CHAPTER 30

Monetary Relations

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I. INTRODUCTION

1. *From "Monetary Sovereignty" . . .*

1. The right to coin money (*jus cudendae monetae*) is an essential attribute of sovereignty and every State is free to conduct the monetary policy of its own choice.

As recalled by the Permanent Court of International Justice, the principle is generally accepted that every State has the right to determine for itself its currency (judgment para. 14 of 12 July 1929 in the case concerning the *payment of various Serbian loans*, (*PCIJ* Series A, No. 20, p. 45). It follows that every State is competent to determine the value of its currency and to regulate that currency's circulation. In the absence of international agreements restricting its exercise, it is a matter "essentially within the domestic jurisdiction" within the meaning of Article 2 (7) of the Charter of the United Nations.

2. Money is nevertheless the normal instrument of transactions, both commercial (purchase of goods and services) and financial (purchase of property titles or debt claims) not only at the internal level but also in the international order. Unless a State decides to live in national self-sufficiency or to confine itself to barter operations, it cannot avoid entering into monetary relations with its economic partners or prevent its nationals from maintaining such relations.

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M. Bedjaoui (ed.), International Law: Achievements and Prospects, 645–665.

Thus, all States are involved in the regulation of these relations, either by adopting such national regulations as each State intends to apply to them, or by providing an area open to transnational regulation by private banking interests, or lastly by participating in "the international decision-making process in the solution of the world . . . monetary problems, *inter alia* through the appropriate international organizations", a right which Article 10 of the Charter of Economic Rights and Duties of States considers rooted in the principle of sovereign equality of States.

3. Pertaining as it does to three areas of law – international, domestic and transnational – the law of international monetary relations is all the more difficult to apprehend in that States, despite the fact that they were under no legal obligation to do so, have allowed Euro-currencies to develop inordinately and have left them to be regulated by private economic interests. These "Euro-currencies" are those used for short-term loans expressed in a currency other than that of the lending entity.

The present chapter deals with the public international law of monetary relations and does not enter into transnational monetary law but the importance of that last body of law should not be underestimated (the mass of Euro-currencies is equivalent to that of the official currency reserves of States).

2. . . .*to the International Monetary System*

4. During the liberal period, the international monetary "order" (based on customary rules) rested on two simple ideas: the gold-standard, whereby gold constituted the sole measure of the value of a currency, and the complete freedom of States to determine that value at their discretion. The economic disruption brought about by the two world wars and the crisis of the 1930s made it necessary to establish a more orderly monetary system, and a more genuinely international one. Such was the purpose of the monetary and financial conference of Bretton Woods in 1944.

5. The Bretton Woods agreements of 22 July 1944, which were concluded in a neo-liberal perspective, were intended to ensure the free circulation of currencies so as to facilitate international trade transactions, under the control of an organization created for that purpose and entrusted with extensive powers: the International Monetary Fund (IMF).

6. Although it participated actively in the negotiations leading to the Bretton Woods agreements, the USSR did not ratify those agreements, and carried with it the people's democracies of Eastern Europe, except for Yugoslavia and Czechoslovakia (which was excluded from the IMF in 1954). Subsequently, however, Romania and Hungary joined the IMF and Poland, which had withdrawn in 1950, applied for readmission in 1981. In addition, the international monetary system which functions under IMF auspices has important repercussions on the financial and commercial relations with other countries of the world of the member States of the Council for Mutual Economic Assistance (CMEA) – which have created an autonomous mon-

etary system of their own. The IMF quasi-universal system therefore, although it may not be the exclusive subject of study in the matter, remains nevertheless of paramount importance.

7. The structure of the IMF, which plays a central role in the operation of this system, is that of a very traditional international organization: a plenary body, the Board of Governors, determines the general orientations of its policy, a restricted organ, the Executive Board, is responsible for conducting the affairs of the Fund, and a secretariat, having as chief a managing director, ensures the operation of the other organs, in addition to these three statutory organs there are subsidiary organs created by the first two and, in particular, the Interim Committee in charge of "supervising the management and adaptation of the international monetary system", and the Development Committee whose role is to recommend measures to promote the transfer of real resources to developing countries within this system.

8. However, although the Fund is a specialized institution of the United Nations, its functioning presents very particular characteristics: it rests entirely on the unequal system of quotas.

Upon entering the IMF, each State subscribes a certain number of shares of the IMF capital. Adjusted periodically either individually, or on the occasion of an increase of its capital, these quotas serve to determine on the one hand the number of votes to which each State is entitled in the organs of the Fund and, on the other hand, the amount of the aid which can be given to each one of them and which cannot, in principle, exceed 450 per cent of the quota.

The inequality of the distribution of the capital of the Fund among its members (see Table 2) and, consequently, of the number of votes of each one of them, enables a small number of industrialized States to play a prominent part in the functioning of the system. This "normative padlocking" is all the more efficient since decisions of principle must be taken, depending on the cases by a majority of 85 per cent or of 70 per cent of the votes.

9. Thus controlled, the IMF plays a dual role: it must ensure on the one hand the respect of the "code of good monetary conduct" instituted by its Articles of Agreement and, on the other hand, help its members which have difficulties in applying it.

Nevertheless, in 40 years, the comparative importance of these two functions has greatly evolved. Conceived at first as a simple extension of its normative role, the assistance function of the Fund has acquired a considerable importance and autonomy although the applicable rules were becoming less constraining.

II. THE INTERNATIONAL CIRCULATION OF CURRENCIES

10. The Bretton Woods system imposed on the participating States a strict monetary discipline based on two simple principles: the stability of exchange rates and the foreign convertibility of currencies, gold played in it a funda-

mental role, the monetary differences being defined, directly or indirectly, by reference to this metal. The first has today been abandoned in favour of a return to a broad freedom in the field of exchange, the second has been maintained but the system has been deeply altered by the "demonitisation" of gold in law, if not in fact.

1. *The Convertibility of Currencies*

A. *The Abandonment of Convertibility into Gold*

11. Traditionally, the gold standard system such as it existed until the First World War imposed an obligation upon the central banks to exchange a fixed quantity of gold against a specific amount of currency presented by any individual. Abandoned by the main Powers during the period between the two wars (e.g. the British *Gold Standard Acts* of 1925 and 1931), this system appears in a very watered down version in the Bretton Woods agreements, Article IV, section 4.b of which stated that: every member of the Fund whose monetary authorities buy and sell gold freely for the settlement of their international transactions is considered as having fulfilled its obligations in matters of exchange.

Limited to the transactions between central banks, purely optional and freely revocable, this system had been accepted only by the United States, who renounced it in 1971.

12. Adopted in 1976 and in force since 1978, the second amendment of the Articles of Agreement of the IMF (Kingston Agreements) sanctioned in law the factual situation thus created by eliminating all reference to the gold standard.

Gold, which can no longer be the object of a fixed price (see below para. 20) is nevertheless not entirely "monetized" in the sense that the new Articles of Agreement leave it open for the member States of the Fund to make among themselves transactions in gold, under the condition that it must be valued on the basis of market prices.

Gold remains today, in practice, "the main instrument of reserve of the international monetary system".

B. *The Convertibility of Currencies Among Themselves*

a. *Between Member States of the IMF*

13. The general rule is stated by Article VIII, section 2.a of the Articles of Agreement of the Fund:

> No member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.

This ensures, in principle, the freedom of circulation of currencies, since this provision imposes their convertibility both internally – that is to say the freedom for the residents of a member State to purchase foreign currencies – as well as externally – i.e. the possibility for non-residents to exchange freely foreign currencies against the currency of the said country. Exchange control is thus forbidden.

This principle is however subject to numerous limitations and exceptions which damp its rigour:

(i) It is only applicable to current payments, i.e. to commercial or strictly monetary operations (short-term credits, payment of interest, etc.) to the exclusion of financial transactions (see above para. 2), consequently exchange control on capital movement remains permitted.

(ii) The Fund can declare "scarce" a State's currency whose balance of payments is structurally excellent, in this case exchange operations on this currency can be the object of restrictions (Article VII of the Articles of Agreement), this clause has never been applied until now and it is very unlikely to be applied in the future.

(iii) According to Article VIII itself (" . . . without the approval of the Fund . . ."), the IMF can impose restrictions on current payments and it uses very widely this faculty "for reasons of balance-of-payments".

(iv) Lastly, and independently of other minor exceptions, Article XIV of the Articles of Agreement provides for "transitional arrangements" which are widely derogatory.

15. Conceived at first in favour of the economies which were victims of the Second World War, this derogatory system has been crystallized in the Kington Agreements, and in its present drafting, Article XIV, section 2, stipulates:

> A member that has notified the Fund that it intends to avail itself of transitional arrangements under this provision may, notwithstanding the provision of any other articles of this agreement, maintain and adapt to changing circumstances the restrictions on payments and transfers for current international transactions that were in effect on the date on which it became a member.

It follows therefrom, *a contrario*, that the "principle" of convertibility laid down in Article VIII is optional: only those States that make an express declaration to this effect are obliged to respect it, while the other countries remain subject to Article XIV. The United States and some countries of Latin America accepted the obligations of Article VIII since 1946, but were only imitated by most of the Western European States in 1961 and by Japan in 1964. On 30 April 1985 this was the case with 60 States out of the Fund's total membership of 148.

Furthermore, members subject to Article XIV are not free from all constraints in the matter of convertibility. In the absence of an obligation of performance resting on them, the countries subject to Article VIII, bear an obligation of behaviour and must take all possible measures to ensure the effective circulation of their currency, all restrictions which have been abolished must remain abolished definitively.

b. *Between Countries Members of CMEA*

16. Although certain countries members of CMEA are also members of the IMF (see above para. 6), this organization has laid down its own rules regarding monetary circulation.

By an agreement dated 22 October 1963, these States have decided to effect the multilateral clearing of their commercial trade in "transferable roubles" through the International Bank for Economic Co-operation (IBEC), created for this purpose (Article II).

Defined by reference to a weight of fine gold (just slightly below one gramme), the transferable rouble does not however completely deserve its name in so far as it constitutes a mere unit of account aimed at facilitating multilateral clearing between the member States (to the exclusion, in principle, of any transaction with non-member States, with the exception of some later accommodations in favour of developing countries), it cannot be exchanged either against gold or against other currencies.

2. *Systems of Exchange*

A. *The Abandonment of Parity Obligations*

17. In its 1944 version, Article IV of the Articles of Agreement of the IMF imposed on its members the obligation to define a parity for their currency by reference to gold, either directly, or indirectly by reference to the United States dollar of the weight and title in force on 1 July 1944, this was reflected by the famous formula "35 dollars the ounce". This rate had to be a single one, since the Bretton Woods agreements forbade multiple exchange rates, and the States had subsequently to ensure the respect of the declared parity (except for futures operations).

18. This principle of parity, however, was not absolute. On the other hand, Article V of the Articles of Agreement allowed a margin of fluctuation of 1 per cent up or down in relation to the official parity, this relative flexibility being indispensable to permit the intervention of central banks on the monetary market.

On the other hand, "stability" did not mean "immutability" and the member States could make modifications of parity (devaluations or re-evaluations) but only to correct a fundamental imbalance in the balance of payments and provided the consent of the Fund has been requested at least 72 hours in advance.

19. Shaken by a number of distorting blows in 1970, the system was rendered considerably more flexible following the decision of the President of the United States, Richard Nixon, of 15 August 1971. In parallel to a general readjustment of parities, the Smithgowan Institute agreements of 18 December 1971 widened to 4.5 per cent (up or down) the authorized fluctuation margins.

Legally, it was however only a simple gentleman's agreement of a temporary nature. After the serious crisis of February 1973, which led to a fluctuation in fact of the main currencies, a radical reform became necessary, and was effected by the Kingston agreements of 1976 (see above No. 12).

B. *The Freedom of States as Regards Foreign Exchange Provisions*

20. Despite its very global character, it is in the field of foreign exchange provisions that the reform of 1976–1978 had the most marked effects.

The rule of parity of currencies was abandoned in favour of a return to a broad freedom of the States, and Article IV of the Articles of Agreement in its new wording imposes on them obligations that are not very compulsive. From now on, States can adopt the exchange arrangements of their choice, under the following condition;

(i) Not choosing a system of gold parity,
(ii) Notifying the Fund of the exchange arrangements adopted and of any possible changes therein,
(iii) "Collaborating with the Fund and other members to assure orderly exchange arrangements and to promote a stable system of exchange rates"; but the Articles of Agreement, which provide for the possibility of "a widespread system of exchange arrangements based on stable but adjustable par values", ingeniously makes this introduction nearly impossible;
(iv) Placing itself under the "firm surveillance" of the Fund, which is exercised mainly by "consultation", either periodical or exceptional, covering in fact the whole of the economic situation of the country in question.

Thus, contrary to popular belief, the second amendment does not institute a general system of floating currencies. It allows States to let their currencies float – i.e. not to interfere on the market to control their value – but it does not impose it.

21. In practice, States have widely taken advantage of this required freedom thanks to a broad deinternationalization of the applicable rules, as can be seen from the diversity of exchange arrangements in force.

On 30 June 1985,

- Thirty-four member States of the IMF, including the United States, applied a system of more or less controlled floating currency;
- Fifty-five had established an exchange rate of their currency by reference to another currency (the United States dollar for 37 of them and the French franc for 14, within the framework of the Franc Zone – see below para. 49),
- Twelve others had done so by reference to the SDRs and
- Thirty-one by reference to a basket of currencies other than SDR;
- Six had modulated their exchange rates by reference to a set of economic indicators; and
- The eight States participating in the European monetary system applied a tightly co-ordinated policy of exchange rates (see below para. 44 *et seq.*).

(These statistics – which are very evolutive – are furthermore complicated by the practice of certain countries of multiple exchange rates, which are now lawful).

22. In the transactions between member States of the CMEA, settlements are made by multilateral compensation in transferable roubles (with a theoretical gold par value) through the IBEC, for commercial operations (see above para. 16), and by means of bilateral compensation, in accordance with multiple and negotiated exchange rates, for non-commercial operations.

III. MONETARY CO-OPERATION

23. The Articles of Agreement of the IMF provide for a great diversity of sanctions which range from exclusion to discrete "representations", going through ineligibility to its resources, the imposing of penalties for delay or the lodging of critical reports. In practice, the Fund rarely uses these sanctions, (only Czechoslovakia was excluded in 1954, Cuba withdrew in 1964 to avoid exclusion, and four other States were deprived of the right to use the resources of the Fund: France from 1948 to 1954, Kampuchea since 1978 and Viet Nam and Guyana since 1985).

This rarity of sanctions can be explained; on the one hand, they constitute an admission of failure and by increasing the difficulties of the State that is the object of them, they involve the right of inducing that State to depart even further from the observance of statutory provisions; on the other hand and especially, they are generally useless because the IMF has more insidious but more effective means of ensuring respect for the orientations which it sets for member States: this because of its powers of derogation (see above, especially paras. 14 *et seq.* and 18), its surveillance powers (see above para. 20) and its powers of inducement.

The monitoring if co-operation within the framework of the IMF is supplemented by the monitoring provided in certain regional frameworks.

1. *In the Framework of the IMF*

24. The IMF has a variety of resources to help its members in difficulty. These are mainly constituted on the one hand by its capital (of approximately 90 billion SDR after the eighth general revision of quotas in force since 1983) and, on the other hand, by the loans contracted with certain member States or with their financial institutions, to these must be added the potential resources derived from general loan agreements, whereby 11 industrialized countries undertake, since 1962, to make available to the Fund specified amounts of their national currencies in case of need (for a total of 18 billion SDR since 1983); (these agreements have been put into effect 9 times until 1978 and have not been involved since then). Furthermore, the IMF can create reserve instruments which it allocates to its members: the "special drawing rights" (SDR).

Since the adoption of the second amendment, the transactions and operations of the Fund are carried out through two distinct "departments": the General Department, in which all the members participate, and the Special Drawing Rights Department, participation to which is not compulsory but which includes all the member countries since Kuwait made the necessary declaration in 1980.

A. *Transactions and Operations of the General Department*

25. Contrary to a bank, the IMF does not permit overdrafts, does not extend credit and does not consent loans. It merely sells to the States who need it both currencies and SDRs in exchange for their national currency. This operation is called a "drawing" or "purchase".

Drawings are provided for in the Articles of Agreement, and are regulated by them as concerns the tranches policies, which constitute the basis of the assistance which the Fund can give to its members. Nevertheless, under the pressure of the members and, in particular, of the developing countries, new facilities have been added since 1963. These are known as the "specific policies".

a. *The Tranches Policy*

26. Upon entering the IMF, each State subscribes a part of its capital (see above No. 8), which must be entirely paid, partly in currencies or in SDR (in gold before 1978), and partly in its national currency. The rules to which the drawings are subject differ greatly depending on whether or not they have the effect of bringing the assets of the Fund in the currency of the member State concerned up to an amount higher than its quota.

27. When this is not the case, the States do not request assistance from the IMF, they dig into their own reserves. This is why "requests for reserve tranche purposes shall not be subject to challenge" (Article V, section 3 (c), of the Articles of Agreement).

These drawings are deemed "unconditional" in the sense that they are not dependent on the payment of a charge or commission, or on the obligation to repurchase, or on the observance of particular conditions, proper to every purchase. Like all transactions of the member States with the Fund, they must however concur with the general objectives of the IMF and meet the criteria of "necessity": to perform these transactions, the "purchaser" must declare "that it has a need to make the purchase because of its balance of payments or its reserve position or developments in its reserves" (article V, section 3.b); but the Fund is not required to verify this statement *a priori*.

28. The situation is different as regards purchases in the credit tranche, i.e. in those which have the effect of increasing the assets of the Fund in the national currency of the drawing State above 100 per cent of its quota (with a maximum of 200 per cent). These drawings, which are subject to the payment of charges and to an obligation of repurchase within a period of three to five years, are also subordinated to the conditionality of the Fund, that is to say to

the observance of the economic policies which the Fund wants the member States to follow in order for them to be allowed to use the resources of the Fund.[1]

These particular conditions become stricter as one approaches the maximum amount of authorized drawings within the framework of the tranche policy.

29. In the first credit tranche (25 per cent of the quota), the Fund has a very liberal policy (defined in 1959) and is content with general assurances given by the purchaser, without subordinating its help to any precise criteria.

The situation is different in the three higher credit tranches, the drawings are subject to obtaining and respecting stand-by arrangements which constitute the legal instrument of conditionality.

According to the definition given by Article XXX (b) of the Articles of Agreement,

> Stand by agreement means a decision of the Fund by which a member is assured that it will be able to make purchases from the General Resources Account in accordance with the terms of the decision during a specified period and up to a specified amount.

These arrangements are thus unilateral decisions of the IMF and not international treaties, although the State concerned indicates in a "letter of intention", the economic policy which it will follow; but this document, which is distinct from the stand-by arrangement, does not legally bind its author.

30. The stand-by arrangement enables the Fund to put into practice, conditionality in concrete terms and at the same time to preserve a certain flexibility in its action; this thanks to a combination of three techniques.

In the first place, the stand-by arrangements contain "performance criteria"; there are precise quantitative objectives which the member State must achieve within set time limits, and which enable the Fund to evaluate the effective enforcement of the adjustment policy contemplated.

The performance criteria are enforced by means of the second technique used, that of spreading out the payments. The amounts provided are not made available to the purchaser in one instalment and the Fund only makes further payments if the specified conditions are met. If this is not the case, the operation of the stand-by arrangement is suspended for consultations, in order to establish new criteria.

This constitutes one of the aspects of the third technique used, that of continuous adaptation, which is enforced even in the absence of any disagreement between the IMF and the purchasing State because the performance criteria, which are always fixed for relatively short periods (in general six months), must be redefined periodically (the stand-by arrangements last between one and three years).

b. *The Specific Policies*

31. Independently of the general criteria to which the assistance of the Fund can be made subject (see below para. 34), the tranche policy presents a dual drawback: on the one hand, it is limited in its scope to the ceiling of 200 per cent of the quota, and on the other hand it is undiscriminating and does not take into consideration the specific causes of the difficulties encountered by the member States.

In order to remedy this situation, the IMF has formulated a multitude of specific policies geared at allowing the member States to make drawings to overcome specific problems in their balance of payments, but the overall total of purchases made by a State (within the framework of the tranche policy *and* of the specific policies) must not exceed a specified percentage of the quota (in principle 450 per cent since 1985).

32. The general scheme of these facilities is identical with that of the policy followed by the Fund regarding purchases in the credit tranche: drawings made by the States are subject to an obligation of repurchase, to the payment of a charge (or of interest if the facility is financed by borrowed resources) and to conditionality, in general by means of stand-by arrangements (or equivalent instruments: enlarged arrangements). Certain of these facilities are permanent, others are (or have been) temporary, some are provided for by the Articles of Agreement, others are provided for in decisions of the organs of the IMF, some are financed by the ordinary resources of the IMF, others by means of loans (see Table 1).

33. Furthermore the IMF administrates a certain number of special accounts, legally distinct from the Fund, which are only available to the developing countries, and which function (or have functioned) outside the basic system of the IMF since these facilities do not result in new drawing rights but in credits on concessional terms or by a remission of interest (see Table 1).

34. The aid policies of the Fund to its members in difficulty have been the subject of very strong criticism on the part of a considerable number of States. There is no doubt that the IMF sometimes serves as a convenient scapegoat to present to public opinion unpopular policies and that the scarcity of available resources makes conditionality indispensible.

In practice, however, it reflects unmistakably the most strict liberal orthodoxy, of which the Fund, apparently not very concerned by the social implications of the policies it advocates, has made itself the watchful guardian. Furthermore, although it is a doubtful proposition in law to denounce the intervention of the IMF in the internal affairs of the member States – since these States are not obliged to accept the solutions proposed or to respect conditionality – it remains nevertheless true that the Fund disposes of means of "persuasion" that are especially effective, particularly as regards the developing countries, which have become, over the past years, the main "beneficiaries" of its resources. This effectiveness is increased by the fact that, very often, obtaining stand-by agreements is the *sine qua non* condition for new banking credits or for the rescheduling of the debt.

Table 1
Specific policies of I.M.F.

Facility	Creation, modification, expiry	Objectives	Maximum amount	Conditionality	Origin of resources
Compensatory financing mechanism	1963 Permanent facility reviewed in 1966, 1975, 1979, 1981 and 1984	Shortfalls in export earnings remittances by migrant workers and earnings from tourism.	83% of the quota (105% if combined with the cereal imports facility) 83% of the quota	Not very compulsive co-operation test (a little more strict beyond 50% of the quota).	Ordinary IMF resources.
Cereal import facility (4 years renewable)	1981 extended in 1985	Excess costs of cereal imports		do	do
Buffer stocks financing facility	1969 permanent facility	Contributions by the States to the operations of buffer stocks governed by commodity agreements	45% of the quota	Very limited concerns only the requirements to be met by the stock)	do
Enlarged access	1974	Structural balance of	140% of the quota	Strict-enlarged	do. for approximately

facility	Permanent facility made more flexible in 1979	payments difficulties	but overdrawing possible	agreement – very concrete and precise programme – performance criteria – scheduling	one-half and borrowed resources or the remainder
Oil facility	1974–1975 and 1975–1976	Balance of payments difficulties arising from the higher cost of oil imports	1974: 75% of the quota or of the amount of deficit due to the oil price	1974: submission of general intentions and consultations; 1975 submission of a	Loans
	= =		Increase; 1975: 125% of the quota or 85% of the additional cost	Programme but without criteria or scheduling	= =
Oil facility subsidy account	1975–1983	Reducing the burden resulting from the resort to the second oil facility.	–	This facility is solely for the benefit of developing countries	Separate special account fed by voluntary contributions
Trust fund	1976–1981	Supplementary balance of payments assistance to low-income countries	Loans proportional to the quota	Very liberal (similar to that for the credit tranche), loans and not drawings; interest: 0.5% per annum	Separate special account, fed by the profits made on the sale of 1/6 of the Fund's stock of gold
Supplementary financing facility	1977–1983	Supplementary structural assistance	Complex – 140% of the quota but overdrawing possible	Strict (similar to those for upper credit tranches)	Loans combined with ordinary resources
Enlarged access	1981	do	115% of the quota	do	Loans

B. *The Operations and Transactions of the Special Drawing Rights (SDR) Department*

35. The SDR constitute the main innovation brought about by the first amendment to the Articles of Agreement of the IMF (Stockholm agreements of 1968, which entered in force on 28 July 1969).

Their vocation according to Article VIII, section 7, and Article XXII, is to become the "principal reserve asset in the international monetary system", and the SDR can be considered, as their name indicates, as a supplementary faculty for the participating States to make drawings. Unlike ordinary drawings, however, these purchases consist of the exchange of scriptural currency allocated by the IMF to the States, against currencies supplied not by the Fund itself but by a State designated by it.

36. At first, the value of the SDR had been fixed by reference to a weight of fine gold and was determined by the formula "35 SDR the ounce". Since July 1974, a new method of evaluation resting on the "basket" system has been adopted: the value of the SDR, calculated every day, is determined since 1981 by reference to the evolution of the exchange rates of five currencies (the US dollar, the D-mark, the French franc, the pound sterling and the yen), weighted in each case.

a. *Allocation of SDR*

37. According to Article XVIII, section 1 (a), of the Articles of Agreement,

> In all its decisions with respect to the allocation and cancellation of special drawing rights the Fund shall seek to meet the long-term global need, as and when it arises, to supplement existing reserve assets in such manner as will promote the attainment of its purposes and will avoid economic stagnation and deflation as well as excess demand and inflation in the world.

In other words, the aim is to meet the needs for necessary liquidities to ensure the financing of world trade.

38. The observance of these conditions of substance is, in principle, guaranteed by the rather cumbersome procedure set forth in the Articles of Agreement, which comports four stages:

(i) The Managing Director must ensure "that there is broad support among participants for the proposal" as to SDR allocation,
(ii) if this is the case, he can make a formal proposal,
(iii) to which the Executive Board must give its consent,
(iv) the final decision is taken by the Board of Governors at an 85 per cent majority vote.

In principle, the allocations are decided for basic periods of five years and effected annually by fractions but the Fund can shorten the basic periods. Every State receives an amount of SDRs proportional to its quota, and, although this constitutes one of their main demands, the developing countries have not obtained that a "link" be established between their needs and SDR allocations by means preferential allocations in their favour. The SDR can be cancelled under the same conditions.

39. The Fund has, until now, decided to proceed only to two allocations of SDRs, for basic periods of three years each, in 1969 and in 1979, for a total amount of approximately 21 000 million, which is very far from making SDRs the "principal reserve asset in the international monetary system". No cancellation has been decided to this day.

b. *Operations and Transactions in SDR*

40. The institutions holding SDRs (States and certain international financial organizations) can make freely between themselves transactions in SDRs by agreement, but they are not obliged to do so. Furthermore, although the IMF tries to encourage operations in SDRs in the transactions between public authorities ("strengthening of SDR" policy), SDRs can be used in transactions in which private persons participate.

To remedy this drawback, it was necessary to provide for the "convertibility" of the SDRs, this is made by article XIX, section 5 (a), of the Articles of Agreement:

> The Fund shall ensure that a participant will be able to use its special drawing rights by designating participants to provide currency for specified amounts of special drawing rights.

A State thus designated cannot refuse but the Fund cannot designate a participant if its assets in SDRs exceed 300 per cent of net cumulative allocation (i.e. of the total of its allocations, less possible cancellation).

41. The participant thus designated must provide, in exchange for the SDRs which it receives, "freely usable currency", a concept which, under the second amendment, replaced the earlier "effectively usable currency", and which Article XXX (f) defines as follows:

> A freely usable currency means a member's currency that the Fund determines (i) is, in fact widely used to make payments for international transactions, and (ii) is widely traded in the principal exchange markets".

Only the five currencies used to determine the value of the SDRs (see above No. 36) have been recognized as meeting these conditions.

42. The use of SDR is unconditional in the sense that although, like for the drawings from the reserve tranche (see above No. 27), it must respect the requirement of need and the general objectives of the IMF, the Fund can only evaluate the fulfilment of the conditions *a posteriori*.

On the other hand, unlike what happens with the drawings from the reserve tranche, a participant who holds an amount of SDRs smaller than its net cumulative allocation (having thus exhausted its SDRs) must pay a charge whereas the one that holds SDRs beyond its allocation receives interest. The rate of this interest (and of the charge) is calculated by reference to the weighted average rate of interest on short-term bonds on the market of the five States whose currencies serves to determine the value of the SDRs (see above para. 36).

Since 1981, the obligation of partial reconstitution of assets in SDRs by the drawing States, provided for by Article XX, section 6, of the Articles of Agreement of the Fund, has been cancelled.

2. *Within the Regional Frameworks*

43. Although the IMF constitutes, very obviously, the privileged framework of monetary co-operation between the great majority of States in the world, there are many other co-operation fora.

However, for various reasons, monetary co-operation between developing countries has remained in the early stages of development despite the attempts that have been made (e.g. the Arab Monetary Fund), except when made within a larger framework (e.g. the Franc zone). On the contrary monetary co-operation (and, most of the time, financial co-operation as well) between industrialized countries has multiplied.

Since it is impossible to study all of them here, we will be content with only three examples: the European monetary system, the "monetary zones" and the "CMEA system". But this must not lead us to underestimate the importance of other frameworks of co-operation such as the Organization of Economic Co-operation and Development (OECD) or the World Bank. Furthermore, the non-institutional co-operation between States or between central banks, on a bilateral or multilateral basis, plays an essential part in the regulation of international monetary relations.

A. *The European Monetary System*

44. In monetary questions, the Treaty of Rome instituting the European Economic Community (EEC) imposes upon member States not much more than a very general obligation of consultation which the framework of a monetary committee, created by its Article 105. Article 107 goes a little further by providing that each State must treat its policy as regards exchange rates as a problem of common interest. Furthermore, the freedom of capital movements instituted by the Treaty, the mutual co-operation provided for by Article 108 and, especially, the requirements of the common agricultural policy, also go in the same direction.

The mechanism of monetary co-operation known under the name of the "serpent and the tunnel" instituted in 1972, was replaced by a new European monetary system which entered in force on 13 March 1979.

45. This system is characterized by the creation of the ECU (European Currency Unit), which takes over from the European Unit of Account the

value of which corresponds to the sum of the values of the currencies of the member States (sterling pound included), weighted in relation to the importance of their gross national products and foreign trade.

The ECU is both a unit of account and a means of settlement which can be used in the operations between the Central Banks of the countries participating in the system (the six original members plus Denmark and Ireland). This is possible because of the deposit by these countries, at the European Monetary Co-operation Fund (EMCF), of 20 per cent of their assets in gold and in currencies in the form of renewable swap agreements (overdraft facilities).

46. Every State defines the value of its currency in relation to the ECU, it is this value which is called the "pivot rate" starting from which it is possible to define the theoretical par values between any pair of currencies of member States.

The fluctuation margins allowed are defined from the starting point of these bilateral pivot rates. They are fixed at 2.25 per cent above and below except for the Italian lira (6 per cent). As soon as these margins have been reached, the Central Bank of the State concerned must intervene. To this legal obligation, however, must be added a "presumption" of action (according to the terms of the Brussels resolution of the European Council of Ministers of 5 December 1978) when the relative value of a currency in relation to the ECU has reaches a "threshold of divergence" determined according to complicated formulas and varying from one State to another. (It is this "blinker" system which has led to the system being described as "rattlesnake").

47. This complex and reasonably effective system (although it has not been possible to move on to the second stage envisaged by the aforementioned resolution of 1978) is supplemented by the strengthening of bilateral mechanisms of assistance which nevertheless function within the framework of the EEC:

- 45 day credits (instituted in 1972),
- short-term monetary support (nine months), partly automatic (instituted in 1970),
- medium-term financial support (for a maximum of five years), in application of Article 108 of the Treaty (instituted in 1971) and
- "parallel actions" (loans made by favourable conditions (6 per cent), geared at helping Ireland and Italy to adapt their economies to the new conditions of monetary Europe – instituted in 1978).

B. *The Monetary Zones*

48. In the strict sense of the term, a monetary zone is marked by

- The unlimited transferability of the currencies of member States, freely convertible among themselves at fixed rates,

- The free movement of capital inside the zone,
- A single exchange control,
- The pooling of foreign currency reserves.

However, in the case concerning *Rights of Nationals of the United States of America in Morocco*, the International Court of Justice does not appear to have admitted that the existence of a monetary zone could have Customs and commercial implications.[2]

The existence of such a zone constitutes nevertheless the monetary reflection of the economic domination exercised by the State whose currency plays the principal role upon the other States which constitute it.

49. In positive law, it is undoubtedly the Franc zone whose features are closest to the general principles set forth above (No. 46). Instituted in 1939 and consisting then of France and of the territories which it administrated, it later became, in 1960, a mechanism of monetary co-operation between France and its former colonies, the 1972–1974 reforms enlarged somewhat the monetary competences of the latter States.

The Franc zone, at present functions on the basis of the following principles:

- Totally fixed exchange rates,
- Unlimited convertibility both for current transactions and for capital movements,
  Common exchange control and
- Regulation of foreign currency reserves, the member States have the obligation to keep at least 65 per cent of French francs in their official reserves, while France grants them a foreign exchange guarantee for the remaining 35 per cent.

In order to enable the functioning of these mechanisms, each member State pays the bulk of its available currencies, into an operations account opened at the French Treasury. In return, that Treasury makes available the necessary amounts for its foreign settlements, (in fact, the former colonial Power thus retains a not insignificant right of supervision on the latter and, more generally, on the whole monetary policy of the other States of the zone).

Furthermore, the monetary and financial co-operation between each of the two groups of African States that are members of the zone, is particularly strong: two central note-issuing banks are shared by the Central African States on the one hand, and to those of Western Africa on the other. Within the framework of the West African Monetary Union, the West African States have, furthermore, in 1973, created a development bank.

50. In contrast with the Franc zone, the Sterling zone, which had always been less centralized and based on mere unformal agreements, ceased to exist in fact in 1967, when the United Kingdom decided the unilateral devaluation of the pound, and in law in 1972.

As far as it is concerned, the "dollar zone" has no legal existence: it exists however in fact, in so far as numerous States have decided, unilaterally, to define the value of their currency by reference to that of the United States (see above para. 21).

C. *The "CMEA System"*

51. Legally speaking the "rouble zone" does not deserve its name: in spite of a limited transferability, the currencies of this zone are not convertible (see above paras 16 and 21) and capital movement within the zone are subject to strict national exchange controls.

On the other hand, the States parties to the Statutes of the IBEC (see *supra* para. 16) can deposit with it part of their reserves in gold and foreign exchange (deposits which bear interest) and obtain from it short, medium or long-term diversified credits on concessional terms:

- clearing credits (one month on average)
- seasonal credits (maximum one year)
- credits in respect of delays in the delivery of good (maximum: one year, at a higher rate)
- credits for an exceptional increase in trade movements (maximum: one year)
- credits intended for the purpose of facing an exceptional imbalance in the balance of trade (variable duration)
- investment credits (see Article 6 of the agreement relating to multilateral settlements in convertible roubles, 1963).

52. In the last forty years, the law of international monetary relations has evolved in a manner which is paradoxical in two different respects.

In the first place, while the international law applicable to economic relations has an overall tendency to become more dense, more precise and more compulsive, the opposite is true in regard to monetary matters, the rules which govern the latter are in fact being "de-internationalized" at least in the quasi-universal framework of the IMF, with the States apparently regaining extremely broad powers to determine their currencies themselves (see *supra* No. 1) either individually or on a regional basis.

In the second place, this withdrawal of international law in the monetary field has -rather unexpectedly – not been accompanied by any relaxation of the external pressure exerted by the monetary institutions, and in particular the IMF, on the national economies. In fact, it is quite the opposite that has occurred: taking advantage of the watering down of the Bretton Woods code of monetary good conduct, the Fund avails itself of the power to lend assistance which has been conferred upon it by its constituent instrument to impose upon States, on a case by case basis, economic policies that go very far beyond the strictly monetary field.

This trend is being increasingly resisted by the developing countries, thereby rendering absolutely essential a thorough reform of the international monetary system – a reform which, despite some encouraging signs, remains nevertheless very problematical.

NOTES

1. Joseph Gold, *Conditionality*, IMF brochure No. 31-F, 1979, page 2.
2. See: Case concerning *Rights of Nationals of the United States of America in Morocco* (*France v United States of America*). Judgment of 27 August 1952: *ICJ Reports 1952*, p. 186.

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– *Le système monétaire international, aspects juridiques*, Armand Colin, Paris, 1972, 398 pp.

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Table 2
*IMF The system of quotas (number of votes of member States)**

	Number of votes	Percentage
United States	179.433	19.29
United Kingdom	62.190	6.69
Germany, Federal Republic of	54.187	5.84
France	45.078	4.85
Japan	42.483	4.57
Saudi Arabia	32.274	3.47
. . .	. . .	. . .
China	24.159	2.60
Maldives	270	0.03
Group B	565.586	60.81
of which EEC, including Spain and Portugal	268.287	28.85
Group of 77 (without China)	315.109	33.88
Total	930.018	100

* At 30 April 1985 – Source: IMF, *Annual Report 1985*.