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Summary

Revaluation and Devaluation in International Law -- National Monetary Sovereignty and the Precept of International Cooperation –

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1. The coming into force of the second amendment to the Articles of Agreement of the International Monetary Fund on April 1, 1978, legalised floating exchange rates, but has refrained from eliminating revaluation and devaluation as corrective devices of monetary law.

2. Rather, revaluation and devaluation remain acknowledged as changes in the external value of currencies which are supplemented by floating as an important additional means for determining the exchange rates of currencies.

3. The external value of certain currencies, such as those of the member States of the European Narrower Margins Arrangment („Snake") of 1972, now of the European Monetary System (EMS), is determined at the same time by revaluation and devaluation within the „Snake", now within the EMS, as well as by floating exchange rates vis-à-vis other currencies.

4. When fixed exchange rates prevail, revaluation and devaluation of a currency are enacted by changes of the parity, i.e. by a new determination of the relationship between the monetary unit of that currency and a legally fixed numéraire (weight unit of a precious metal, abstract unit of account, e.g. Special Drawing Right, monetary unit of a foreign currency), which as a rule, are compulsory in nature and, accordingly, entail enforcement of the parity.

5. The incident of the change in the parity of one currency on the value of other currencies does not amount to revaluation or devaluation in the legal sense of these terms, the latter designating exclusively sovereign measures of a State increasing or decreasing the external value of its own currency.

6. Floating consists in the renunciation by a State, more often by a group of States, of fixed exchange rates so that central banks henceforward refrain from intervening when market rates reach specific buying and selling limits and, accordingly, the evolution of exchange rates becomes contingent on – the more or less „free" development of – offer and demand.

7. Thus, floating may be conceived as an assessment of currencies' value devoid of governmental or central bank intervention on the unique basis of the rates prevalent in international transactions.

8. The five concepts of floating described as its principal categories in official documents of the International Monetary Fund are blurred where monetary authorities in spite of their commitment to float intervene in foreign exchange markets in order to influence rates, and thus seek to obtain or obtain fixed exchange rates („dirty floating").

9. Under customary public international law and as a matter of principle, the determination of a currency's external value continues to be at the discretion of the territorial sovereign.

10. Such special position of governmental measures to increase or decrease the external value of money ensues from the doctrine of monetary nominalism which excludes, in particular, the compensation of losses due to the depreciation of a currency, especially as a result of governmental action modifying its exchange rates.

11. Neither the judicial assessment of inflationary depreciation by the Reichsgericht nor the practice of intergovernmental organizations, including, in particular, their enactments with regard to the transfer of emoluments due to international and supranational civil servants, depart from monetary nominalism; they only allay its consequenses under principles of equity if otherwise the result of a revaluation or devaluation in a specific case would amount to an undue exaction.

12. Within the domain of customary public international law, international responsibility of a State for changes in the value of its currency may ensue from a qualified abuse of rights, whereas in the absence of intergovernmental arrangements neither the protection of *bona fide* situations, nor the principles relating to unjust enrichment, nor the doctrine of *droits acquis* could be invoked as basis of such liability.

13. With the exception of the International Monetary Fund among world-wide bodies, the – historical – European Payments Union and the European Economic Community among regional organizations, no intergovernmental institution makes provision for the need to lay the legal

groundwork for enforcing cooperation among member States with regard to changes in the value of money.

14. Even the members of these joint ventures, however, tried to sidestep the duty to cooperate set forth by the constituent agreements and the enactments taken there under the guise of uncoordinated exchange rate practices – e.g. multiple and floating exchange rates, changes in the external value of currencies by fiscal burdens or easements.

15. Nonetheless, the passage from the gold standard through the „money muddle" of the 1919-1939 period to the I.M.F. Articles of Agreement as conceived at Bretton Woods merits to be remembered as a promising and fertile trail which exposed changes in the value of money to the influence of intergovernmental institutions, and whose ultimate failure as a device of monetary law could be explained in terms of the Bretton Woods system only, if it were proven that the constant growth of U.S. foreign debts is indeed due to the 1944 text.

16. A multitude of exegetical efforts tends to establish that disregard for the Bretton Woods text between August 15, 1971, and April 1, 1978, was lawful. This assessment is not borne out by the acknowledgement of those responsible – central banks, other monetary authorities, International Monetary Fund – that from August 15, 1971, on they considered themselves under the compulsion to maintain convertibility world-wide and, accordingly, to practice floating exchange rates, yet refused to accept that element of factual coercion as the ultimate warrant of jural quality, the latter having been obtained only by the end of March, 31, 1978, i.e. with the coming into force of the second amendment to the I.M.F. Articles of Agreement.

17. Whether the scarcity of mandatory elements in regional and world-wide exchange rate arrangements since 1973, in the International Monetary Fund, the „Snake", now the EMS, may prove to be their permanent and decisive jural quality or remain significant for an interim period only, will depend on the success of the effort to obtain a consensual evolution of exchange rates in these intergovernmental entities.

18. If the international obligation to cooperate can serve as enticement to and safeguard of such an evolution, the enactments of I.M.F. bodies, thereafter perhaps the I.M.F. Articles of Agreement as well, limited by their second amendment to the function of a legal framework, may become the legal basis of a moderate exchange rate development without erratic movements.

19. The decisions of the I.M.F. regarding exchange rates of the members' currencies, in particular the „Statement on Surveillance over Exchange Rate Policies", are hardly suitable as criteria of control over the exchange rate conduct of members, and even less so for the purpose of correcting past malpracticies, unless the generous definition of the duties of States and central banks is to serve, in spite of its dubitable aptitude to become executory, as basis of an understanding designed to meet the desiderata of I.M.F. members after the initial trial period of the new exchange rate system.

20. The quest for substantive criteria of the exchange rate evolution which spell out pertinent legal requirements as well will continue to be the significant trait of practice and opinion in international monetary law, as the I.M.F. Articles of Agreement and enactments thereunder continue to be unsatisfactory in that regard.

21. Thoroughness and vigor of the effort to secure balanced exchange rates as a matter of fact determine and dominate the evolution of international monetary law.