The French Deep-Sea Mining Legislation of 1981

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One of the basic aims of the Third United Nations Conference on the Law of the Sea was the drawing up of a Convention on deep seabed mining in the interests of mankind's common heritage. It was hoped that such a Convention would permit immediate exploration and mining of deep sea mineral resources — notably manganese nodules.

Although after initial hesitation general agreement seemed to have been reached on principles, voting on the Draft Convention which was finally adopted on April 30, 1982, would seem to indicate a failure to achieve in practical terms the hoped-for consensus between industrial and third world countries. Activity in this field, however, has not been limited to the international forum of UNCLOS. Following in the steps of the United States and Great Britain, the French Parliament passed on November 24, 1981, the Deep Seabed Mineral Resources Exploration and Mining Act.

The Aim of This Legislation

This Act, No. 81-1135, is intended to enable France to participate in exploring and mining polymetallic nodules, thus strengthening French interests from the viewpoint of international law and
underlining the need for a just distribution of seabed mineral resources at the international level.

The Act will enable France to reap the rewards of an ambitious research program intended to reduce its dependency on raw materials originating in other countries. Back in 1974 France established Afernod, a consortium made up of the National Center for Ocean Exploration (CNEXO), the Atomic Energy Authority (CEA), the Imetal Company (Le Nickel) and the France-Dunkerque Shipyards. Prospecting in the Pacific led to the discovery of an area of 450,000 km² covering as many as three possible extraction zones of some 50,000 km² each.

The Atomic Energy Authority (CEA) has opted for a system of underwater self-contained machines to extract the nodules. Trials of the prototype extraction vehicle are set for 1983 in the Pacific, with initial mining trials due for late 1986. The Le Nickel company is testing various processes for treating these minerals with a view to industrial exploitation of the deposits.

The Act will apply only until an International Convention — of which France would be a signatory — comes into effect, and stipulates that no actual exploitation may be carried out until January 1, 1988. It is fully in agreement with international law in that it states that all exploration and exploitation of the high seas in no way constitute any claim to sovereignty and in no way affect the freedoms of the high seas. It also stipulates that only activities carried on by French private persons and companies shall come under the scope of the Act — thus stressing the French government's intention to conform strictly to international law, and, moreover, to the spirit of UNCLOS III which declares that deep seabed minerals should be mined in the interests of the common heritage of all mankind.

The Act provides for the imposition of a levy of 3.75 percent on each net ton of hard minerals extracted, intended to give developing countries a share in resources which they themselves are unable to exploit.

The Main Provisions of the Act

The exploration and exploitation of deep seabed mineral resources are subject to obtaining a license, which may only be issued to
French nationals. The rules of the EEC, however, make it possible for other EEC nationals to join those of France and thus allow them to enjoy similar facilities. Mere prospecting is not subject to any formalities and may be carried out freely.

An exploration license confers on the holder exclusive prospecting and exploration rights over a given area and entitles him to carry out extensive exploration over a period of time sufficient to permit both exploration and the construction and testing of prototype equipment for extracting and, where necessary, processing mineral resources. It also spells out the holder’s obligations, and especially fixes the minimal financial investment required of the holder. Only the said holder of an exploration license may obtain, during the term of his license, an exploitation license for a maximum of half the area covered by the exploration license, and only after having furnished proof that such exploitation is possible.

An exploitation license confers on its holder exclusive prospecting, exploration, and exploitation rights over a given area for a predetermined period of time.

License holders must respect rules governing the protection of the marine environment, the conservation of mineral deposits, and the security of people and property. They must also refrain from unduly hindering the normal exercise of the freedoms of the high seas.

There are also requirements concerning the use of national means of transport (ships and planes) between French national territories and offshore installations. These requirements, however, are subject to EEC law and the judgment of the cabinet minister with jurisdiction in these matters.

France reserves the right to control or requisition mineral resources in times of international crises or periods of international tension.

In the event of noncompliance by license holders with such requirements, licenses may be withdrawn or financial penalties imposed.

Extension of Licenses for Nationals of Reciprocating States

Act No. 81-1135 of December 23, 1981, is intended to strengthen French interests. This aim cannot be attained, however, without cooperating with those industrial nations which, like France, are
likely to begin seabed mining in the not-too-distant future. For this reason, international reciprocity agreements may be concluded\textsuperscript{23} to allow French private persons and companies to obtain exploration and exploitation licenses issued by other countries\textsuperscript{34} and to enable foreign nationals to obtain similar advantages from the French government.\textsuperscript{35,36}

Notes

5. Resolution of the United Nations General Assembly 2749 (XXV) Dec. 16, 1970: Declaration of principles governing the activities of States with respect to the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of national jurisdiction.

Although there were 130 votes in favor of this convention, the USSR and the Eastern bloc, the British, West Germans, Italians, Belgians, and Spaniards abstained while the U.S.A., Israel, Turkey, and Venezuela voted against. The United States moreover announced on July 9, 1982, its intention not to sign the Convention, due in part to its provisions on deep-sea mining.
10. Art. 7.
11. Art. 1.1.
12. Art. 1.2.
13. Art. 1.3.
14. Art. 3.
15. Art. 12.
17. French legislation differs from U.S. legislation concerning the destination of the money levied. The American Act provides that money thus collected shall be paid into a special fund and shall only be handed over to the International Seabed Authority in the form of a compulsory contribution all signatories of the Convention shall be required to pay. The French Act provides that money collected by the levy shall be allocated as aid to the third world. The 1982 Finance Act therefore provides (Article 50 – J. O. Dec. 31, 1981, p. 3539) for the setting up of a special Treasury Fund.
18. Art. 3.
19. Art. 1.
22. Art. 5.
27. Art. 9.
29. Art. 10.
30. Art. 11.
32. Art. 15.
34. Art. 3.
36. The Constitutional Council (decision No. 81-131 DC of Dec. 16, 1981, published in the J. O. of Dec. 18, p. 3448) held the Act to be in conformity with the French Constitution, except for those provisions con-
cerning the application of this legislation to French Overseas Territories (New Caledonia, Wallis and Futuna, French Polynesia, Southern and Antarctic Territories). Such a decision would jeopardize the very raison d'être of this legislation were it not based on a mere procedural hitch (the Assemblies of the Territories concerned had not been consulted) which will soon be put right.