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International Law and Monetary Sovereignty: The Current Problems of the International Trusteeship of the CFA Franc and the Crisis of Sovereign Equality.

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The CFA franc and the Comorian franc are colonial francs which derive from the split, made by the monetary reform of 26 December 1945, between the metropolitan franc and the currencies used in the French colonies. As far as the CFA franc is concerned, its history is fundamentally marked by the spectre of devaluation, the spectre of countless attempts and the spectre of numerous implementations, which are a reminder that the CFA franc carries a congenital infirmity: its birth coincides with the devaluation of the metropolitan franc. The CFA franc and the Comorian franc are the two currencies of the franc zone, a group of fifteen countries that depend on three central banks: the Central Bank of West African States (BCEAO), the Central Bank of Central African States (BEAC) and the Central Bank of the Comoros (BCC). It should be specified that the monetary unit designated by the CFA franc is different depending on whether the countries are in Central or West Africa. Originally called the franc of the French colonies in Africa, the CFA franc became in 1958 the franc of the African Financial Community in West Africa, within the framework of the West African Monetary Union (WAMU), acting within the limits of the objectives of the West African Economic and Monetary Union (WAEMU); and in parallel, the franc of the African Financial Cooperation in Central Africa, within the framework of the Central African Monetary Union (CAMU), acting within the limits of the objectives of the Central African Economic and Monetary Community (CEMAC).

Introduction

Sub-Saharan Africa digs up its past in order to project, reflect itself in, and specifically to make its future. This prevailing spirit of an article by Arthur Schomberg published in 1925 still resonates today.[1] There is no doubt that the question of the survival of the CFA franc, which has for several years now profoundly opposed African civil societies to their leaders and to French leaders, contributes indelicately to giving it a more literal meaning. The situation of the CFA

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1 *See e.g.*, Arthur A. Schomburg, *The Negro Digs Up His Past*, The New Negro 237 (Alain Locke, ed., reprinted New York, 1992) (1925).

franc, as observed during the demonstrations that swarmed the many African capitals, calls for fundamental social change. Such a conclusion can only be reached if one shares an objective condition: the CFA experience must be characterized as a failed social experiment. In this debate, it is quite legitimate to voice the logic of those whose:

> (...) life course has allowed them to suffer successively from colonial aggression, neo-colonial aggression and hegemonic aggression, including by subcontractors or proxies.[2]

The CFA franc and the Comorian franc are colonial currencies that derive from the split, made by the monetary reform of 26 December 1945, between the metropolitan franc and the currencies used in the French colonies.[3] As far as the CFA franc is concerned, its history is fundamentally marked by the spectre of devaluation,[4] notably through countless attempts[5] and numerous implementations,[6] which remind us that the CFA franc carries a congenital infirmity,[7] its birth coincided with the devaluation of the metropolitan franc.[8] The CFA franc and the

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2 *See* SAYEMAN BULA-BULA, DROIT INTERNATIONAL HUMANITAIRE 47—48 (Bruylant ed. 2010).

3 CFA zone: (French colonies in Africa): 1 franc C.F.A. = 1.70 metropolitan franc (A.-O.F., AEF., Togo, Cameroon. Somalis, Madagascar, Reunion and Saint-Pierre-et-Miquelon).
C.F.P. zone (French colonies in the Pacific): 1 franc CFP. = 2.40 metropolitan francs. The Indochinese piaster and the Indian rupee, already detached from the franc, were set at FRF 17 and FRF 36 respectively.
See e.g., *Les monnaies de l'Union française*, LE MONDE, 11 April 1950.

4 *Id.*

5 The French government's communiqué published on the evening of the Council of Ministers meeting of 2 April 1949 underlined its desire to maintain monetary stability in the overseas territories.
See Le gouvernement entend maintenir la stabilité monétaire dans les territoires d'outre-mer, LE MONDE, 2 April 1949.

6 *See The first contingent of the 1948 class will be called up on April 15th. The new parity of the franc C. F. A. will not be modified*, LE MONDE, 19 February 1948. *See e.g.*, Kako Nubukpo, *Le policy mix de la zone UEMOA : leçons d'hier, réflexions pour demain*, 212 REV. TIERS MONDE, 137—52 (2012).

7 *See Le gouvernement entend maintenir la stabilité monétaire dans les territoires d'outre-mer*, *supra* note 5.

8 *See e.g., Les monnaies de l'Union française,* LE MONDE*,* 11 April 1950.

Comorian franc are the two currencies of the franc zone, a group of fifteen countries[9] that depend on three central banks: the Central Bank of West African States (BCEAO), the Central Bank of Central African States (BEAC) and the Central Bank of the Comoros (BCC).

It should be specified that the monetary unit designated by the CFA franc is also different depending on whether the country in question is in Central or West Africa. Originally called the franc of the French colonies in Africa, the CFA franc became in 1958 the franc of the African Financial Community in West Africa, within the framework of the West African Monetary Union (WAMU), acting within the limits of the objectives of the West African Economic and Monetary Union (WAEMU); and in parallel, the franc of the African Financial Cooperation in Central Africa, within the framework of the Central African Monetary Union (CAMU), acting within the limits of the objectives of the Central African Economic and Monetary Community (CEMAC).[10]

Since their creation, franc zone currencies have been characterized by the specific determinants. They have a monetary unit maintained since colonial times for each integration zone. They have an issuing institute common to all countries belonging to the same zone. They are supposed to have an unlimited guarantee from the French Treasury for each common currency. France guarantees them a fixed parity between the CFA franc and the French franc, then the euro. They are supposed to enjoy absolute freedom of transfers between France and each state, between each state and France, or between states, whether for current commercial or financial transactions or for capital movements. They must pool the external assets of their central banks with the French Treasury. They must deposit almost all, currently slightly

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9 On the one hand, members of the West African Economic and Monetary Union (WAEMU) are as follows: Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo. On the other hand, members of the Economic and Monetary Community of Central Africa (CEMAC): Cameroon, Central African Republic, Republic of Congo, Chad, Equatorial Guinea and Gabon. Lastly, Islands of the Union of the Comoros is composed of: Mwali (Mohéli), Maoré (Mayotte), Ndzuwani (Anjouan), N'gazidja (Grande Comores). It should be noted that the Union of the Comoros is counted as a single member of the franc zone. This, in addition to the sub-Saharan African countries, brings the total to 15.

10 *See, e.g.*, Sanou Mbaye, *Le franc CFA, monnaie anachronique*, 165 Le Monde Diplo., Maniere de Voir, June-July 2019, at 16 (France-Afrique, Domination et émancipation).

above 50%, of the assets of the three central banks with the French Treasury. They must undertake a unification of their exchange rate regulations and benefit from a guarantee of sound monetary management provided by a close association of France with the decisions taken, etc.[11]

Historically, these various conditions have not been exclusively sealed in marble in the cooperation agreements between France and these areas of integration, which are executive agreements, containing a few general clauses recalling the independence of states, consent to monetary cooperation and, generally formulated in evasive terms, the existence of a transaction account agreement. The general thrust of monetary cooperation—in each of these cases—is particularly apparent from a combined reading of the cooperation agreement, the transaction account agreement, the agreement establishing the central bank, the central bank statute, etc.[12]

However, a few years after their signature, the cooperation agreements have been criticized and called into question, if not in an underhanded way, at least openly.[13] In the early 1950s, the French Economic Council had expressed its concern about the creation in 1945 of colonial francs, which did not provide any advantage to the territories of the French Union.[14] The conclusions reached by the Council underlined the increasing complexity of the system and the lack of interest in the creation of the francs of the French colonies in Africa (CFA) and the French colonies in the Pacific (CFP).

These colonial francs were seen more as a factor of economic turmoil and their annexation to a foreign currency risked accentuating political instability within the French Union.[15] Various circumstances accentuated in particular by the devaluation of the metropolitan franc

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11 *See, e.g.*, Guia Migani, *Chapter 10 / From CFA franc to CFA franc. La banque centrale des Etats d'Afrique de l'Ouest, les Etats africains et la France* (1955-1962), Les Banques Centrales et L'État-Nation 261—280 (Olivier Feiertag ed., Presses de Sciences Po) (2016).

12 *See, e.g.*, Guy Feuer, *La révision des accords de coopération franco-africains et franco-malgaches*, 19 Annuaire Français de Droit International 734—35 (1973).

13 *See, e.g.*, Philippe Simonnot, *M. Pompidou warns Africans against a fundamental revision of the monetary agreements with France*, Le Monde, 24 November 1972.

14 *Id.*

15 *Id.*

on 20 September 1949,[16] had begun the thrilling epic of constant threats of devaluation of the CFA franc or changes in the parity. This context was then favourable to the creation of the Djibouti franc, encouraging the Somali coast to leave the franc zone, almost ten years before the exit of Guinea, which led to the creation of the Guinean franc (1960), that of Mali with the creation of the Malian franc in 1962,[17] returning later in 1984,[18] that of Madagascar, which gave rise to the Malagasy franc in 1963, and then that of Mauritania, punctuated by the creation of the ouguiya in 1973.[19]

The problems posed by the CFA franc are economic in that they hinder the economic progress of the countries in the franc zone,[20] but they go beyond that because of their legal and sociological roots. Therefore, this tribute to the late Professor Stéphane Doumbé-Billé, who devoted a considerable part of his reflections to the relationship between international law and development problems—with particular emphasis on regional integration—makes it possible to put some perspective on the problem of the international trusteeship of the CFA franc, based on the monetary dimension of sovereignty, which is rarely mentioned in the current debate in African public opinion.

I. Monetary Sovereignty: An Ethereal Creature

As an instrument of the state—by its nature and importance—money is one of the materials supports, which promote trade, grant various capacities and confer a certain degree of power and freedom.[21]

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16 *Id.*

17 *See* Demba Moussa Dembele, Kako Nubukpo & Martial Ze Belinga, *CFA Franc: Les termes nouveaux d'une question ancienne*, 191 Presence Africaine 243—45 (2015). *See equals*, *La Guinée, la France et l'Afrique*, Le Monde, 14 May 1963.

18 *See* Guia Migani, *L'indépendance par la monnaie: la France, le Mali et la zone franc, 1960-1963*, 133 Relations Internationales, 21—39 (2008). *See equals Les conventions franco-maliennes et franco-malgaches ont été rendu publiques*, Le Monde, 14 April 1960.

19 *Une conférence des chefs d'État d'Afrique francophone se tiendra à Paris le 13 novembre, Le Monde*, 03 November 1973.

20 *See, e.g.*, Kako Nubukpo, *Le franc CFA, un frein à l'émergence des économies africaines ?* 68 L'Eco. Po. 71 (2015).

21 Moustapha Lo Diatta, Les Unions Monetaires en Droit International

From this point of view, the power to make banknotes a legal tender, in payment of states' commitments, has historically been considered appropriate and suitable for the execution of the power to wage war, in the same way as the power to regulate trade and international relations.[22] However, it has also been argued that such a power is inherent—in the spirit of the constitution of many states—in that they have both the freedom to choose their monetary system and the power to regulate their currency.[23]

As a result, states are to determine or evaluate the extent of their wealth, to identify characteristic features of it, weight and form, but also to determine the conditions for the printing and denomination of their monetary units and their relations with foreign currencies.[24] It is not disputed that these essential features of monetary sovereignty, which have been enshrined in international and domestic law, are often hampered in the practical implementation[25] of their application by various constraints.[26]

A. The Initial Conception of Monetary Sovereignty

By acceding to their independence, the franc zone states acquired the right to freely choose their political, economic and monetary system. The resulting statehood conferred upon them—*inter alia*—an equality of rights and a personality at the international level likely to favour the exercise of all the rights attached to their sovereignty. In particular, two dimensions of it that are ineluctably correlated, economic and monetary sovereignty. In many respects, their role has been historically important in terms of the development path that the franc zone countries proposed to follow from the beginning of the 1960s and 1970s. For this reason, these countries endeavoured to exercise their monetary sovereignty within the limits of international law, but in a context that

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(Presses universi-taires de France, 2007).

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 *See* Kako Nubukpo & Boris Samuel, *Entre les plans d'émergence sans vision et des visions sans émergence: la difficile appropriation par l'Afrique de ses trajectoires de développement*, 145 Politique Africaine 51—63 (2017).

appeared less conducive to genuine monetary independence.

1. Monetary Sovereignty: A State Competence

The state shall have sole competence to determine or right to issue currency. It is now possible to situate historically the context in which this monetary competence emerged for the first time,[27] before finding the axes of its convergence in state practice.[28] However, this state competence has only recently found its most universal international expression in the case law of the Permanent Court of International Justice (PCIJ). In 1929, in its ruling on the payment of various Serbian loans issued in France, the PCIJ had held that the state has a duty to ensure that the payment of such loans is made in accordance with the provisions of the law:

> Indeed, it is a generally recognized principle that every state has the right to determine its own currencies.[29]

To recall the authority of such a formulation, the PCIJ had also referred to it in its judgement in the case concerning the payment in gold of Brazilian federal bonds issued in France.[30]

27 To solve so many financial problems, we needed a strong currency. And to facilitate trade with the rest of the Hellenistic world, it had to be attached to the monetary standards of the latter, which are foreign to Egypt. A whole financial system was then set up. A state central bank was set up in Alexandria, with branches in the capitals of the nomes and sub-subsidiaries in the important villages. These royal banks carried out all kinds of banking transactions. There were also private banks, which played a secondary role in the economic life of the country.
See H. Riad, *L'Egypte à l'époque hellénistique*, Histoire générale de l'Afrique. Afrique ancienne 166 (G. Mokhtar ed., Présence africaine/Edicef/Unesco, 1987). *See equals.* Cheikh Anta Diop, Precolonial Black Africa. A Comparative Study of the Political and Social Systems of Europe and Black Africa, from Antiquity to the Formation of Modern States 133—36 (Chicago Review Press, 1987).

28 *See* Chancellor Williams, The Destruction of Black Civilization. Great Issue of Race From 4500 B.C. TO 2000 A.D., 110 (Third World Press, 1974).

29 Case Concerning the Payment of Various Serbian Loans Issued in France (France v Kingdom of the Serbs, Croats and Slovenes) (1929), PCIJ Series A, No. 20/21, at 44.

30 The PCIJ had occasion to state that: (...) if the Court cannot accept that

An examination of monetary sovereignty, as it is conceived today, nevertheless makes it possible to underline the place of history and case law tradition in its identification as the product of international custom. This generally recognized principle, according to the PCIJ's formula, is derived—in comparative law—from a long case law tradition, including the Anglo-Saxon area.

It is worth recalling prima facie the decisive role of a case that has remained famous in the United Kingdom since the 19th century, *Emperor of Austria V. Day and Kossuth* which is deemed a landmark judgement. The facts in that case are relatively simple. The defendants, Louis Kossuth and Messrs. Day & Son, had printed banknotes in London. Louis Kossuth intended to use them in Hungary, after having overthrown the Emperor of Austria by a revolution. However, less favourable circumstances for this project led the emperor to be informed, and he sought an injunction from the judge to stop printing the banknotes.

In his judgement, the British judge came to the following conclusion:

> If the question related merely to an affair of state it would be a question, not of law, but for mere political discussion. But the regulation of the coin and currency of every state is a great prerogative right of the sovereign power. It is not a mere municipal right, or a mere question of municipal law. Money is the medium of commerce between all civilized nations; therefore, the prerogative of each sovereign state as to money is but a great public right recognized and protected by the law of nations. A public right, recognized by the law of nations, is a legal right; because the law of nations is part of the common law of England.[31]

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the intention was to subject the substance of the debt and the validity of the stimulations determining it to French law, this does not prevent the currency in which payment must or may be made in France from depending on French law. Indeed, as the Court explained in its judgment on certain Serbian loans, it is a generally recognised principle that every State has the right to determine its own currencies. *See* in this sense Case Concerning the Payment in Gold of Brazilian Federal Bonds Issued in France (1929), PCIJ Series A, No. 20/21, 122.

31 *See* Emperor of Austria V. Day and Kossuth (1861) 1 Reports of Cases Adjudged in the High Court of Chancery by the Vice-chancellor Sir John Stuart [1858-1865] (1916), 425—26.

This extract is understood as stating a principle of law whose foundations already existed in international custom. It states that it is now established that the regulation of the currency in each state is a matter of sovereignty. To reinforce this statement, the decision affirms that the issue of currency falls within the scope of such matters, the scope of which goes beyond domestic law, since currency is, in itself and in a general way, perceived as the medium of exchange and trade between nations. Accordingly, this prerogative of the sovereign state is a right recognized and protected by international law. The law of nations.

It is therefore widely accepted that the power to establish and determine a legal tender is a sovereign power of the state. As such, it is exercised in accordance with a combination or well-established balance of powers,[32] whether of the executive[33] or legislative branches.[34] In the Republic of the Congo, for example, the competence to determine the regime for the issuance of currency is vested in the parliament.[35]

It, moreover, follows that monetary power, by its very nature and necessity, derives from the very concept of monetary sovereignty.

In many respects, it is through this principle that the United States Supreme (U.S.) Court has perfectly illustrated the revealing function of monetary sovereignty as a basis of power, except that it is an implicit constitutional jurisdiction, but intrinsically a power of the federal state on the same level as the power to wage war. In *Hepburn V. Griswold*, handed down in December 1869, which aroused the greatest interest, the U.S. Supreme Court unravelled the subtlety of the legal and economic concepts that form the basis of monetary sovereignty and allocated the reciprocal prerogatives of the American government and Congress in this matter:

> It is not doubted that the power to establish a standard of value by which all other values may be measured, or, in other

32 *See* Gabonese Const. art. 47, amend. by Act No. 47/2010 of 12 January 2011. *See* also Gabonese Const. art. 67.

33 The peculiarity of art. 61 lies in the fact that the Gambia Const. refers to a direct competence of the Central Bank of The Gambia. However, it does not confer competence in this matter to the executive or parliament, but the central bank works under the supervision of the government.

34 *See* Ivory Coast Const. art. 71, and Cameroon Const. art. 26.

35 *See e.g.,* Congo (RC) Const. art. 125.

> words, to determine what shall be lawful money and a legal tender, is in its nature, and of necessity, a governmental power. It is in all countries exercised by the government. In the United States, so far as it relates to the precious metals, it is vested in Congress by the grant of the power to coin money. But can a power to impart these qualities to notes, or promises to pay money, when offered in discharge of pre-existing debts, be derived from the coinage power, or from any other power expressly given?[36]

The clarity of the principle that the U.S. Supreme Court posed was essentially twofold. On the one hand, that all matters relating to the determination of the currency are intrinsically a matter of sovereignty in all countries. The resulting prerogative is usually exercised by governments. However, the power to determine the condition of precious metals is vested in Congress.[37] On the other hand, the court noted that there is also no reason to consider that the power over precious metals would be implied or incidental to the power to regulate the value of U.S. currency or foreign coins. However, it is particularly interesting to

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36 *See* para. 32.

37 Nor is the power to make notes a legal tender the same as the power to issue notes to be used as currency. The old Congress, under the Articles of Confederation, was clothed by express grant with the power to emit bills of credit, which are in fact notes for circulation as currency; and yet that Congress was not clothed with the power to make these bills a legal tender in payment. And this court has recently held that the Congress, under the Constitution, possesses, as incidental to other powers, the same power as the old Congress to emit bills or notes; but it was expressly declared at the same time that this decision concluded nothing on the question of legal tender. Indeed, we are not aware that it has ever been claimed that the power to issue bills or notes has any identity with the power to make them a legal tender. On the contrary, the whole history of the country refutes that notion. The States have always been held to possess the power to authorize and regulate the issue of bills for circulation by banks or individuals, subject, as has been lately determined, to the control of Congress, for the purpose of establishing and securing a National currency; and yet the States are expressly prohibited by the Constitution from making anything but gold and silver coin a legal tender. This seems decisive on the point that the power to issue notes and the power to make them a legal tender are not the same power, and that they have no necessary connection with each other. (Para. 34).
See Hepburn v. Griswold 75 U.S. 603.

note the judge's declination of this power in that the regulation consists of the power to determine the weight, purity, shape, printing and denomination of the various coins, as well as their relationship to each other and the relationship of the foreign coins to the United States currency unit.

As a result, it is appropriate to observe that the state, in exercising its monetary jurisdiction, which is part of its reserved area under domestic law, has the power to create a currency and to give it the name it deems appropriate. This competence involves the issuance of currency, including its printing, the definition of its rate and value, through the mechanisms of its central bank and often a commission, which in principle regulate payment and settlement systems and ensure banking and financial supervision. In this respect, it is therefore incumbent on the state to set up mechanisms for manipulating the currency, such as devaluation or revaluation, to organize—in terms of its relations with other states—the conditions for international use and possible convertibility, and to determine the applicable interest rates.

In the case of franc zone countries, this power has been delegated to monetary issuing institutions since colonial times.

2. Monetary Sovereignty: A Delegated Competence

In order to reflect the exact scope of this delegation, it should be recalled—at the outset—that monetary sovereignty is exercised by the state alone and that it relates—in no uncertain terms—to its reserved area. With regard to the situation of the Franc area states, this element can be seen particularly as part of the integration of the monetary system.[38] In this respect, the islands belonging to the Union of the Comoros, the Member States of the West African Monetary Union (WAMU) and those of the Central African Monetary Union (CAMU) have delegated their monetary powers to their respective central banks.[39] Consequently, it is up to them to define the various monetary policies and to exercise the power consubstantial to the monetary competence

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38 *See* Narcisse Mouelle Kombi, *Les aspects juridiques d'une union monétaire: l'exemple de l'Union monétaire de l'Afrique centrale (UMAC)*, 4 Afrilex 87—131(2004).

39 *Id.*

delegated to them, by means of bodies in which the Member States participate.[40]

First, it should be noted that this integration has been achieved through the creation of monetary unions, whose organic pillars are central banks with the legal status of international public institutions. For their part, WAMU Member States have created a common monetary unit, known as the CFA franc, whose issuance is entrusted, under article 2 of the Treaty on the West African Monetary Union, to a single issuing institution, the Central Bank of West African States (BCEAO).[41] As for the member States of the UMAC, they have agreed to a common monetary unit, also known as the CFA franc, issued by the Bank of Central African States (BEAC) pursuant to Article 3 of the Convention governing the Central African Monetary Union.[42] Finally, Article 6 of the Statutes of the Central Bank of the Comoros states that the Central Bank of the Comoros is the sole monetary authority of the Union of the Comoros, which issues a common monetary unit called the Comorian franc.[43]

From the vantage point of legal analysis, it should also be re-

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40 Kako Nubukpo, *Politique monétaire et servitude volontaire. La gestion du franc CFA par la BCEAO*, 105 Politique Africaine 70—84 (2007).

41 Following the signing of the Treaty of 12 May 1962 establishing the West African Monetary Union, BCEAO became an international public institution. On 4 December 1973, the Cooperation Agreement between the French Republic and the Member Republics of the West African Monetary Union and the Operations Account Agreement between the French Republic and the West African Monetary Union were concluded.

42 The BEAC, which has its headquarters in Yaoundé, Cameroon, was created by the monetary cooperation conventions signed in Brazzaville on 22 and 23 November 1972. These conventions, according to Guy Feuer, were made up of four texts: the statutes of the B.E.A.C.; a monetary cooperation convention between the member states of this Bank and the French Republic; a monetary cooperation convention between the Republic of Chad, the United Republic of Cameroon, the Central African Republic, the People's Republic of Congo and the Gabonese Republic; an operating account convention between the B.E.A.C. and the French Treasury. *See* Guy Fueur, *La révision des accords de coopération franco-africains et franco-malgaches*, 19 Annuaire Français de Droit International 734 (1973).

43 The Monetary Cooperation Agreement between the French Republic and the Islamic Republic of the Comoros was signed on 23 November 1979, guaranteeing the stability of the currency of the Union of the Comoros. The Central Bank of the Comoros was officially established on 1 July 1980.

marked that several clauses in the statutes of central banks reveal the essential features of the monetary competence delegated to them by the states. By way of illustration, Article 8 of the statutes of the BCEAO defines price stability as the primary objective of the bank's monetary policy. Its content is reinforced by the statement in Article 9, which gives an enumerative definition of the BCEAO's tasks in these terms:

> The BCEAO's mission is to (...) define and implement monetary policy within WAMU; ensure the stability of the WAMU banking and financial system; promote the smooth operation and ensure the supervision and security of payment systems in WAMU; implement WAMU's exchange rate policy under the conditions laid down by the Council of Ministers; and manage the official foreign exchange reserves of WAMU member states.[44]

The combined effect of the cooperation agreements led the drafters of these instruments to reproduce this clause in extenso in the statutes of the BEAC. As such, Article 1 specifies the mission of the BEAC in the same terms, although it is not listed in the same order. On the other hand, Article 6 of the Statutes of the Central Bank of the Comoros appears, in turn, less enumerative, it limits itself to identifying some of the fundamental missions such as the stability of the currency and the definition of monetary policy, then concedes in Articles 7 to 9 the task of detailing the content of the other fundamental missions.

However, monetary competence is also linked to the privilege of issuance and the material appearance of the media issued. In this respect, Article 12 of the Statute of the BCEAO, which refers to the issuance of monetary signs, confers the privilege of issuing:

> Monetary signs, banknotes and coins having legal tender status and power of discharge in WAMU Member States.[45]

Its provisions are supplemented by those of Article 13, which grants the WAMU Council of Ministers the competence to decide on the physical monetary media. This applies to the range of banknotes

44 *See* BCEAO STATUTES art. 9.
45 *See* BCEAO STATUTES art. 12.

and coins as well as the conditions for their withdrawal from circulation and their cancellation,[46] but also to the face value, the form of denominations and the signatures to be affixed to the said material supports.[47] Article 7 of the BEAC's statutes and Article 8 of the statutes of the Central Bank of the Comoros grant a privilege—of the same nature—to these two public institutions.

A faithful presentation of the substance of this delegation implies that reference should be made to the role assigned to central banks with regard to the relations of their Member States with international financial institutions. As a result, franc area central banks are entitled to assist their Member States in their interactions, negotiations or commitments with international financial institutions, and even to operate—on their behalf—in the international monetary and financial system.[48] Consequently, Member States have a duty of information towards central banks when entering into monetary or financial commitments and to seek the assistance of the said banks, in particular when the commitments have implications for their operating accounts. In addition to these interactions, central banks may carry out various transactions on behalf of Member States, namely buying and selling gold[49] and foreign exchange.[50]

However, it does not seem correct to consider, as stated in the statutes of these central banks, that they actually operate as issuing institutions.[51] It is sufficient to point out that the CFA franc has been beaten in Chamalières, France, since 1945. The first apparent reason for such outsourcing is that centralized production in France does not entail significant costs in terms of manufacturing and transport to the mainland and the Comoros. However, as the franc zone comprises fifteen countries that are dependent on three central banks, the curiosity that such a situation arouses lies in the fact that it would be cheaper to beat and transport banknotes, if they were manufactured in Douala, Dakar or Moroni, as the case may be, than in Chamalières.

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46 *See* BCEAO STATUTES art. 13 para. 1.
47 *See* BCEAO STATUTES art. 13 para. 2.
48 *See* BCEAO STATUTES art. 12.
49 *See* BCC STATUTES art. 6.
50 *See* BEAC STATUTES art. 13
51 Kako Nubukpo, *Cinquante ans d'Union monétaire ouest africaine : qu'avons-nous appris ?* 110 Rev. Eco. Fin. 145—64 (2013).

Generally speaking, public[52] or private[53] institutions involved in the manufacture of foreign currency make a fortune, since they account for about 11 per cent of the world's monetary production.[54] A recent incident in Liberia clearly showed the fragility of such a process.[55] The second reason put forward is that many African countries print their currency abroad, including the United States, Germany, United Kingdom, etc., a justification that arouses nothing less than an objection.

The determination of which countries are in the franc zone does not depend on whether a particular country chooses to print its currency in Europe or elsewhere. It is a matter of sovereignty, which induces self-management and independence in the courses of action. Most recently, the Chinese press caused a stir in India when it announced that the China Banknote Printing and Minting Corporation, a state-owned company, had signed a contract with the Indian government to print Indian rupees.[56] This was denied by the Indian government on the grounds of sovereignty and national security.[57] However, this monetary leverage has already been used for political purposes. In 2011, the British government had used it to paralyse Libya in order to obtain the fall of its revolutionary leader, Muammar Gaddafi.[58]

Indeed, this situation seems very delicate, because the manufacturer of the currency, particularly through the printing process, really

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52 Isaac, I. Inter-African Development and Development Fund (IADF): With Alternative Strategies Towards Sustainable Economic Development for Africa, 178 (United Kingdom, ed. AuthorHouse, 2009).

53 Companies such as the British De La Rue for about 140 central banks in the world; the German Giesecke & Devrient for about 100 central banks, to which we must add the Canadian Banknote Company, the American and Swedish Crane, and so on.

54 Christopher Giles, *Why countries print money outside their borders*, Bbc News, 28 November 2019.

55 Disappearance of banknote "containers" in Liberia: 15 people banned from travelling. The equivalent in local currency of 83 million euros, intended for the Central Bank, was lost after his arrival in Liberia, Le Monde Afrique, 20 September 2018.

56 *See* Christopher Giles, *Why Countries Print Money Outside Their Borders*, *supra* note 54.

57 *Id.*

58 In 2011, the British government has withheld about 1.86 billion dinars, or 713,284,317,150 FCFA. *See* Chris Summers, *How did Libyan money come to be printed in Britain*, Bbc News, 2 September 2011.

has the power rather than a single option. This leverage incidentally gives him the means to disrupt the economic and financial life of a state that outsources the manufacture of its currency. This applies, for example, to the excessive deployment of cash, the fraudulent production of banknotes, depreciation, but also to the use of the printing press. Finally, it is sufficient to note that, in the absence of a mechanism, under international law, for regulating and controlling the production of currency, recourse to public or private institutions simply calls into question the sovereignty of these States.

Although the central banks of the franc zone claim the principle of independence on their behalf,[59] it is nothing less than a legal mirage.[60] In addition to the printing of the CFA franc, France has real power, notably the institutional levers that guarantee it the exercise of monetary trusteeship in the strict sense.

B. The legal impossibility of monetary independence

The legal impossibility of monetary independence for the franc zone, which is now attracting the most bitter attention and the most incisive criticism, essentially stems from two sets of considerations. On the one hand, the existence of an operation account agreement, a mechanism acting like a monstrous creature that devours the monetary and financial capacities of the franc zone countries. On the other hand, the insidious and material persistence of a state of trusteeship, which reveals the modalities of action of the decentralization of monetary sovereignty and, undoubtedly, a supposed incapacity of African heads of state to manage their own affairs.[61]

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59 Sylviane Guillaumont Jeanneney, *L'indépendance de la Banque centrale des Etats de l'Afrique de l'Ouest: une réforme souhaitable?* 14 Rev. Eco. Dev. 60—2 (2006).

60 *Id.*

61 *See* Kako Nubukpo, Martial Ze Belinga, Bruno Tinel & Demba Moussa Dembele, Sortir l'Afrique de Servitude Monétaire Volontaire. A qui profite le Franc CFA ? 248 (La Dispute, 2016). Also, Claude N'Kodia & Felwine Sarr, *Place et rôle des pactes de convergence face aux nouveaux dispositifs budgétaires et de financement du développement en Zone franc*, 223-224 Afrique Contemporaine, 113—31 (2007).

1. The Trading Account Agreement: An Economic Monster

Monetary independence is—in the first place—made impossible by the existence of transaction account agreements.[62] This is a legal mechanism with an economic purpose, ostentatiously characterized by a state of surveillance and supervision to which France subjects the central banks of the franc zone, subsequently Member States, which nevertheless claim independence from their Member States. Article 9, paragraph 2, of the Convention on Monetary Co-operation, concluded on 23 November 1972 in Brazzaville between the Member States of the Bank of Central African States (BEAC) and the French Republic, which sets up a convention known as the operations account agreement, is indicative of this function. This article stipulates that the agreement will be concluded between the President of the Bank and the Minister of Economy and Finance of the French Republic.

The lineaments of the said Convention are laid down in Article 11 of the Statutes of the Bank of Central African States (BEAC), according to which its objective is expressis verbis to set up an operation account capable of ensuring the external convertibility of the CFA franc and its unlimited guarantee. Similar clauses are contained in the Monetary Cooperation Agreement concluded on 23 November 1979 between the French Republic and the Islamic Federal Republic of the Comoros. Such is the case with Article 2, which grants the currency issued by the Central Bank of the Comoros an unlimited guarantee. In order to achieve this, these cooperation agreements lead the Member States of the central banks of the franc zone to pool their external assets in foreign exchange reserve funds. The latter are deposited in current accounts opened with the French Treasury, i.e. subject to the budgetary and accounting controls exercised by the French Ministry of the Economy and Finance, known as transaction accounts.[63] Unlike the Monetary Co-operation Agreement, the BEAC's statutes provide that the special

62 Bruno Tinel, Le Fonctionnement des Comptes d'Opérations et leur Rôle dans les Relations entre la France et les Pays Africains, Documents de travail du Centre d'Économie de la Sorbonne 2016, [put online on 3 November 2016], consulted on 28 June 2020, URL: https://halshs.archives-ouvertes.fr/halshs-01391233.

63 *See* Beac Operating Account Agreement art. 1 as approved by the Ministerial Committee at its session of 22 November 2006.

agreement, which determines the conditions for the provisioning and operation of this account, is concluded between the Chairman of the BEAC's Board of Directors and the Director General of the French Treasury and Economic Policy, with the assent of the Ministerial Committee.

> There shall be opened, in the records of the Budgetary Control and Ministerial Accounting Department of the Ministry of Economy, Finance and Industry (SCBCM-MINEFI), in the name of the Bank of Central African States (hereinafter referred to as the Bank or the BEAC), a current account referred to as the Operations Account.
>
> The credit balance of the trading account is capped at the portion of the assets that must be deposited in the account pursuant to Article 3 paragraph 3 below. Above this threshold, the BEAC's surplus assets are held in a separate account, called the Special Levelling Account, also opened in the books of the Budgetary Control and Ministerial Accounting Department in the name of the Bank of Central African States in application of this convention. The Special Levelling Account shall not be in debit. It shall be operated exclusively by order of the BEAC.[64]

It should also be noted that the BEAC's Statutes also provide, beyond the portion of reserves designated as being automatically placed in the operations account, that the management of the BEAC's reserves, held outside the said account, may be delegated insofar as they are not:

> Deposited in an account denominated in convertible currencies with the French Treasury, of the Bank for International Settlements, issuing institutions, specialized financial institutions or foreign credit institutions with a minimum rating equivalent to A+ from one of the main rating agencies and appearing on a list drawn up by the Government of the Central Bank.[65]

64 *See* Beac Operating Account Agreement art. 1.
65 *Id.*

With the exception of sums linked to the commitments of the Member States of the Central African Monetary Union (CAMU) towards the International Monetary Fund (IMF), as well as the counterpart of external assets, the proportion of external assets that they must deposit on the operations account is—at this date—set at 50% of the net external assets of the BEAC, knowing that it was 60% until 30 June 2008 and 55% until 30 June 2009.[66] Under these conditions, the BEAC tends to act on behalf of the French Treasury, in the sense that it keeps a record of the external assets of all the public treasuries, institutions, companies and public authorities of the Member States, as well as the external assets resulting from the activities of banks and credit institutions established in the territory of its Member States. Consequently, the BEAC ensures that the operational account remains permanently available. In the event of a decrease in the liquidity in the said account, it shall have recourse to:

> External liquid assets placed, where appropriate, outside the zone, shall request the transfer for its benefit, against CFA francs, of external liquid assets in euros or other currencies held by any public or private bodies that are nationals of Member States, and then, where appropriate, the counterpart in its external assets of the States' deposits with the BEAC with a term of one year or more.[67]

In this respect, the BEAC can—to a certain extent—use the funds of public bodies and banks in the Member States particularly concerned by external transactions, whose deficit balance affects the operations account. However, the lack of availability—in this case—should lead the BEAC to resort to the sums available in its operation account in order to cover it. This mechanism further implies that when the balance is in debit, the BEAC is required to pay interest on top of the balance at a rate of between 1 % and 2 % or even the variable rates set by the European Central Bank (ECB).

It also appears that the French Treasury may automatically subject the BEAC to certain contractual constraints. When various circumstances cause the average amount of the BEAC's external assets and

66 *See* Beac Operating Account Agreement art. 3.
67 *See* Beac Operating Account Agreement art. 4.

liabilities to stagnate for a period of three months and in an iterative manner around a threshold equal to or less than 20 %. As a result, BEAC Member States in a debit position in the trading account can only have access to a maximum refinancing reduced by 20 %; while those in a credit position of less than 15 % are reduced by 10 %.

However, the trusteeship already mentioned, exercised through the budgetary and accounting control of the French Ministry of the Economy and Finance, goes beyond the above-mentioned constraints. Indeed, it is the least suspected control and monitoring, in particular the fact that the BEAC has a daily duty to transmit information—by fax—on the entries or accounting situation of external assets to the budgetary control and ministerial accounting department of the French Ministry of the Economy and Finance. In return, the department provides a statement of the various transactions carried out on the transactions accounts, on the basis of which the monthly remuneration is calculated. The same applies to the prior notification of treasury transactions, which is informed the day before the transaction.

To help understand the depth of the problems associated with the impossibility of monetary independence posed by operating account agreements,[68] it is necessary to look for the combined effect of these problems in the institutional supervision as it is applied in practice.

2. Institutional Trusteeship: A Means of Material Control

Seen from the perspective of institutional trusteeship, the impossibility of monetary independence stems from the fact that the current scheme is no less than a perpetuation of the colonial system. The implementation of cooperation agreements is not limited to maintaining France's zones of influence in Africa, but truly disguises the geographical location of the decision-making centre.[69] It is significant to mention here, with regard to the institutional trusteeship exercised by France in the network of central banks in the franc zone, its presence in their respective management and operating systems. As a result, the BEAC's Statute provides that France participates alongside the Member States

68 Kako Nubukpo, *Cinquante ans d'Union monétaire ouest africaine : qu'avons-nous appris ? supra* note 51, at 152.
69 Mohammed Bedjaoui, Pour Un Nouvel Ordre Economique International, 181—82 (Unesco ed., 1979).

in the management and supervision of the BEAC.

Indeed, Article 26 of the Statute specifies that France's participation is justified by the guarantee of convertibility it provides for the currency issued by the BEAC. Such a justification loses its apparent meaning when it is known for a fact that the CFA franc has been beaten and issued in France in the Auvergne region since 1945. An identical clause is provided for in Article 4 of the Monetary Cooperation Agreement between the French Republic and the Islamic Federal Republic of the Comoros. It states in almost the same terms that France participates in the management and control of the Central Bank of the Comoros in return for the unlimited guarantee it provides for the Comorian franc.

The illustration offered by the study of the law originating from the BEAC seems very interesting in this respect. The Statute of the BEAC contains an Article 29, according to which France has two seats on the BEAC's Board of Directors (BoD), in the same way as all Member States: a BoD of 14 members, including two directors for France and two for each Member State. As regards the Central Bank of the Comoros, Article 43(2) establishes a Board of Directors composed of eight members, half of whom are appointed by the French government and half by the Comorian government. Although such an apparent clause is not formulated in the BCEAO statutes, it nevertheless appears that one has to look very carefully to find the formula used, which is rather vague, especially for the neophyte. Article 80 of the BCEAO's Statute stipulates that, in addition to its governor and the sole member of each government, the Board of Directors shall comprise:

> A member appointed by the state which guarantees the convertibility of the common currency.

Unlike the statutes of the other central banks, this formula, neutral though it may seem, has the sole virtue of having obliterated the term "France", replacing it with "the State providing (…)" throughout the statute of the BCEAO. In fact, it reflects the same reality, notably that of France's participation in the management and control of the BCEAO. It should be pointed out that this approach, which consists in erasing the name "France" from the content of a legal instrument, in addition to the fact that it is not in this case a guarantee of monetary independence, reinforces the idea, now widespread in Africa, that the majority of its leaders first bow piety before the colonial citadels that established them, before acting as subcontractors interposed with arbitrary power,[70] especially a power of misappropriation of African people's fundamental rights. The record of which is to be heavy when it is established.

Basically, the situation of BCEAO, with regard to monetary sovereignty, is exactly the same as that of the BEAC since 1945. However, it would be ingenuous to consider that these seats on the board of directors confer only an *in partibus* presence. The board of directors is the place where monetary power is exercised in its sovereign nature. In accordance with Article 33 of the BEAC's Statute, it is responsible for proposing the broad outlines of monetary sovereignty:

> [t]he creation and issue of banknotes and coins as well as their withdrawal and cancellation; the face value and form of the denominations, the signatures they must bear as well as the modalities of their identification by State; the characteristics of the metallic coins; the period during which the banknotes and coins withdrawn from circulation must imperatively be presented to the Central Bank otherwise they lose their power of discharge; the allocation of the counter value of the balance of the banknotes or coins withdrawn from circulation and not presented at the counters of the Central Bank.[71]

In addition to membership of the Board of Directors, Article 39 of the BEAC's statutes gives France two seats on the BEAC's Monetary Policy Committee, which is a body of fourteen members, in which it participates on an equal footing with the UMAC Member States. Moreover, Article 40 of the BEAC's statutes stipulates that France, like the Member States, shall propose one of the three candidates who may take a seat, with the right to vote, on the BEAC's Monetary Policy Committee. Similarly, Article 67 of the Statute of the BCEAO provides for French participation in the Monetary Policy Committee, through an ex officio member appointed by it on account of its representation. It is

70 *See* Sayeman Bula-Bula, Droit international humanitaire, *supra* note 2, at 47.

71 *See* Beac Statutes art. 33.

interesting to note that within such a committee, the BCEAO Member States, i.e. the eight WAMU Member States, have only four members and France alone has one. Such a body does not exist in the case of the Central Bank of the Comoros; its Board of Directors plays the role of this committee. In this respect, it should be noted that the Committee is the body responsible for defining monetary policy, applied both outside the franc area and within the banking system of each Member State, which was presented above as an attribute of sovereignty.

A final aspect relating to this situation is France's participation in the College of Censors of the central banks of the franc zone. In this respect, Article 62 of the BEAC's Statute establishes a three-member College of Censors. France appoints one member *ex officio* and the six UMAC States appoint the remaining two. Here again, it should be noted that the distribution is not equitable and that France, through this body, controls the regularity of the BEAC's operations and accounts. Such a stipulation also appears in Article 59 of the Statutes of the Central Bank of the Comoros. In the latter case, the two members are appointed, one by the Union of the Comoros and the other by France.

In order to fully understand the meaning and scope of this trusteeship, it is necessary to examine the blank cheque given to France by the Council of European Economic and Finance Ministers at its 2136th session in Brussels on 23 November 1998.[72] At that session, the European Finance Ministers adopted a series of decisions, including one relating to the CFA franc and the Comorian franc. The Council, having dealt with exchange rate issues relating to the CFA and Comorian francs, authorized France to maintain the agreements on exchange rate issues between France and the WAEMU,[73] the CEMAC[74] and the Union of the Comoros.[75] Its objective was, after the replacement of the French franc by the euro on 1 January 1999, to maintain the status quo on the issue of foreign exchange reserves.[76] In addition to committing

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72 *See* Ecofin Council Communiqué, 23 November 1999, 2136th Council meeting, C/98/402.

73 Namely Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, Togo.

74 Namely Cameroon, Central African Republic, Chad, Congo, Gabon, Equatorial Guinea.

75 *Id.*

76 *See* Ecofin Council Communiqué, *supra* note 72.

France to pursue monetary cooperation, the decision reaffirmed that it was now up to the French Treasury, in view of its budgetary commitments, to guarantee free convertibility at a fixed parity between the euro and the currencies of the franc zone, in this case the CFA and Comorian francs.[77]

The resulting mechanism is as follows. On the one hand, cooperation agreements may exist as long as they do not hinder or influence the proper functioning of the European Union and its monetary and exchange-rate policy.[78] On the other hand, the European Union exercises—on its behalf—another supervisory function relating to the modification of the parity between the euro and the CFA or Comorian franc,[79] in the sense that France may not henceforth undertake such a modification without first informing the Economic and Financial Committee of the draft:

> Any change in the nature or scope of these agreements must be approved by the Council on a recommendation from the Commission and after consulting the ECB.[80]

Similarly, France keeps the Commission, the ECB and the Economic and Financial Committee informed about the implementation of monetary cooperation agreements.[81]

In view of the arguments put forward so far, the question therefore arises as to whether the Member States have really delegated their monetary competence to their respective central banks or is it France that has decentralized the Treasury departments in the franc zone? Since the States in question are said to be sovereign, does this suggest that they have abdicated their monetary sovereignty in favour of France? Whether one question seems more justified than another or the reverse, the conclusion that emerges from the preceding considerations is that monetary sovereignty is a component of state sovereignty, in the same way as economic and political sovereignty.

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77 *Id.*

78 *See* EU Council Decision on exchange rate matters relating to the CFA and Comorian francs, art. 4.

79 *Id.*

80 *Id.*, at art. 5.

81 *Id.*

On this basis, monetary sovereignty is never assumed, is partial and does not accommodate any form of trusteeship. If there are islands of subordination of monetary sovereignty, it is directly the sovereign equality in international law that is tainted, in the sense that the political sovereignty that the States in question could boast of becomes a mere clay pot.

II. Political Sovereignty: an Appalling Spectre

Sovereignty—the central piece of international relations today—has long been locked in its political dimension. It took some twenty years, following its transcription in the United Nations Charter, for Third World states to achieve recognition of economic sovereignty at the international level. It was then argued that political sovereignty was self-annihilating when the economic sovereignty of states was confiscated, either by foreign states or by multinational corporations.

However, the adoption of the Charter of Economic Rights and Duties of States intervened to definitively seal the fate of economic sovereignty in international law, to which monetary sovereignty remains attached. Consequently, state sovereignty, when devoid of its economic and monetary dimension, resembles an abstraction which is legal, but also sociological.

A. Sovereign Equality: A Legal Abstraction

Although it represented the immediate avatar of the overall scheme around which inter-state relations from 1945 onwards were to be articulated, sovereign equality—moulded in a sweater that was narrower than it seemed—had been built ab initio on the concept of sovereignty and on a horizontal framework that broke—only apparently—with existing hierarchical forms¬. It is no longer necessary to mention the internal tensions that were simmering in international society, brought to light by the debate on sovereignty over natural resources.[82]

However, the recent history of the CFA franc does not in fact strengthen the authority of the principle of sovereign equality. It con-

82 *See* Georges Abi-Saab, *La souveraineté sur les ressources naturelles*, 1 Droit International Bilan Et Perspectives, 639—45 (M. Bedjaoui (ed.), Pedone, 1991).

fronts a report that is not only analysed from the point of view of inequalities in development, although such inequalities are rooted in the fact that some societies have derived their capacity for action at the international level from the exploitation of other societies. For sustained periods of time, such a situation makes it obvious to reach the conclusion that empires are still alive. This report, in the case of the CFA franc, is seen as an agent that reinforces the degree of abstraction of international law, especially the principle of sovereign equality. The result is a twofold situation.

It should be noted that, by relying on the dual approach to sovereignty, the principle of sovereign equality aims to promote legal equality among states, in the sense that they are guaranteed equal enjoyment of all the rights deriving from their sovereignty, as well as respect for their international personality, territorial integrity and political independence, etc. The principle of sovereign equality is based on the principle of the sovereign equality of states. However, unless the condition of equality—which is likely to reconcile law and the international society its social basis—is achieved,[83] the problems posed by the trusteeship of the CFA franc incline to the view that sovereignty in those countries is a mere mirage.[84]

This distortion can be observed firstly in the light of the fact that the countries of the franc zone are enclosed in a degree of legal abstraction, which comes under the phenomenon of ghostly or 'phantom sovereignties.'[85] Sovereignty here is a disembodied soul, it proceeds from the pure concept, it is confiscated and therefore remains definitively formal. This sovereignty lies within accepted conceptions. Firstly, the internal one, in that international law recognizes its existence within the state, as the supreme, initial and unconditional authority that the state alone possesses and which confers on its will—over that of groups, organizations or individuals acting on its territory and with whom it maintains different relationships—a predominant nature.[86] State power

83 *See* Mohammed Bedjaoui, *Introduction générale*, 1 Droit International Bilan Et Perspectives, *Id.*, at 3.

84 Mohammed Bedjaoui, Pour Un Nouvel Ordre Economique International, *supra* note 69, 182—83.

85 *Id.*

86 *See* Raymond Carré de Malberg, Contribution à la théorie générale de l'État, 71—2 (Librairie du Recueil Sirey, 1920).

is known as *summa potestas*, that is to say the ultimate power within its territory.[87]

In this respect, the state has—according to the formula—the competence of its competence.[88] It determines its own competences, in their fullness and extent, as well as its fundamental rules, which in turn will condition the application of all other rules throughout its territory.[89]

Thus, in order to guarantee compliance with the rules, the state has to exert a monopoly on armed coercion. In other words, sovereignty thus enables it to establish and delimit its internal legal order. It is then that sovereignty appears as a property of the regalian rights of government, which the state simultaneously exercises and enjoys.[90] These sovereign rights constitute a bundle of powers of public authority indispensable to the government of a country, which take the material form of rights of legislation, the right of legation, police, justice, etc., and which are also the property of the state.

Secondly, sovereignty is external. As a translation of the intrinsic independence of the power of the state[91] at the international level,[92] it postulates that the state is not subordinated to any other power in its relations with other similar entities.[93] It is therefore independent of these

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87 *Id.*

88 *See* Gérard Cahin, *Le concept de souveraineté chez Gorge* JELLINEK, GRANDES PAGES DU DROIT INTERNATIONAL 83 et seq (Les sujets) (Pedone, 2015). *See* also Charles Rousseau, *L'indépendance de l'État dans l'ordre international*, 73 RCADI, 171—72 (1948).

89 Charles Chaumont, *Recherche du contenu irréductible du concept de souveraineté internationale*, MÉLANGES BASDEVANT 114—15 (Pedone, 1960).

90 *See* MAURICE HAURIOU, PRÉCIS ÉLÉMENTAIRE DE DROIT CONSTITUTIONNEL, 17—8 (Sirey, 2nd ed. 1930).

91 *See* Maurice Flory, *Souveraineté des États et coopération pour le développement*, 1 RCADI 257 et seq (1974).

92 *See e.g.*, the famous arbitral award, rendered on 04 April 1928 in the Island of Palmas case by sole arbitrator Max Huber. The latter had also considered that "Independence, in relation to a part of the globe, is the right to exercise, to the exclusion of any other state, state functions. The development of the national organization of States in recent centuries and, as a corollary, the development of international law, has established the principle of the exclusive jurisdiction of the State over its own territory, so as to make it the point of departure for the settlement of most questions relating to international relations ...". *See* RSA, vol. II, at 850.

93 CLAUDE-ALBERT COLLIARD, INSTITUTIONS DES RELATIONS INTERNATIONALES, 964 (Dalloz, 7th ed. 1978).

entities in its relations with each of them. In this regard, the widely accepted representation of the state is the ultimate power, freed, liberated or unburdened from all kinds of shackles, yoke, constraint, subjection or limitation towards a power external to it.[94] The PCIJ has—on this basis—considered that sovereignty is the fullness of the powers that may be vested in a subject of international law, so that it constitutes the criterion of the state and entitles it to exercise all powers not limited by international law.[95] Accordingly, the state acts in a so-called equal relationship and is obliged to cooperate and coexist with other states under international law.[96]

All this can in fact only be understood as a legal abstraction[97] that attempts to situate and determine the role of the state entity in international society.[98]

However, in the light of the approach outlined, it is difficult to envisage the sovereignty of franc zone countries, even political in some respects, beyond mere form. Although it contains some material elements, this sovereignty has a high degree of abstraction which is indeed based on the symbol. This in itself is reminiscent of the criticisms already made regarding the decolonization of several sub-Saharan Afri-

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94 *See* Raymond Carré de Malberg, Contribution à la théorie générale de l'État, 71—72 (Librairie du Recueil Sirey—reprinted in 1962 by CNRS—1920). In the same vein, *See* Nicolas Politis, *Le problème des limitations de souveraineté*, 1 Rcadi 5 et seq (1925).

95 *See* PCIJ, Lotus Case, judgment of 7 September 1927, Series A, No. 10.

96 *See* Georges Abi-Saab, *Cours général de droit international public*, 207 Rcadi 328—51 (1987).

97 *See* Ahmed Mahiou, *Le droit international ou la dialectique de la rigueur et de la flexibilité : Cours général de droit international*, 337 Rcadi 118—19 (2009).

98 *See* Olivier Beaud, *Le Souverain*, 67 Pouvoirs 33—45 (1993). Also, Olivier Beaud, *La souveraineté dans la contribution à la théorie générale de l'État de Carré de Malberg*, Rev. Droit Public 1251 et seq (1994). In the same sense, Olivier Beaud, *Fédéralisme et souveraineté : Notes pour une théorie constitutionnelle de la Fédération*, 1 Rev. Droit Public 83—122 (1998). Also, Gilles Guilleux, *La théorie générale de l'État de Raymond carré de Malberg*, 1 Revue juridique de l'Ouest 81—90 (1999). Then, Arnaud Haquet, Le concept de souveraineté en droit constitutionnel français 333 (PUF, 2004). Additionaly, Joseph Krulic, *La revendication de la souveraineté*, 67 Pouvoirs 21—32 (1993); François Luchaire, *La souveraineté* 43 Rev. Franc. Droit Const. 451—61 (2000); Michel Troper, *Le titulaire de la souveraineté*, 1 Rev. Droit Public 1504 et seq. (1996); Georges Vedel, *Souveraineté et supraconstitutionnalité*, 67 Pouvoirs 91 et seq (1993).

can countries. In fact, sovereignty is locked up in apparent signs such as the proclamation of the Republic, the drafting of a constitution, membership and a seat at the United Nations, the flag, the national anthem, etc., which were all part of a process of decolonization. In the very presence of these symbols, whose material evidence could be obvious, it is easy to see that the drafting of the constitution, the composition of the national anthem, especially the lyrics and their singing, were in many cases carried out by foreign agents, in a context that perpetuated the rupture with the initial historical and sociological heritage of these states.

These apparent signs were conveniently moulded into an abstract sovereignty, and above all reinforced an appearance of equality on the international scene, which the problems posed by the CFA franc make even more palpable today. Apart from the fact that, by their nature, these symbols do not always help to identify, reflect the past or the rich historical legacy of certain countries in the franc zone, they do play their symbolic role well, since the CFA franc test exposes the true seat of power. In so doing, the inconsistency that these sovereignties entail has led to the persistence—under a new guise—of constantly denounced consubstantial infirmities, which Judge Bedjaoui had been able to highlight, concerning the appearance of decolonization, in the following terms:

> Fictitious political independence and effective economic subordination are then the distinguishing features, par excellence, of the situation of underdevelopment in which neo-colonialism and imperialism try to maintain many Third World countries.[99]

In the scheme of things, the CFA franc raises problems relating to the right of the Member States of the central banks of the franc zone to freely choose their monetary systems or to exercise their competence in this respect, but also those relating to the interference of other states in the exercise of this right or the creation of obstacles hindering such an exercise. Such a situation is a perfect illustration of the detachment link be-

99 Mohammed Bedjaoui, Pour Un Nouvel Ordre Economique International, *supra* note 84.

tween the abstract legal principle and the society it is intended to govern.

B. Sovereign Equality: A Sociological Abstraction

International law, through the issue of currency, unfortunately reflects this sociological reality of an international society subservient to a narrow circle and governed by a league of powerful people. The "global monetary disorder," which Judge Bedjaoui refers to in his analysis of the New International Economic Order,[100] constitutes the natural environment in which—over the years—various economic and monetary phenomena such as inflation and devaluation have been produced before being exported to the emaciated receptacles represented by the African countries of the franc zone. Such a situation relentlessly denotes the lack of control over their destiny by the franc zone countries. Then, this heart-wrenching context can be analysed in practice through two phenomena that we would now consider to be appallingly commonplace.

It is worth mentioning—at first glance—the obligation on states to align themselves with the French position regarding the devaluation of the CFA franc.

Indeed, it appears that, it is now a recurring feature of history that, when it was necessary to adjust its balance of payments, France adopted various measures linked to the devaluation of the French franc which were passed on to the franc zone. This practice has been tried out several times since 1945. To put the subject back into historical perspective, it should be pointed out that as early as 1958, when France had to regain its margin of competitiveness, it resorted to the devaluation of its own currency. In view of the circumstances surrounding this approach, the Banque de France proposed applying a rate of 15%.[101] This devaluation was immediately passed on to the CFA franc, since the latter was devalued accordingly.

However, in the space of just ten years, when its inflation differential with Germany had reached 3.6%, France was once again faced with a loss of competitiveness margin for its products, inflicting a trade

100 *Id.*

101 Bertrand Blancheton and Christian Bordes, *Débats monétaires autour de la dévaluation du franc de 1969*, REV. EURO. SCIENCES SOCIALES. [Online], XLV-137 (2007).

deficit and a current account deficit on it. This time the devaluation of the French franc was 10%. As a result, France decided to devalue the CFA franc. In this regard, African countries were therefore forced to align themselves with the French position regarding the devaluation of the CFA in 1969.[102] The devaluation of the CFA franc was indexed to that of the French franc, "(...) i.e. 12.5% in relation to foreign currencies, and 11.11% in relation to the gold content of the various francs."[103] The African Ministers of Finance of the franc zone, meeting in Paris, under the chairmanship of Mr. Giscard d'Estaing, jointly arrived at the following final communiqué:

> The Ministers of the African and Malagasy states noted that the parities between the French franc, on the one hand, and the C.F.A., Malian and Malagasy francs, on the other hand, should be maintained, as fixed by the cooperation agreements. They reaffirmed the solidarity of their common monetary area and their economic and financial policy.[104]

Mr. Giscard d'Estaing welcomed the fact that his African colleagues were able to:

> (...) unanimously agree to adhere to the French position on devaluation," which he found to be an expression of "reinforced solidarity among the members of the franc zone.[105]

The terms of trade, which preceded the adoption of the final communiqué, further reveal what is akin to a practice that survived the ghost of Africa's decolonization. At the outset, the French Minister of Economy and Finance outlined the reasons that justified a devaluation of the CFA franc, considering that while this operation would lead to a 5% increase in the cost of living, an increase in African spending on

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102 These fourteen countries were Cameroon, Central African Republic, Chad, Congo (Brazzaville), Côte d'Ivoire, Dahomey, Gabon, Upper Volta, Madagascar, Mali, Mauritania, Niger, Senegal and Togo.

103 Archives Le Monde,10-11 August 1969.

104 Philippe Simonnot, *M. Pompidou warns Africans against a fundamental revision of the monetary agreements with France*, Le Monde, 24 November 1972.

105 *Id.*

their imports and certain external commitments, it should nevertheless encourage their exports by 10%.[106]

Yet, such a tight rope, just like a spurious spectre, has hardened the exports of raw materials that were not processed on the continent, whose value was zero from the outset. It is worth noting that, during the discussion, the Malian Minister of the Economy—for his part—regretted that the African colleagues had not been informed of the decision to devalue the CFA franc before their arrival in Paris, in view of the implications that this entailed. However, it can be observed here that the latter did not mention the fact that they had not taken part in the decision or had been consulted, but that they had not been informed.

It has already been pointed out above that devaluation is one of the mechanisms operated by the holder of monetary authority.

Basically, the soothing promise of the facilities and aid linked to the status of African countries associated with the common market, which constituted for African representatives a legitimately obtained *quid pro quo* at the end of a negotiation, only added further pain to the suffering of the African populations. These elements are more than enough to present this phenomenon, without having to resort to all the events surrounding the devaluation of the CFA franc in 1994.[107] A

106 *Id.*

107 During questions to the government, Michel Roussin had justified the need for a devaluation of the CFA franc, below is Jacques Brunhes' answer, for the communist group: "(...) The CFA franc is not a currency like any other, it is a by-product of the franc, originally designed to strengthen the ties of the dominant French pole with French-speaking countries and contribute to an improvement in their human and productive capacities (...). Devaluation makes currencies outside the zone, in which their debt is denominated, 100 per cent more expensive, while the prices of the exported products by which they can repay it fall. Inevitably, this leads to increased austerity. The prices of essential imported products, such as medicines, are rising. This deterioration can only jeopardize the processes of democratization. Once again it is the people who will foot the bill. Some of the "accompanying measures" of debt cancellation were already on the agenda. Today, under the supervision of the international financial institutions, very limited loans and aid are being granted against the implementation of structural adjustment plans. This will result, in defiance of France's cooperation strategy with the Third World, in drastic cuts in health and education spending, the dismissal of thousands of civil servants and the forced privatisation of strategic and profitable sectors that will once again enrich a minority, while the majority of African peoples will continue to sink into crisis". See Nat. ass. 2nd meeting, 3 May 1994, JORF, No. 26, 4 May 1994, at1354.

simplified diagram consists in describing the conditions under which France prepared the countries of the franc zone, before the international financial institutions came into play, then its central role in negotiations with these institutions and after the devaluation.[108]

It is also legitimate to underline another aspect of the lack of control over their destiny by the countries of the franc zone, which lies in the constant threat of instability expressed by external actors. A first edifying observation can be made here. In 1972, the value of the parity had been set at 2 cents. Noting a fundamental discrepancy between the alleged data and the reality of the facts, Mr. Etienne Eyadéma, the Togolese Head of State, suggested—firstly—that the parity should be changed to ensure that it was genuinely appropriate in the cooperation agreements and—secondly—that the convertibility of the CFA franc should no longer be guaranteed by France but by the European Economic Community, in the same way as the French franc.[109] Perceived as a veritable cry for help, this appeal immediately earned him a severe reprimand. Mr. Pompidou replied that the independence and sovereignty of France's partners:

> (...) have their limits in the guarantee given to them by the French State.[110]

Therefore, he went on to say that:

> [t]he CFA franc would collapse tomorrow without the guarantee given by France.[111]

This reprimand was widely echoed by some economists, who stressed that it was not pleasant for an old metropolis to be given monetary lessons by the countries it still holds under its tutelage, especially

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108 *France-Afrique: la coopération dévaluée Paris est accusé d'avoir lâché ses anciennes colonies en sacrifiant le franc CFA*, *Le Monde*, 20 January 1994.

109 Philippe Simonnot, *M. Pompidou warns Africans against a fundamental revision of the monetary agreements with France*, *supra* note 104.

110 *Id.*

111 *Id.*

after it has granted them substantial debt relief.[112] On this basis, it was maintained that Mr. Eyadéma's statement was not economically justified, since the foreign exchange reserves, those mentioned above with regard to the operations account, of the African and Malagasy states had increased sharply because they were domiciled with the French Treasury.[113] One in fact, who suggested that the possible revaluation of the terms of the relationship between the CFA franc and the French franc would be a matter for the second phase of African decolonization, then came to the following conclusion:

> In short, what is being asked of France is to continue to help these states without the counterpart that has hitherto been attached to this aid, i.e. a kind of economic, financial and also political tutelage. On the French side, we do not seem to be prepared to take the risk of such an adventure. If the African and Malagasy states truly want total decolonization, they will sooner or later have to follow the dangerous path of Mr. Sekou Touré and give up France's "privileged aid". No doubt this aid has many flaws. But it is not certain that they can do without it for the moment.[114]

Such a situation, by its nature and importance from the perspective of monetary sovereignty, calls for an observation without delay. The economic argument used in this debate, which is important for the economic and monetary destiny of the African states of the franc zone, is a circumstantial argument, which aims to raise the scarecrow of technical justifications for an asymmetrically iniquitous approach. Those economists referred to the re-evaluation of the report as a possible second phase of decolonization. Such a logic, which is assumed, leads one to believe that the end of the trusteeship of the CFA franc, inter alia

112 *Id.*

113 Reference is made to the following data: (a) Equatorial Africa (including Cameroon): $104 million in May 1972 (last known figure), compared with $55 million at the end of 1969; (b) West Africa: $282 million in August 1972, compared with $167 million at the end of 1969; (c) Madagascar: $56 million in August 1972, compared with $19 million at the end of 1969.

114 Philippe Simonnot, *M. Pompidou warns Africans against a fundamental revision of the monetary agreements with France*, *supra* note 109.

through the above-mentioned mechanisms, will be—if it takes place—only a simple phase of decolonization, and therefore not its final act.

The truth is that the monetary cooperation agreements that have been signed since then have not brought about any substantial changes, apart from the geographical relocation of the headquarters of the African central banks, which left Paris in 1977 to settle in Douala and Dakar respectively. The African states have not managed to denounce the cooperation agreements in the context presented above, because there have always been—on the one hand—those who, having acquired their allegiance, have been stunned by the soporific effect of development aid and—on the other hand—those who have nevertheless tried to make their voices heard, but without success. It is therefore a distressing observation to indicate today that decolonization has not led to the advent of real sovereign equality.

What those economists contend here only reinforces the idea that this is not an economic problem in the technical sense.[115] Like the tragic history of colonization, the story of monetary cooperation between France and Africa does not follow the paths of the mind, but those of the dominant power.[116] Admittedly, the economic argument or technical incapacity is raised, but the argument here is that the CFA franc poses—in our view—a problem of monetary sovereignty, which is nothing less than a dimension of state sovereignty.[117] It is not a question of economics or economic doctrine to which the countries of the franc zone adhere through France, it is a question of sovereignty. This point seems to us to have been taken for granted.

The lack of monetary sovereignty, which affects the international capacity of the Franc Zone states, clearly highlights the fact that political sovereignty, without its monetary component, is nothing less than an appalling spectre.[118] It is part of the perpetuation of development

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115 *See* Kako Nubukpo, *Quel futur pour l'Afrique ? Évolution des paradigmes du développement, débats méthodologiques et perspectives,* 59 L'Economie Politique 76—90 (2013).

116 *See* Roger Garaudy, The Founding Myths of Israeli Politics 19 (Samiszdat, 1996).

117 *See* Demba Moussa Dembele, Kako Nubukpo, and Martial Ze Belinga, *Les termes nouveaux d'une question ancienne*, *supra* note 19, at 245—246.

118 *See* Kako Nubukpo, *Politique monétaire et servitude volontaire. La gestion du franc CFA par la BCEAO*, 105 Politique Africaine 70—84 (2007).

inequalities that are attributed to various causes, but which the international financial institutions have radically deepened, moulded and cemented. The rupture between international law and international society lies in international instruments that states are not even apparently able to denounce, without escaping profound threats nonetheless.[119]

However, it is certain that the CFA franc currently benefits French multinationals, recipient of the so-called fixed parity, but also from the free movement of capital, which allows them to repatriate their profits to the euro zone.[120] The various customs barriers, which were broken down as a result of the structural adjustments of 1994, have doubled the capacity of these multinationals to easily import goods and services into the franc zone where they operate and have eased the conditions for their extraction and exploitation of raw materials. Without a shadow of a doubt, this situation seems just as favourable to African governments, which enjoy these easy living conditions to the detriment of their populations, who pay the heavy price. Although many virtues are attached to the CFA franc by some economists, they have not made it a tool for sustainable growth or job creation in the franc zone.[121]

Conclusion

In the light of the legal considerations set out above, it is appropriate to point out that the analysis of the organic scheme, which supports the functioning of the franc zone, leads to an abject trilateral portrait. The African states and the Union of the Comoros do not relinquish their monetary sovereignty over the BEAC, the BCEAO or the Central Bank of the Comoros; they delegate their monetary competence to them. In return, these central banks—for their part—claim a certain independence from the states. At the top of the pyramid, France exercises a double tutelage over the states and central banks of the franc zone. The first can be analysed in terms of abdication of sovereignty

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119 Philippe Simonnot, *M. Pompidou warns Africans against a fundamental revision of the monetary agreements with France*, *supra* note 109.

120 *See* Demba Moussa Dembele, Kako Nubukpo, and Martial Ze Belinga, *Les termes nouveaux d'une question ancienne*, *supra* note 17, at 244.

121 Kako Nubukpo, *L'impact de la variation des taux d'intérêt directeurs de la BCEAO sur l'inflation et la croissance dans l'UMOA*, 526 Notes D'Informationet Statistiques, Series Études et Recherches 32 (BCEAO, Dakar, June 2002).

to France. The second can be understood in terms of administrative tutelage.

The sociological consequences surrounding the problem of the CFA franc are numerous and are now more than half a century old. They also testify—at the present stage—that the progress of humanity has its seat in a deep fracture that the façade of the building cannot—even on the surface—make invisible.[122] Appearances of equality at the international level hide cruel realities, in particular the constant problem of the integration of the Third World into international society. [123]However, one question remains, should international law per se not be decolonized in order to inaugurate a new rationality that of its relationship to humanity and universality?[124] Basically, the humanity and universality to which international law now lay claim can no longer ignore or conceal these cruel realities.

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122 *See* Georges Abi-Saab, *"Humanité" et "communauté internationale" dans la dialectique du droit international*, 1 Le Développement du Droit International : Réflexions d'un Demi-siècle 3—4 (Graduate Institute Publications, 2013).

123 *See* Georges Abi-Saab, *La "communauté internationale" saisie par le droit : essaie de radioscopie juridique*, *Id.*, at 27.

124 *See* Sundhya Pahuja, Decolonising International Law. Development, Economic Growth and the Politics of Universality 10 (Cambridge University Press, 2011).