelf that doesn't extend to 200M because of the presence of other States. Their outer limit in the 200 nautical miles is also determined by the overlaps of the submissions of third States for the continental shelf in the absence of delimitation agreements.²⁰⁰ Europa Island is endowed with a continental shelf expanding up to the limit of 200 nautical miles. 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 that of 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 imposed by the scientific and technical directives established by the CLCS in 1999 with regards to the satisfaction of the test of affiliation wouldn't be fulfilled for France. *Walter Roest confirmed during his statement that following a campaign in the sea to the south of Europa Island, it had been established that the extension wasn't geologically justified*²⁰¹.

The neighbouring States haven't remained inactive in this zone, in particular Mozambique which, after delivering preliminary information on 11 May 2009 filed a submission on 7 July 2010 which covers the continental shelf to the south of 200 nautical miles of Europa Island, that which France had focused on which wasn't achieved. The submission informs that the claimed area does not form the subject of any dispute with neighbouring States. This comment was aimed in particular at France, even if the latter wasn't mentioned, as their two continental shelves meet on the 200 nautical miles limit of Europa²⁰². In the absence of conquest of an expanded continental shelf, France will have the satisfaction of seeing Mozambique recognise a French continental shelf 200 nautical miles to the south of Europa. IFREMER is officially cited as an organisation having provided

199 Source: note accompanying the presentation of Mr. Jean-Yves Perrot, CEI of IFREMER, at his hearing before the members of the delegation for Overseas Territories, on 25 September 2012.

200 The only existing agreement is that of 19 February 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.

201 Statement of Mr. Walter Roest before the members of the Delegation for Overseas Territories, on 26 June 2012.

202 The fixed point MOZ-OL-01 is located on the 200 nautical miles of the Island of Europa in invoking Gardiner's formula (thickness of sediment).

its assistance to Mozambique by participating in the collection and analysis of additional data. The Delegation for Overseas Territories didn't collect supplementary information on the continental shelf to the south of Europa that France succeeded in sharing with that of Mozambique.

Madagascar filed a submission on 29 April 2011 that didn't aim for the zone of the continental shelf concerned at 200 nautical miles south of Europa.

The Seychelles filed preliminary information on 8 May 2009 for area located to the North West (region of Aldabra Island), very far from the Glorioso Islands.

Mauritius has submissions of sovereignty over Tromelin²⁰³. This State filed a joint submission with the Seychelles on 1st December 2008, regarding the continental shelf zone located to the north east area and well beyond 200 nautical miles from Tromelin Island. The French law of 1968 allocated a continental shelf up to 200 nautical miles which is covered by the framework agreement on the joint economic, scientific and environmental management relative to the Island of Tromelin and its surrounding maritime areas concluded on 7 June 2010 between France and Mauritius. It *"sets the scope of the submission which includes 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 as well as off the coast of Mauritius Island"*²⁰⁴. As indicated in the impact study of the government bill *"[i] there wouldn't be question that France eschewed the sovereignty over Tromelin not only on principle but also because that could have an impact on the other disputes relative to the French Overseas possessions, in particular those with Madagascar regarding the Scattered Islands located in the Mozambique channel. Each of the States keeps to its position regarding the question of sovereignty or territorial and maritime jurisdiction for 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 has filed its own submission and already obtained its recommendation from the CLCS.

For their part, the Comoros filed preliminary information with the CLCS on 2 June 2009. Its extreme simplicity gives evidence of the state of progress of the submission. It doesn't give any indication regarding the exterior limits of the extension and regarding the date of

203 Following the promulgation of the decree of 3 February 1978 creating the EEZ around Tromelin, Mauritius protested on 1st March of the same year reiterating that the Island and its maritime zones form an integral part of Mauritius. On 18 December 2009 France files with the United Nations a list of geographical coordinates of the points defining the outer limits of the EEZ off the coast of Tromelin. Mauritius protests on 17 May 2011. The submissions of Mauritius over Tromelin were withdrawn on 10 December 2010 at the time of its ratification of the agreement relative to fishing in the south of the Indian Ocean. It was accompanied with an interpretative statement as follows: *"(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), *Sentinelles Bulletin* N° 310, on 1st July 2012

204 Senate, *government bill N° 299 (2011-2012) authorizing the approval of the framework agreement between the Government of the French Republic and the Government of Mauritius regarding the economic, scientific and environmental joint management relative to the Island of Tromelin and its surrounding maritime areas*, 25 January 2012, p. 4.

the filing the submission. No French extension is disputed in this part of the Mozambique Channel²⁰⁵.

Conclusion

The extension of sovereign rights over the natural ground resources and beneath the sea on the expanded continental shelf by France and authorized by the UNCLOS, is in the process of completion. The objective fixed in 1998 of filing all possible submissions for extension before May 2009 will only be partially achieved by this date as only five submissions out of the nine possible will have been filed. In 2013, there are still four to be completed. The strategy set up starting in 2003 regarding the scientific, diplomatic and economic preparation of the submissions was met with difficulties which filled the review of the French continental shelf extension with gloom.

Three internal difficulties were brought up: financial, technical and diplomatic. They are at the root of the prejudicial delays in the filing the submissions, have deprived the Overseas Territories of a part of the surface area claimed and have contributed to the absence of presence of the State in the sea *a fortiori* of action in the sea. These difficulties have in addition lead to the failure of the French diplomacy in the preventive resolution of disagreements preventing the examination of some submissions. They did not allow after the release of the recommendation by the CLCS the quick conclusion of the delimitation agreements necessary to the fixation and the publication of the outer limits of the expanded continental shelf.

It is expedient to add the absence of the implementation, prejudicial to 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 submission from coastal States to be examined by the CLCS, the latter found itself confronted with an overload of work which wasn't accompanied by sufficient financial and human resources.

All these difficulties have caused a delay in the conquest of the extension, delay which increased dramatically to the extent that the filing deadline for each new submission gets further from 9 May 2009. Two or three years between the filing of a submission and the issuing of a recommendation before 2009, ten years for those filed in 2010 and between fifteen and twenty years or more for those filed in 2013.

The extension allowed France to play a trump card, that of the affirmation by French jurisdiction over the space of the continental shelf and sovereign rights over the natural resources that it includes. 660,000 km² which may contain resources have been conquered so far. There only remains three times the amount to conquer.

205 On 5 December 2001, three African countries signed an agreement delimiting their borders. It concerns the delimitation maritime agreement between Mozambique and the Union of the Comoros, Tanzania and the Union of the Comoros Tanzania and Mozambique and the agreement between Mozambique, Tanzania and the Union of the Comoros regarding the tri-point 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*, 19 February 2012.

It is urgent that at the same time as pursuing the conquest, plans for exploring and exploiting of the natural resources should be established with a view towards favouring sustainable development of the Overseas Territories, principal generators of the extension.

In a second chapter, it is appropriate 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 that of the marine environment by sustainable development, on the other, with a view towards the growth of the wealth of the state, the overseas communities and their populations.

Table 1: Extension area of the Continental shelf beyond 200 nautical miles

Name of the Area	Location (N 1)	Surface areas of maritime space below 200 nautical miles (in km ²)	Surface areas of the extended continental shelf having formed the subject of a recommendation (in km ²)	Surface areas of the extended continental shelf having formed the subject of a submission or of preliminary information (in km ²)	
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 Guyana	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 the 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)
The Kerguelen Archipelago	OI	547,000	423,300		
Crozet Archipelago	OI	562,000		541,288	(N 3)
Adélie Land	O An	112,000			
Clipperton	OP	434,000		25,000	
New Caledonia	OP	1,364,000			
Southwest file			76,000		
Southeast file					
French Polynesia	OP	4,804,000		814,842	(N 3)
Wallis And Futuna	OP	266,000		17,329	(N4)
Total		10,346,000	663,300	1,847,244	
<p>Source: Websites of the Ministry of Overseas Territories, of French Southern and Antarctic Lands, of SHOM, of IFREMER</p> <p>N 1: OA (Atlantic Ocean), OI (Indian Ocean), OP (Pacific Ocean), O An (Antarctic Ocean)</p> <p>N 2: area to be shared with Spain, Ireland and the United Kingdom</p> <p>N 3: estimation by IFREMER</p> <p>N 4: area to be shared with Tuvalu and Tokelau</p>					

Managing the extension of the Continental shelf

The possible acquisition of sovereign rights over the natural resources of the seabed and the subsoil over almost 2 million km² on the expanded continental shelf thanks to the EXTRAPLAC programme, of which the report has just been drawn up, would barely have meaning if it was limited solely to the satisfaction of having obtained an increase of space, as vast as it is, over the seabed and the subsoil. This space acquired and in the process of being acquired thanks to the Overseas Territories, spread over the world, is considerable. It represents 3 times the surface 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 strengthen its State presence in the sea, as well as the most exhaustive knowledge possible of the resources of its seabed and its 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, and adapted provisions for the protection of the environment, specifically on the biodiversity and marine ecosystems, as well as the close involvement of the overseas authorities for the economic and social development of the populations concerned.

To conquer sovereign rights over the natural resources of the seabed and the subsoil over the expanded continental shelf would remain in vain if France doesn't face its obligations and responsibilities that this conquest demands.

Resources of the Extended Continental shelf, knowledge 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 over which sovereign rights are attributed to it. 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-living resources** of the seabed and its 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 subsoil.*
- Such as defined by Article 77, the rights of the coastal State over its continental shelf are therefore:
 - **Sovereign and exclusive:** These rights for the purposes of the exploration and exploitation of the resources of the expanded continental shelf are sovereign rights of which the exercise and use are exclusively reserved for the coastal State. Only the coastal State can thus conduct exploration and exploitation activities on the expanded continental shelf or authorize another State which shall have made the request;
 - **Independent:** "these rights do not depend on occupation effective or notional, or on any express proclamation" which means the rights exist without interventions from the State (contrary to the rights of the EEZ that the State must proclaim expressly);
 - **Limits to 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 resources not yet discovered. A list of these resources therefore does not exist in the Convention.

- This part of the study attempts to make an inventory of the resources of the extended continental shelf. It rests on the scientific work²⁰⁶ carried out on the continental shelf beyond 200 nautical miles and in the Area managed by the ISA.

It concerns:

- Hydrocarbon resources²⁰⁷;
- Hydrothermal sulphides;
- Cobalt crusts;
- Polymetallic nodules;
- Natural hydrogen;
- Rare earths;
- Living resources²⁰⁸
- Living organisms which belong to sedentary species.

Today, with the predictable and progressive depletion of easily accessible onshore natural resources, the technological progress, the emergence and the competition of particularly dynamic countries in the investigation of the marine environment (China, India, Korea), the ocean is a vast field of wealth, certainly still little known, but that we know is precious and that could respond to the meet global needs in energy and those necessary to the development of new technologies. All these countries are already positioned for researching resources of this vast sea domain which occupies 71% of the earth's surface of which 60% is more than 2,000 meters of depth. Thus, we measure the interest of the coastal States to pursue their approach of appropriation of maritime spaces within the limits of this new frontier which is made up of the expanded continental shelf.

Energy mineral resources: hydrocarbons

"The mineral resources" are a well known category in the international marine depths. Article 133 of the Convention indicates that these resources are solid, liquid or gas.

Petrol results from the thermal degradation of organic material in certain rocks. There are fossilised remains of aquatic or land vegetation and bacteria which have accumulated at the bottom of the oceans, lakes or in the deltas. For around ten million years, new sediments will continue to accumulate, carrying the parent rock to the deep oceans.

Mr. Vially²⁰⁹ recalled, during his statement before the Delegation for Overseas Territories, that an petroleum system refers to all the geologic conditions allowing to generate and

206 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.

207 For IFREMER, the "other non-biological resources" mentioned in paragraph 4 of article 77 of the Convention refer to hydrocarbons.

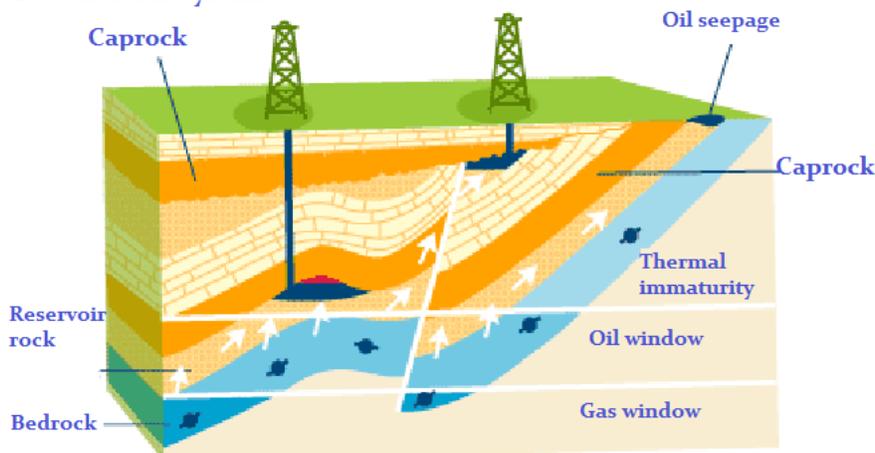
208 Biological resources, although not cited in Article 77 of the UNCLOS, nonetheless form part living organisms of the expanded continental shelf.

209 Statement of Mr. Roland Vially, project manager of evaluation of resources and reserves within l'Institut français du pétrole et énergies nouvelles (the French Institute of Petroleum and new energies - IFPEN), before the members of the Delegation for Overseas Territories, on Tuesday 25 September, 2012:

accumulate hydrocarbon. It is comprised of several elements: organic matter, namely the parent rock which is a rock rich in organic material, porous rock which is permeable and allows hydrocarbon to accumulate, cap rock which prevent hydrocarbon, lighter than water, from regaining the surface constituting a trap which forms deposits.

Schema 1: Elements of a petroleum system

■ **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 from the erosion of the continents are deposited 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 the 4 above mentioned elements: the parent rock, reservoir rock, cap rock and the trap which condenses the resource. The work of the 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 submissions for extension have enabled the identification of 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 Adélie Land**. All these territories correspond to the zones where the thickness of sediments 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 a depth of 785 meters, quantities of methane hydrate 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 the seabed conceals, would be important.

□ *The Case of Guyana*

In Guyana, before the scientific work carried out within the framework of the EXTRAPLAC programme, the relative knowledge of the Guyana continental margin had been weak.

The bathymetric charts and the seismic data showed incredible sedimentary thickness of the continental margin despite the extremely significant depth of the water, favourable geological situation to the presence of hydrocarbons. In 2007, the Jubilé oil field, located in the South Atlantic Ocean, was discovered by *Tullow Oil* in the waters of Ghana. It began to produce petroleum in 2010 at a depth of 1,100 metres and today it supplies 110 000 barrels per day or the equivalent of 6 to 7 % of French consumption. By geological analogy²¹⁰ and thanks to the data already acquired by EXTRAPLAC, a first phase of exploration was carried out on the Guyanese continental margin with the Zaedyus 1 well which revealed the presence of petroleum. Before considering exploitation, it is necessary to evaluate the profitability of the deposit: volume of reserves retrievable and conditions of production can actually be determined only in proceeding with drilling delineation with a view to delimiting the oil field.

Indeed the major part of the zone where the oil sheets are found are located within 200 nautical miles 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 discovered²¹¹. The proximity of Guyana of the important markets which the neighbouring countries represent is equally an extra asset which advocated for the development of this sector of activity.

□ *The Case of Saint Pierre and Miquelon*

With regards to Saint Pierre and Miquelon, the available data is 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 Miquelon is fully part of this sedimentary basin. During his statement, 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 an altogether promising case. The evaluation charts show that the narrow French passage, even reduced, proves particularly interesting regarding its potential for petroleum. The single exploration well that of Bandol, recognised a zone which marked interest. In reality, the most promising zone is located 100 to 150 km further south. This maybe the reason for which the oil company (ConocoPhillips), which worked in Bandol, hastened to acquire the all of the exploration licences “ensnaring” the French EEZ. On the other hand, Saint Pierre and Miquelon 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 (OJ) Union on 1st June 2010 is still waiting for an answer from France. These individual examples show the interest which the French continental shelf off the coast of Saint Pierre and Miquelon could present for the large North American operators, whereas only a single French operator is currently displaying its interest for the zone, which could be regrettable. The interest of Saint Pierre and Miquelon also resides in the fact that it is located near the large consumer

210 This analogy rests on the fact that several millions years ago, South America and Africa formed only one solid block and French Guyana brushed against the current place of Ghana.

211 Statement of Mr. Julien Denègre, Business Development Manager at TECHNIP, before the members of the Delegation for Overseas Territories, on 23 October 2013.

countries that are Canada and the United States. The narrowness of its EEZ wouldn't fail to be compensated by the extension of its continental shelf estimated to be an increase of surface area corresponding to 350% of its EEZ²¹².

□ *The Case of New Caledonia*

The territory of New Caledonia was the first to express its interest for knowledge of the topography of the seabed of its economic zone and for the evaluation of the resources it harbours. A working 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 three Provinces associated themselves with research institutes, to construct and initiate the multidisciplinary economic Zone programme of New Caledonia (ZoNéCo). This programme had as a principal objective gathering and making accessible the necessary information for the inventory, the appreciation and the management of mineral and living resources in the exclusive economic Zone of New Caledonia.

Thanks to the results of the ZoNéCo and EXTRAPLAC programmes, the existence of the important sedimentary basins has been proven a very large depth of water. Thus there is a strong probability of finding hydrocarbon liquid there (Fairway basin for example) or exploitable gasses in the *deep offshore*. There would similarly be equal potential of hydrocarbon in the west zone along the Lord Howe Rise according to IFREMER.

□ *The Case of Adélie Land*

In Antarctica, French sovereignty over Adélie Land exercised in the context of the Antarctic Treaty of Antarctica signed in Washington in 1959 which established a "freeze" of territorial submissions and affirmed 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 gas and oil fields have been found there. By geological analogy and based on the Australian data collected for documenting the extension of their continental shelf, the existence of important sedimentary basins within the Antarctic continental margin allows the potential for hydrocarbon to anticipated even if it is totally virtual for the moment. The actual status that the Antarctic Treaty attributes Adélie Land doesn't allow possible exploration and exploitation activities to be contemplated in the short terms and quite obviously poses the question of the presence of the environmental dimension.

In the current context of still major world dependence with regard to hydrocarbons (notably in the transport domain), these reserves present an important strategic challenge. But it is appropriate to recall that the exploration and exploitation of hydrocarbons in the sea impacts upon the marine ecosystems and environment, but also presents industrial and environmental risks. The greatest vigilance is therefore essential as to the perturbations and damage that could drive the exploration and exploitation of offshore activities at sea. The

212 See note N°3 Ocean Mineral Resources, September 21, 2012, Ifremer/DGOM/12/DP/054/PhL.

strategic environmental evaluations (SEA)²¹³ must allow a greater recognition of these risks. French and European regulations are in the process of being reviewed to better integrate the environmental impacts, inadequately taken into account today.

Hydrothermal sulphides

Circulation of fluids in the oceanic crust at the level of the rifts zones of 60,000 km of oceanic ridges is favoured by the presence of heat and faults contained therein. The hydrothermal activity which results from it is translated by an important concentration of metal present in the form of a cluster of sulphur clumps.

It was in 1962, in the Red Sea, that the first hydrothermal mineralisation associated with hot brines (70° C) was observed. It was at close to 3,000 meters deep on the East Pacific ridge that the first black smokers (350° C) were noticed in 1978. Thus, at depths located between 800 and 4,100 metres after 30 years of exploration in all the oceans, nearly 150 hydrothermal sites were discovered.

The hydrothermal sulphurs are distinguished by crusts and nodules by their strong enrichment in base metals. These sites harbour copper and zinc and are generally rich in silver and often gold. In the Atlantic, certain sites present significant cobalt content. When it is a question of mineralization 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 formed 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 the exploitation of which in principle would generate little which and the location of which on the seabed doesn't require the excavation of tunnels like on land. Hydrothermal mineralisation has been studied by submersibles and by dredging, these two techniques allowing the sampling of the surface. In addition, the infrastructures on the ships are easily moveable. 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 would be negligible.

The knowledge and the research of the hydrothermal sites, active and especially inactive, remain to be deepened. The technological world leader in this domain is French, namely TECHNIP. In the case of exploitation, it is especially the inactive sites that would be affected.

In the Area, under the authority of the ISA, beyond the extended continental shelf, the most active countries are China, Korea, Russia and India. **The missions of IFREMER have permitted hydrothermal sulphur sites to be found in the potential 350 miles to the East of Clipperton and equally to show the extensions of the Saint-Paul and Amsterdam Islands which also have potential for hydrothermal mineralisation²¹⁴.**

213 By SEA we mean "the analytic and participatory approach to strategic decision taking which aims to integrate environmental considerations in polities, plans and programmes and to evaluate their interactions with economic and social considerations". The Organisation for Economic Co-operation and Development (OECD), *the strategic environmental evaluation, handbook of best practices in the domain of cooperation for development*, 2006, p. 18.

214 See note N°3 Ocean Mineral Resources, September 21, 2012, Ifremer/DGOM/12/DP/054/PhL.

Cobalt crusts

These crusts exist where during several million years a low level of sediment, combined with strong currents, prevented sedimentation.. They are found associated with the sub-marine Intra-plate elevations, with the isolated sub-marine mountains, as well as the volcanic alignments. These crusts vary from a few centimetres to 25 centimetres of thickness and could cover a surface of several km² at depths of 400 to 4,000 metres.

It's in the Pacific and notably in French Polynesia that the deposits present the strongest cobalt and platinum potential at depths located between 1,500 and 2,000 metres.

The crusts are above all composed of iron oxides and manganese oxides and are on average three times richer than the cobalt and platinum nodules. We can equally find on these sites rare elements (yttrium Lanthanum, cerium, titanium, thallium, zirconium, tellurium, molybdenum) which exist in interesting concentrations.

In short, the rare earth, 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 for exploiting the cobalt crusts. In this domain, but below 200 nautical miles, the most active countries are Japan, the United States, Korea, China, Brazil and France. In most of the zones of the French continental shelf, the extension could affect the crusts existing on any hard substratum or the nodules.²¹⁵.

Polymetallic nodules

The nodules are dark balls from 5 to 10 cm in diameter that are found on the seabed in all the oceans from 4,000 meters deep. The fields with the strongest density were recorded from 1973 in the Clarion Clipperton zone in the North Pacific.

They contain above all manganese hydroxides and iron hydroxides and are frequently enriched with nickel, cobalt and copper. They present, notably in the Clarion Clipperton zone, interesting contents in copper (0.8%), nickel (1.2%), manganese (25.4%) and have been the subject of the granting of numerous permits. These nodules are two times more concentrated than those of the Andean mines which supply 34% of global production. They are considered as strategic reserves of base metals and of certain rare metals (cerium 0.1%). The still uncertain technologies for exploitation 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 oceanic rock minerals and the role that it plays in the redox reactions taking place during the interactions of sea water with the rock in hydrothermal circulation. Also thanks to the hydrogen numerous metal elements (i.e. titanium, vanadium, chromium, cobalt, molybdenum, tungsten, uranium, and thorium, gold) could circulate in the mantle. Scientists have also discovered the production of hydrogen in large quantities along the oceanic ridges and in the subduction zones. But global flows of hydrogen are actually not well known and still require a deepening of knowledge of the seabed and subsoil.

215 See source IFREMER, note N°3.

Rare earths

The rare earths are these mineralisations which concentrate around 15 metals already mentioned in this study: selenium, molybdenum, tellurium, cadmium, germanium, barium, etc.

These rare earths are associated with various mineralisations found in the depths: cobalt crusts, sulphur piles, polymetallic nodules; the concentrations are very mixed depending on the zone.

These rare earths are extremely sought after because of their *“electromagnetic and chemical properties, vital to state of the art technologies, ranging from semi conductors in the defence industry to telephony, but also renewable energies, like the Neodymium kilogramme necessary for making the engine for the Prius, a hybrid car from Toyota, not to mention solar and wind power^{216”}*.

Thanks to these elements, the Smartphone has a calculation power that would have required 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 sustainable development also utilise these elements. We find the neodymium in the wind turbines, electric cars often containing up to nine types of rare earths. Yttrium allows the formation of compounds thanks to which the LED screens and the fluorescent light bulbs emit light.

Living resources

It is appropriate to report the living resources, although article 77 of the UNCLOS doesn't mention them specifically as resources of the continental shelf. During his statement, Mr. Bersani²¹⁷ reported *“intense life”* existing at the depth of 4,000 metres. The IFREMER study²¹⁸ highlights *“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 tens of microns to a few millimetres) and of micro-organisms. An American study carried out on the North West Atlantic continental slope located between 1,500 and 2,500 meters deep estimated that there are approximately 10 million benthic species living at these depths. Generally speaking, scientists acknowledge the magnitude of the uncertainty about the number of deep sea and benthic species which could be found in the oceans. In fact, it is estimated that only 5% of the oceans have been explored systematically to date.

This vitality of life obviously attracts large industrial and commercial groups active in the extremely profitable medication and cosmetics markets. *“The genetic resources of the deep seabed have enormous potential for a variety of commercial applications, notably in the medical sector, industrial process or in bioremediation. A research of databases relating to patent offices revealed that compounds of seabed organisms have been used as the basis of powerful medications intended to fight against cancer, commercial dermatological products providing*

216 Poirier-Coutansais Cyrille, *“L'Eldorado maritime : entre prédation et gestion concertée”*, in revue *Études*, tome 415/3, September 2011.

217 Statement of Mr. Bersani in private interview with Mr. Grignon, rapporteur of the study, on 26 November 2012.

218 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.

greater 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 marine genetic resources. The high cost of scientific marine research and the low chance of success (only 1 or 2% of the preclinical candidates are commercialised) are compensated by the potential benefits. Actually, the worldwide sale of all products derived from marine biotechnology in 2000 was estimated at 100 billion US dollars²¹⁹.

Besides the necessary effort to research, obtain knowledge of and inventories the ecosystems and the living resources of the marine environments, France must develop regulations adapted²²⁰ to the objectives of the international convention.

Living organisms belonging to sedentary species

Concerning Living organisms “which belong to sedentary species, that is to say, organisms which, at the harvestable stage, are either immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.”, no list of species mentioned has been drawn up. This wording would signify that the coastal State exercises its sovereign rights over the only species restricted to the bottom, such as the exploited benthic species (flat fish, shellfish). These living organisms pertaining to the sedentary species, on or under the seabed, where they are unable to move without keeping in physical contact with the seabed or subsoil, which are included in this definition are molluscs, such as abalones, ormers, oysters, scallops, various shellfish such as lobsters and crayfish, sea cicadas and crabs, as well as the echinoderms such as sea urchins, starfish, sea cucumbers, sea sponges, corals and other worms. Exploitable plant species similarly form part of these resources for example, seaweed and algae²²¹. 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 as a species mentioned at article 77, paragraph 4 of the Convention, based on a scrupulous analysis to know if as they move, they lose contact with the seabed or not. We can imagine that the shellfish and certain shells make up part of the targeted species, but obviously, the subject calls for clarification.

Finally, the extended continental shelf occupies a space on the seabed and subsoil above 200 nautical miles offering a potential for rich, varied and significant resources 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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219 United Nations Programme for the environment (UNEP) *Marine and coastal biological diversity – situation and dangers to which the deep sea genetic resources located outside the limits with the national jurisdiction are exposed and identification of the technical options for their conservation and their sustainable utilisation*, note from the Executive Secretary of the Convention on Biological Diversity (CBD), UNEP/CDB/CBS/TTA/11/11, 22 July 2005.

220 Poirier-Coutansais Cyrille, « L'Eldorado maritime : entre prédation et gestion concertée », revue *Étude*, tome 415/3, September 2011.

221 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 from the different people heard, and in particular the executives of scientific and technical organisms (IFREMER, IFP, TECHNIP, Eramet . . .) that despite the scientific missions undertaken but still covering still areas too limited to be sufficiently exhaustive, the knowledge and identification of the resources of the continental shelf and more particularly of the extended continental shelf remain very incomplete and demand more ambitious investment. Furthermore, the association with these different missions of private interests (in particular oil interest), indeed the only private initiative, entails a certain confidentiality as regards to the publicity of the information acquired regarding these resources whereas diverse missions and scientific work clearly allow hopes to emerge that the wealth of the ground and underground marine floor elicits.

The conquest of these new rights over the exploration and exploitation on the extended continental shelf confronts our country with the responsibility to watch and control these spaces with, for the purpose of knowing and protecting the resources that it includes. If the State does not intend to give way to the interests of private research, it shall be responsible, particularly thanks to its first class operators²²², to increase its knowledge concerning the resources of its seabed and the subsoil, of the ecosystems surrounding the same and the impacts and implications associated with human activities. This knowledge can be improved through a coordinated programme involving the all the social-economic actors who gather precious data in the context of their activities. These efforts regarding research and development need significant human, technical and financial resources In this context, and taking account the fact that these challenges go beyond the strict national context, it matters, on the one hand, that these actions are to be conducted together with the corresponding international and community programmes - especially the Technological Research and Development Main Programme (TR&DMP), and, on the other hand, that they fully integrate in a real strategy of regional cooperation, on the scale of each regional cooperation zone. This responsibility obviously leads to mentioning the legal framework in which the exploration and exploitation activities can be conducted 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?

UNCLOS provides no indication with regards to the legal framework of exploration and exploitation activities (EEA) of the resources of the extended continental shelf²²³. 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 exploitation licences and to define the technical specifications referring to the

222 IFREMER, SHOM, Agence des aires marines protégées (Agency for Marine Protected Areas), IRD, CNRS, universities, BRGM, ONEMA, water agencies, Météo-France, IGN, CNES, MNHN, IFPEN, CEA, CEMAGREF, IPEV, CEDRE.

223 Interview of Mrs. Virginie Tassin, Doctor of Law, with Mr. Grignon, rapporteur, on 8 October 2012.

obligations of the contracting party with regards to the State and the local authority in question, the provisions establishing the respect and the protection of the environment, the social exploration and exploitation conditions, the taxes on production.

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

□ *The extended continental shelf and the high sea*

The circumstances in which the EEA will take place on the extended continental shelf are very different from these on the continental shelf at less than 200 nautical miles. Indeed, if at less than 200 nautical miles the continental shelf is overhung by a water column which belongs to the coastal state's EEZ (article 56 of UNCLOS), the extended continental shelf is overhung by the high sea, international area of freedom (article 87 of the Convention). These EEAs of the extended continental shelf cannot happen without disturbances of the subsoil and the water column that hangs over it. The works destined to these activities on the continental shelf are authorised by article 80 of the Convention, which refers to the article 60 that defines them (artificial islands, installation of works for the purposes specified in article 56 or to other economic purposes)

If the regime applicable to the continental shelf under 200 nautical miles can only pose problems to the sovereign coastal country concerned in its EEZ, it is altogether different for the EEAs over the extended continental shelf, which can trouble and disturb the activities practised freely by other countries on the high sea (navigation, fishing etc.) or even limit the regime of freedom, proper to the status of the high sea and results in the existence of 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 legislation applicable below 200 nautical miles, as it should consider the customary practices for the free area which is the high seas, which overhangs the same.

□ *The extended continental shelf and the Area*

The other characteristic of the extended continental shelf is its location, beyond its outer margin, at the frontier of the Area managed by the international Seabed Authority (ISA).

The activities regarding the mineral resources of the Area are regulated by part XI of UNCLOS and by appendix III about *the "basic conditions governing prospecting, exploration and exploitation"*.

A first regulation about the prospecting and exploitation of Polymetallic nodules was adopted in July 2000. A second one regarding the EEA concerning the hydrothermal sulphides was adopted in May 2010. These regulations are based on the broad guidelines of the international regime establishing the principle of the common heritage of mankind in article 136 of UNCLOS. The regulation regarding cobalt-rich crusts is still being developed. 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 Area is on the way developing a real international mining code regarding the activities of exploration and exploitation of the mineral resources belonging to the common heritage of mankind²²⁴.

In an opinion of 1st February 2011, the chamber of Arbitration for the settlement of disputes 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 development of their own regulations relative the EEAs.

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 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 display foresight and would even be a model in the matter.

This duty of the coastal State to provide a legal framework for the EEA on the extended continental shelf must also take consideration of the requirements regarding marine biodiversity and the challenges of the seafloor and the sub-seafloor environment.

The necessary adaptation of the Mining Code to the extended continental shelf

At present, the licences that could be agreed concerning the extended continental shelf off the coast of the Metropolitan France and the Overseas departments are governed by the legislation in force concerning the continental shelf within 200M, in other words, the mining code including the so called *Auberger amendment*, adopted in 1993 by suppression of tax regulations oriented at offshore hydrocarbon exploitation. As it is recognised to be obsolete, it is currently being reformed. Among the overseas departments and territories, only New-Caledonia has specific mining legislation.

According to current legislation, exploration licences are awarded nearly free of charge by France to enquiring oil companies, without any strong contractual undertakings regarding economic, social or environmental actions towards the regions concerned. These exploitation licences 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, introducing legislation so favourable with regards to the oil conglomerates operating offshore.

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 amending finance law for 2011. Georges Patient, senator of Guyana, as a part of the Senate's Delegation for Overseas Territories,

224 Senate, Department of the Parliamentary initiative and delegations. Note about the deep marine mineral resources: Polymetallic nodules, crusts and hydrothermal sulphides. Brazil – the 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.

had the chance to recall, on Wednesday 16 January 2013 that “with effect from 1st January 2014, regarding deposits in the sea located on the edge of the continental shelf, the owners of concessions for mines of hydrocarbon liquid or gaseous will have to pay an annual license-fee calculated on their production. It will be determined by applying a progressive rate to each tranche of the annual production. This rate will be set in accordance with several factors: nature of the products, the continent off the coast of which the deposit is located, depth of the water, distance from the deposit to the coast and amount of the expenses granted during the period of exploitation and development, within the limit of 12%. 50% of the tax income will be allocated to the State and the other 50% to the region whose territory is the closest to the deposit.” Apart from this tax provision relative to the exploitation of off-shore hydrocarbons, the only other existing provision is the possibility for the Territorial Council of Saint-Pierre and Miquelon to raise a license-fee of which the basis and the rate are established by the local Assembly for the benefit 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 applicable social law²²⁵. The recent communication of the Council of Ministers of 7 February 2013 seems to engage in this direction.

These necessary reforms should take into account the evolution of the European legal framework and the European case law which aim to on establish standards regarding the activities related to the continental shelf. In the opinion of March 2012 *De la gestion préventive des risques environnementaux : la sécurité des plateformes pétrolières en mer*, the Economic, Social and Environmental Council recalls that these European developments, especially with the publication in 2011 of the draft regulation of the European Commission regarding the safety of off-shore activities in Europe²²⁶. This draft insists particularly on the necessity to implement stricter conditions for issuing national permits to industries. Regarding the evolution of the law, the case law of the Court of Justice of European Union (CJEU) tends to strengthen the applicability of the community standards to the activities related to the continental shelf. Indeed, in a judgement of 17 January 2012, the Court decided that the law of the Union henceforth applies to an employee of a rig located beyond the continental shelf of a member State.

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To conclude, the Delegation for Overseas Territories is aware of the difficulty in defining a regulation covering the activities of exploration and exploitation of resources insufficiently identified, known, quantified, located and situated in environments and ecosystems of great depths also unknown.

225 See Communication by the Council of Ministers of 7 February 2013 regarding “the main principles of the mining code reform”.

226 Beall Jacques et Feretti Alain, *De la gestion préventive des risques environnementaux: la sécurité des plateformes pétrolières en mer*, opinion of the ESEC, Les éditions des Journaux Officiels, N° 2012-08, March 2012.

In addition, the operations of exploration and exploitation of mineral resources of the seabed or the subsoil of the continental shelf or on the surface (following the collection of products of the exploitation) are extremely diverse and complex.

Besides, in France, the ecosystems and marine environments concerned were not the subject of public scientific studies advanced enough to allow the setting of better legislative and regulatory standards to be taken to preserve them.

Finally, the exploration and exploitation of resources employ advanced technologies to be taken into account in any legislation.

The Coastal State facing its responsibilities and its duty to protect the soil and subsoil environment

The report the Delegation for Overseas Territories concerns the extension of the jurisdiction of our country over the seabed and the subsoil of its extended continental shelf and obtaining sovereign rights for the exploration and the exploitation of mineral resources and other living resources and living organisms which belong to the sedentary resources contiguous to the seabed. These rights, once their perimeter has been defined following the publication of their outer limits to the United Nations, leave to the coastal State the entire liberty to authorise drillings, to carry out dredging, to scour the seabed, to dig galleries, to install different equipment and works on the seabed and subsoil as well as in the water column for the lifting up of resources to the surface, to install artificial islands, etc.

These activities cannot be implemented without causing important disturbances within the environments concerned, namely the seabed and the subsoil as well as the water column which overhangs it and, as required, the high sea when it concerns the extended continental shelf. Besides, they are executed at great depth beyond 1,500 meters, even up to 4,000 metres down.

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 generally and the resources over which we have gained rights of exploration and exploitation on the extended continental shelf and taking a look at the existing legal framework which the coastal State can rely on to deal with its responsibility towards this environmental challenge. Indeed, apart from active hydrothermal sites, very few data about the nature and the layout of the fauna related to the oceanic ridges 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 compartment) and indirect impacts linked to the spreading of sedimentary plumes (modification of the physical and chemical characteristics of the environment for the pelagic ecosystem)²²⁷.

227 Fouquet Yves et Lacroix Denis, *Les ressources minérales marines profondes, étude prospective à l'horizon 2030*, IFREMER, Éditions Quae, pp. 28-30.

Dangers faced by marine biodiversity and ecosystems within the framework of EEA

The definition of biological diversity is specified in chapter XV of Agenda 21 (also known under the name Action 21) adopted by the Rio Conference in 1992 as being “*the variability among living organisms from all sources, including, inter alia, the terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems*” (Article 2).

The ecosystem is defined as “*the dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as 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 are the ecosystems of which they are a part.

IFREMER Studies point out “*the exuberant and extraordinary life*” around hydrothermal chimneys. These ecosystems related to ejections of hydrothermal fluids shelter exuberant and extraordinary communities in the sense that their development is based not on photosynthesis like almost all forms of life on our planet, but on chemosynthesis. The micro-organisms building these systems include hundreds of invertebrate species, often large-sized and mostly new to science. Knowledge of these environments and of the life existing there is very incomplete. The potential exploitation of natural hydrogen from hydrothermal air vents would primarily 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 crusts rich in cobalt is also 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 habitat across the exploited zone) and indirect (redeposit of the variety of sediments on a larger zone) consequences on the ecosystems of the zone. **The processes of re-colonisation and restoration of population might thus last for years or even decades.**

Generally, mining activities in a deep milieu would have different levels of impact on the environment the biodiversity, including the local destruction of habitats and associated ecosystems, but also the disturbance of the environment (water column and seabed) and biological diversity over a larger area and a much longer time than the exploitation properly so called²²⁸.

Technologies linked to these activities in deep waters are currently the subject of extremely precise studies by countries which have measured the vital and strategic importance of these resources and the needs of protection to the marine environment. It is thus that around Hawaii and Polynesia, some sites spotted by a Japanese team have been identified as strategic reserves and result in a real competition with submersible equipment. The Jiaolong, a Chinese submarine, specialised in the exploration of the abyss approximates

228 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 the French Nautilie. Indeed, it reached, during the summer of 2010, a depth of 3,759 metres, thus showing China's ambitions regarding territorial pretensions against neighbouring countries and in the matter of technological expertise France must become a pioneer in this field.

The responsibilities and duties of the State towards the environment

Article 192 of UNCLOS states that *"States have the obligation to protect and preserve the marine environment"*.

The UNCLOS Convention does not deal specifically with biological diversity or marine genetic resources. It defines a general framework for the whole range of activities conduction in marine areas, whether they are placed under the jurisdiction of States or beyond. This is clearly translated the paragraph 4 of the preamble, where it is stated that *"recognising the desirability of establishing through this Convention, with due regard for the sovereignty of all States, 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 1982 Convention is in fact a framework convention calling for the development of additional rules. Therefore, it refers to other instruments of global or regional application for rules susceptible of being applied to marine biodiversity. Among the most important are the Convention 1982 Convention on biological diversity (CBD), the 1973 MARPOL Convention and the OSPAR Convention.

The 1992 Convention on biological diversity

The Convention on biological diversity (CBD) recognises, for the first time, that the conservation of biodiversity is a *"shared concern for mankind"* and an integral part to the development process. It concerns the living marine and terrestrial resources, under the jurisdiction of the state. Its objectives notably 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 marine ecosystems and the species associated, it appears obvious that **the precautionary and the ecosystemic approach** emerging from chapters XV and XVII of Agenda 21 seem totally adapted to characterise the attitude to be adopted toward the treatment of resources related to the extended continental shelf.

Lacking any advances scientific data, the Convention on biological diversity clearly insisted on the necessity to promote an anticipatory approach rather than a reactionary approach.

Notice also that the Convention on biological diversity was completed by a protocol adopted in Nagoya (Japan) on 29 October 2010 regarding access to genetic recourses and the fair sharing of the advantages resulting from their use. This protocol determines the precise conditions of access to the genetic resources, provides a sharing of the advantages and aims to have an effect on the conservation and the sustainable use of these resources.

The 1973 MARPOL Convention amended by the 1978 protocol

The activity of exploitation of mineral resources of the seabed and subsoil includes their transportation from the bottom of the sea to the surface, but no text foresees their processing on the surface and their transport by sea to the shore.

Article 194 of the United Nations Convention on the Law of the Sea asks States to take measures to limit as much as possible the pollution resulting from ships accidents, and, where applicable, assure safety for the operations at sea, prevent discharges, and regulate the design, armament and exploitation of ships.

The States can also rely on the dispositions of the Marpol Convention which contains the main rules and standards related to the prevention, reduction and control of pollution by the ships.

The OSPAR Convention

OSPAR is the mechanism by which fifteen governments²²⁹ of the western coasts and 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 Oslo Dumping Convention. Its scope was extended to the pollution of telluric origin²³⁰ and to the oil industry by the Paris Convention in 1974. Finally, both conventions were unified, updated and expanded by the OSPAR Convention²³¹ in 1992. The new annex on biodiversity and ecosystems was adopted in 1998 in order to cover non-polluting human activities which may have a negative impact on the sea.

The OSPAR Commission is the forum by which the contracting powers collaborate. It meets once per year. Generally, the work of the OSPAR Commission is guided by the ecosystemic approach²³² in order to achieve an integrated management of human activities in the marine environment. This approach is supported by a general obligation of the contracting parties to apply: **the precautionary principle; the polluter pays principle; the best available techniques (BAT) and best environmental practice (BEP), including clean technologies.** The Commission is supported by five main committees dealing with the following issues: biodiversity; the environmental impact of human activities, dangerous

229 The fifteen governments are the following: Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom of Great-Britain and Northern Ireland.

230 Notice that telluric pollution, of terrestrial origin, is about 80% of the total for marine pollution.

231 A series of annexes is included in the OSPAR Convention and deals with the following subjects: prevention and elimination of pollution from land-based sources (annex I); prevention and elimination of pollution by operations of dumping or incineration (annex II); prevention and elimination of pollution from offshore sources (annex III); assessment of the quality of the marine environment (annex IV) and any human activity which might harm the marine environment in the North-East Atlantic (annex V).

232 The ecosystem approach is defined as “ *the integrated and complete management 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 maintaining the integrity of the ecosystem* ”, website of the OSPAR Convention.

substances and eutrophication²³³, offshore industry and radioactive substances. The committee relative to the environmental impact of human activities must thus “*promote the integrated management of human activities in the marine environment; ensure that the effects of human activities, both individual and cumulative, do not have detrimental effects on the services of the ecosystems or the habitats and species and take specific measures regarding waste and noise*”. The Convention also foresees a certain number of applicable provisions regarding the activities of exploration and exploitation.

During the ministerial meeting on Sintra in 1998, the contracting powers of the OSPAR Convention agreed to **promote the implementation of a network of protected marine zones**. After a period of preparatory works, they adopted, in Bremen in 2003, a recommendation in order to establish an ecologically coherent network well managed of protected marine zones in the North-East Atlantic for 2010. The goals of the OSPAR network of protected marine zones are to:

- Protect, retain and restore the species, the habitats and the ecological processes which have been affected by human activities;
- Prevent degradation and damage to species, habitats and ecological processes, following the precautionary principle;
- Protect and retain the zones which best represent the variety of species, habitats and ecological processes in the maritime field.

During the ministerial meeting in Bergen in September 2012, the contracting parties of the OSPAR Convention also took the initiative to create six protected marine zones²³⁴ in the North-East Atlantic region beyond national jurisdictions, that is to say on the high sea. These six protected marine zones cover a surface of 285,000 km². During his statement, Mr. Laroussinie²³⁵ pointed out that in two cases, those of 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 beyond its exclusive economical zone, but in a zone claimed within the context of its submission for extension of the continental shelf, the seabed and subsoil of these ecosystems were the subject of a classification as a protected area by the Portuguese authorities, the latter inviting the OSPAR Commission to protect the over arching water column for which the regime of the high seas still applies. The protection of these zones stands on a double legal basis: the Portuguese legislation regarding the seabed and the subsoil and the OSPAR regulation regarding the water column. However, before accepting this classification as a protected marine zone, Iceland was reluctant for two years, stating that this classification would prevent it from exploring and exploiting the resources of a part of its continental shelf. Finally, the designation of protected marine

233 The eutrophication of the sea is the modification and the degradation of an aquatic environment, generally linked to an excessive input of nutritional substances (nitrogen coming mostly from agricultural nitrates and wastewater, and secondarily from automobile pollution, and phosphorous pollution, coming from the phosphates contained in wastewater), which increase the production of seaweed and aquatic species, and sometimes the turbidity, sometimes depriving the bottom and the water column of light.

234 The Milne seamount, Charlie Gibbs southern zone, the Altair Seamount, the Altair Seamount, the Josephine Seamount and the Mid-Atlantic Ridge north of the Azores.

235 Statement of Mr. Olivier Laroussinie before the members of the Delegation for Overseas Territories, on 27 November 2012.

zones alone would not be sufficient and must necessarily be followed by the adoption of management plans adapted to the threats menacing on the ecosystems and enforceable against the largest number²³⁶.

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To conclude, the Delegation for Overseas Territories considers that it is necessary to adopt an ecosystemic and precautionary approach before deepening the scientific knowledge about biodiversity and habitats of the marine environment. Such a marine scientific approach then assumes fundamental significance and its results must imperatively be communicated to the executives of the territorial authorities concerned. Only the most perfect knowledge possible of all the ecological data can allow the adoption of appropriate rules and the necessary measures, and also the creation of the institutions most apt to the manage the marine zones.

The Delegation for Overseas Territories of ESEC also states a proliferation of often unfamiliar, complex international rules, numerous treaties and agreements concluded both at an international and regional level with no positive results on the marine environments. In the same way, Mrs. Annick de Marffy-Mantuano²³⁷ writes that *"the causes that prevent the effective application of the rules are primarily located at two levels; the first one finds its origin in the absence of an integrated national marine policy, which prevents the implementation of efficient control mechanisms; the second one resides in the absence of an ability of the States, particularly the developing States, to implement rules which demand means in terms of people, administrative structures and financing"*²³⁸.

Overseas Territories at the forefront of this management

The overseas authorities, due to their geographic position, gather the majority of the maritime challenges. These territories, which allow our country to possess immense maritime zones worldwide and the European Union to have active borders in zones with strong potential for growth, must be fully associated developing the 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 the populations of the Overseas Territories which must benefit from resources of the continental shelf. In the case

236 Rochette Julien et Druel Elisabeth, *Les zones marines protégées en haute mer dans le cadre de la Convention OSPAR : état des lieux et perspectives d'avenir*, IDDRI, March 2011.

237 Mrs Annick de Marffy-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 l'Institut du droit économique de la Mer (the Institute for the economic law of the Sea). She was heard in a private interview by Mr. Grignon, rapporteur of the study, on Friday 9 November 2012.

238 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.

of these resources it is a fact that the different laws currently applicable deprive our country and its overseas authorities of 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 those for the young people, which reach unbearable levels, and the sluggishness of the economy characterized by weak private investment must lead the national and local public authorities to fully grasp the importance of this potential by making available the human, legal and financial resources to all the actors for the elaboration of sustainable development projects.

The association of the overseas populations to the management of the resources of continental shelf happens firstly with the knowledge of these latter, their wealth in terms of biodiversity and their fragility. The potential for exploitability and future revenue must be the subject of extended studies in order to fully enlighten the local public powers and populations. In this regard, the establishment of a monitoring and consulting commission regarding oil in Guyana organised around four thematic working groups and of which *“the objective is sharing the information and discussing with every stakeholder conditions to make the oil exploration, and its potential exploitation a lever of economic and social development for Guyana, while ensuring the operations roll out in the strictest respect of safety and environment”* constitutes an initiative that could provide inspiration for the other Overseas Territories affected by these issues.

Caution in this field is appropriate and leads Mr. Jean-Yves Perrot to state, during his interview, that it would be illusory to imagine that the quantitative extension of our area of sovereignty alone would trigger an extension of the possibilities both development both in the field of mineral resources and that of living resources. Indeed, even if interesting perspectives exist, without any series of support measures, extension of our jurisdiction alone would not meet, within a timescale that remains to be defined, the expectations generated by this “marine Eldorado”.

Any real evolution cannot happen without the existence of strong politic will followed by tangible effects.

A reform of regulations in terms of exploitation of marine resources including Overseas Territories and considering their interests

As previously stated, the legal framework applicable to the mineral substances contained in the French seabed is currently complex. It is principally constituted by law N° 68-1181 of 30 December 1968 relative to the exploration of the continental shelf and the exploitation of its resources, and its implementing decree N° 2006-798 of 6 July 2006 relative to prospecting, searching and exploiting substances or fossils contained in the public seabed and the 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 sufficiently precise consideration of the issue related to specific situations of the overseas authorities, particularly the Overseas departments. This mining code clearly deprives these authorities, in the hypothesis of the exploitation of resources on the continental shelf and the extended continental shelf, of any participation in the production of the exploitation, which would moreover benefit from an abnormally advantageous fiscal tax regime in relation 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 regime specific to each authority.

The Overseas departments and regions governed by article 73 of the constitution must indeed be distinguished (principle of legislative identity) from the Overseas authorities (governed by article 74 of the constitution) and New Caledonia and the French Southern and Antarctic Lands (authorities with a special status), the latter being under the principle of legislative speciality.

Regarding the Overseas departments and regions, framework law N° 2000-1207 of 13 December 2000 for the Overseas provides for the transfer of the competence to the delivery of mining rights in favour of these communities. But this competence was never transferred to the regional executives in the absence of an implementing decree. In fact, the minister in charge of mines retains competence in this matter. This situation is not satisfactory and the works preliminary to the reform of the mining code must allow this situation to be remedied in order that this competence is actually transferred in the end. In parallel, the transfer of this competence must make provision measures of financial support and training for qualified personnel.

Thus, the current legal framework does not associate the Overseas departments in the development and implementation of a regulation of the exploration and exploitation of the resources of the continental shelf and the extended continental shelf. Besides, governed by the principle of legislative identity, these authorities do not have, for most of the possibility, the possibility to set license-fees for potential marine deposit, in the absence of fiscal autonomy.

Regarding the authorities governed by the article 74 of the Constitution and the authorities with a special status (notably the French Southern and Antarctic Lands 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 27 February 2004), Saint-Barthelemy (*see* Organic Law art. 6214-6 du CGCT – General Code of the Territorial Authorities), Saint-Martin (*see* Organic Law art. 6314-6 du CGCT), and New Caledonia and its provinces (*see* art. 22 and 46 of the organic law N° 99-209 of 19 March 1999) are competent to regulate and apply the right of exploration and exploitation of the resources of the seabed and the subsoil of the EEZ.

Regarding Saint-Pierre and Miquelon, for instance, the dispositions of Organic Law article 6414-3 of the general code of territorial authorities states that “subject to the international commitments of France and the measures taken to apply them, the State gives the territorial authority, in the conditions specified in the specifications approved by order of decree in Council of State made after obtaining the opinion of the territorial council, the application of competences in terms of exploration and exploitation of natural resources, living and non-living, of the seabed, its subsoil and the over arching waters. Subject to and on the same conditions, it also grants it the application of competences in terms of issuing and managing the mining rights regarding the seabed and its subsoil”. It is necessary to

highlight the fact that this competence does not apply in the absence of an implementing decree²³⁹.

Apart from these competences, it is also expedient to recall that the Overseas authorities benefit from fiscal and customs autonomy. Which theoretically allows them to set license-fees 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 at 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”*²⁴⁰. For the French Southern and Antarctic Lands, the article L. 663-1 of the mining code states that *“the owners of gaseous or liquid hydrocarbons mines permits in the French Southern and Antarctic Lands have to pay a yearly license-fee on the production to the French Southern and Antarctic Lands.”*

Generally, it is necessary to underline that whatever the degree of autonomy envisaged by the constitution and the organic laws, the overseas territorial authorities have no competences in terms of exploration and exploitation of resources on the extended continental shelf²⁴¹. Beyond the problems related to the necessary legal framework (hereinbefore developed) for activities linked to the exploration of resources, and beyond the modifications that should undoubtedly be made to the organic laws, the reform of the mining code must clearly allow *“a better consideration of the particular situations of the Overseas Authorities”*²⁴². The Delegation for Overseas Territories of the ESEC believes it is not about considering particularities of the Overseas authorities, but again of establishing the bases of their economic, social and environmental development from resources available on their territories and those located off their coasts.

Economical environment that needs to be strengthened for greater competitiveness and increased employment

In most Overseas Territories, the land surface/marine surface ratio 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 sea and seabed and that these authorities might then be characterised by a real and effective marine vocation. However, reality indicates that the sea and the seabed are, nowadays, for the different political and economical actors and within the public opinion and civil society, more a parameter, even an obstacle, than an asset. We want as proof thereof the deficiency in terms of sustainable exploitation of fishing resources because of a lack of political will in the discussions at EU level and with the big fishing countries, but also, because of a lack of means to develop fisheries and secure the EEZ. The overseas authorities must clearly

239 The draft decree presented to the Council of State in 2003 was rejected on the grounds that it did not embrace the exercise of the police powers (see note N° 367.199 of the section of the public works of the Council of State of 14 January 2003).

240 Grignon amendment adopted by the National Assembly during examination of the Finance Bill 1998.

241 The elements of the answer by General Delegate to the Overseas Territories, 23 January 2012.

242 *The reform of the mining code*, communication in the Council of Ministers on 5 September 2012.

orientate their social and economical development around the 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 a submission on 1st January 2013 for Reunion, Martinique, Guyana, and Guadeloupe) of big seaports replacing independent harbours represents progress. This new organisation of the Overseas ports must allow be able respond to the demands of performance and competitiveness faced with the evolution of the international marine trade and competition with foreign ports. These developments must promote training and social promotion of the personnel of these various port platforms.

It increases the weight of territorial authorities within the Supervisory Board of the large seaports, in order to keep a consistency between the development of Overseas ports and the evolution of the territories on which they are located. This new framework must favour the investment and creation of harbour infrastructures projects in the Overseas Territories. All the possible applications of the sustainable exploitation of the numerous resources of the 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 located in harbour areas. It is a place where employment is created in many sectors (refining, steel industry, food industry, fertiliser industry etc.). The trades in the marine and para-marine sector are indeed potentially very vast.

We should recall that the unemployment rate in the 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 seabed and the subsoil of the extended continental shelf may in the more or less long term be a breeding ground for jobs for the overseas populations. There is a real effort to be made in order to concentrate the means to the benefit of the training sought and reinforce the sectors of excellence. The big companies which benefit and will benefit from permits to exploit resources must, through precise specifications, fully participate in these efforts of train the local populations for these trades. Once again, the discussions around the redesign of the mining code must integrate taking account of the problems of employment and the financial spinoffs that the territorial authorities may receive from exploiting companies in respect of their production.

Strengthen the international influence of our country and the EU in the maritime sectors by strengthened regional cooperation with the Overseas Territories

The lack of consultation, and association of the territorial overseas authorities and the actors of civil society (social partners, nongovernmental organizations, regional economical social and environmental Councils (RESEC etc.), in the discussions regarding the management of the resources of the marine areas can be prejudicial to the territories and their population, and, *ultimately*, weaken the position of our country in some regional zones. The strengthening of this regional governance must allow this greater association, in order

to better respond to the challenges. This concern was expressed in the report and opinion of the ESEC *For a stronger regional cooperation in the Overseas Territories*²⁴³.

The State must strongly support the transfer of human and financial means to allow the overseas authorities to fully assume their responsibilities and strengthen their reinforced participation in the actions of SG Mer.

More fundamentally, while great powers such as the United States or China very rapidly understood quickly the interest and importance of increasing their influence and their capacity for action within their marine areas, France has every interest to be in the front line to this end thanks to marine collaborations with neighbouring States from the Pacific, the West Indies, the Indian Ocean and the North Atlantic. Associated with the strengthening of the participation of our overseas authorities in the forums and arenas of regional collaboration and in the big regional research programmes, the strengthening of the means of action of the State in the sea must also constitute an indivisible priority.

Conclusion

In conclusion, France should not be satisfied with extending its sovereign rights over the natural resources contained within an extension of approximately two million km² of the continental shelf with the potential additional wealth it could provide.

France must also assume its responsibilities and fulfil its duties. It must seize the opportunity to manage the potential new resources of the seabed and subsoil of the newly acquired or yet to be acquired marine area beyond the 200 nautical miles. It must implement the means to learn about, preserve and exploit these resources. It must do this in a sustainable manner for the benefit of our overseas populations.

It is not sufficient to possess jurisdiction over the world's second largest marine area and to hold sovereign rights over its resources. It is crucial for a true marine policy to be implemented. The scale of the French marine area and its potential resources dictate responsibilities and duties for our country. It requires the means to be found to meet these responsibilities and duties. At the same time it needs to promote the economic, social and environmental development of the Overseas Territories. This development should be based in part upon the potential resources of the extended continental shelf.

243 Budoc Rémy-Louis, *For stronger regional cooperation in the Overseas Territories*, opinion and report by ESEC, The Editions of the Official Journals, N° 2012-09, May 2012.

Annexes

Annex 1: List of members of the Delegation for Overseas Territories on the voting date

✓ President: Gérard GRIGNON
✓ Vice-Presidents: Joëlle PRÉVOT-MADÈRE and Pierrette CROSEMARIE
<input type="checkbox"/> Agriculture Group
✓ Jean-Michel LEMÉTAYER
✓ Françoise HENRY
<input type="checkbox"/> Associations Group
✓ André LECLERCQ
<input type="checkbox"/> CFDT TRADE UNION GROUP
✓ Evelyne PICHENOT
<input type="checkbox"/> CFE-CGC TRADE UNION GROUP
✓ Jean-Claude DELAGE
<input type="checkbox"/> CGT TRADE UNION GROUP
✓ Françoise GENG
✓ Pierrette CROSEMARIE
<input type="checkbox"/> CGT-FO TRADE UNION GROUP
✓ Didier BERNUS
✓ Marie-Alice MEDEUF-ANDRIEU
<input type="checkbox"/> Cooperation group
✓ Marie de L'ESTOILE
<input type="checkbox"/> Enterprise Group
✓ Joëlle PRÉVOT-MADÈRE
<input type="checkbox"/> 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 public figures interviewed in delegation or received in private interview 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) programme within the French Research Institute for the exploitation of the sea (IFREMER)
 - ✓ **Mr. Elie 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, river law and the law of the poles at the ministry of Foreign Affairs (MAE), attended with Mr. Jérôme Sautier, councillor for foreign affairs.
 - ✓ **Mr. Roland Vially**
Head of the Evaluation of the resources and reserves project within the French Institute for Petroleum and Renewable Energies (IFPEN)
 - ✓ **Mr. Jean-Yves Perrot**
CEO of the French Research Institute for Exploitation of the Sea (IFREMER), accompanied by Mr. Philippe Lemerrier, Delegate General for Overseas Territories within IFREMER;
 - ✓ **Mr. Julien Denègre**
Head of commercial development at TECHNIP
 - ✓ **Mr. Cyrille Poirier-Coutansais**
Deputy Head of the Bureau for the Law of the Sea to the Chief of the Navy;
 - ✓ **Mr. Claude Girault**
General Deputy Assistant for 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 fishing and naval affairs mission 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 the French Navy, Hydrographical and Oceanographic Service (SHOM);

✓ **Mr. Pascal Bolot**

Prefect, Senior Administrator of the French Southern and Antarctic Lands (TAAF);

✓ **Mr. François Bersani**

official responsible for subsoil questions 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 Overseas 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 French Southern and Antarctic Lands;

✓ **Mr. Serge Larcher**

Senator of Martinique, president of the Overseas Senatorial delegation.

✓ **Mr. Jean-Claude Fruteau**

Deputy of Reunion, president of the Overseas delegation of the National Assembly.

✓ **Mr. Tearii Alpha**

Minister for marine resources and mines of the government of French Polynesia, and Michel Paoletti, former president of the Overseas group of the French Economic, Social and Environmental Council

✓ **Mr. Georges Patient**

Senator of Guyana, member of the senatorial Overseas delegation, president of the Overseas parliamentary Intergroup.

The president, the rapporteur and all the members of the Delegation for Overseas Territories sincerely thank all these people for their precious contribution to this opinion.

Mr. Grignon, rapporteur, is keen to express his gratitude to Mr. Richard Meese, doctor of Law, honorary lawyer, for the precious expertise and support he provided to the development of the report.

Annex 3: Articles 76 and 77 of the United Nations Convention on the Law of the Sea

📌 PART VI Continental shelf

Article 76: Definition of the continental shelf

1. The continental shelf of a coastal State comprises the seabed 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 of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.
3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed 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 per cent 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.
5. 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.
6. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, 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.
7. 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.

8. 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.
9. 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.
10. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.
11. 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 in paragraph 1 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 seabed 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 seabed or are unable to move except in constant physical contact with the seabed 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, crafts and artisans of 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	National Centre for agricultural machinery, rural engineering, water and forests
ESEC	Economic, Social and Environmental Council
RESEC	Regional Economic, Social and Environmental Councils
CGCT	General code of local authorities
CIMER	Joint Minister Committee of the sea
CJEC	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
UNCLOS	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 reasoned 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
ITLOS	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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