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Relationship between International and Domestic Law in the Constitutions of the States of the Economic and Monetary Community of Central Africa

MAIREMA Jacqueline[1]

Abstract

The purpose of this paper is to analyze the constitutional provisions relating to the relationship between international law and domestic law of the States of the Economic and Monetary Community of Central Africa reveals an ambivalent conception of the system relationships. This is all the more true since the choice of monism with primacy of international law is affirmed both formally and materially. Even if this variant of monism seems to be tempered by certain constitutional provisions, the treaties have considerable effects in the domestic legal order. Once integrated into the legal order through the modalities of insertion, treaties have a supra-legislative and infra-constitutional rank. However, some constitutions of the States of the Economic and Monetary Community of Central Africa, such as Gabon and Equatorial Guinea, have not enshrined constitutional provisions on the place of treaties in the legal order. The concern to safeguard the supremacy of the constitution and consequently of national sovereignty may justify such a constitutional practice.

Keywords: system relationship, monism, dualism, international law, national law.

1. Introduction

Since a treaty is to be incorporated into the domestic legal order domestic legal order legal order, its provisions must be confronted with other legal norms with which they may compete[2]. The relationship of the constitutional legal order with the Community legal order and the and the conventional legal order are of interest in this contribution. This relationship is expressed either through an interaction between these legal orders or through conflicts. The provisions of the treaty may conflict not only with international conventional and nonconventional norms, but also with internal norms. In other words, the legal norms that may conflict with the provisions of the treaty may be either international norms or internal norms. The relationship between international and community treaties and internal norms will be examined treaties with domestic norms in case of conflict. This choice is justified by the fact that there is no hierarchy between the sources of international law to resolve the problem of superiority between norms of external origin. On the other hand, the internal legal order is organised according to the principle of the hierarchy of norms which derives from the hierarchy of organs[2].

The analysis of the constitutional statements on the issue of system relations remains ambiguous as to the respective position of international and domestic law and domestic law, in particular treaty law, and domestic norms constitutional and legislative norms[3] . This is what justifies Professor Dupuy's thinking when he notes the difficulty of understanding the relationship between international law and domestic law[4] . For each legal order seeks to assert its primacy over the other either in a text or in case law.

The understanding of the relationship between international law and domestic law can be considered from both a theoretical and a practical point of view. From a theoretical point of view, two approaches to the relationship between the legal orders are adopted. These are dualism and monism. The first approach, described as dualist[5] , maintains that there can be no relationship between domestic and international law.

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[1]Assistant, Department in Public International Law, University of Maroua (Cameroon). e-mail: mairemajacqueline7@gmail.com

[2] Cf. CARRE DE MALBERG (R.), *Contribution à la théorie générale de l'État*, Tome II, CNRS editions, 1985, p. 114; See. DE BÉCHILLON (D.), *Hiérarchie des normes et hiérarchie fonctionnelle normatives des Etats*, Economica, Droit public positif, pp. 20-21.

[3] DHOMMEAUX (J.), "Monisme et dualisme en droit international des droits de l'homme", *Annuaire Français de Droit International*, Edition du CNRS, Paris, 1995, p. 447.

[4] DUPUY (P.M.), *Droit international public*, Dalloz, 1992, pp. 302 and 415.

[5]See TRIEPEL (H.), "Les rapports entre droit interne and international law *"RCADI*, 1923, Vol. 1, pp. 77-121; ANZILOTTI (D.), *Cours de droit international*, *op. cit.* pp. 102-121.

The second approach, known as monist[6] , advocates the existence of a relationship between these two legal orders. This relationship is reflected either in the primacy of international law over domestic law, which is called monism with primacy of international law, or by the primacy of domestic law over international law, which is called monism with primacy of domestic law. From a practical point of view, international practice opts for monism with primacy of international law. This is the quintessence of Articles 26 and 27 of the Vienna Convention[7] . Moreover, this primacy of the law of external origin is enshrined both in positive law as well as in international jurisprudence. international case law.

Professor Dominique Carreau distinguishes three main categories of systems[8] . Firstly, those that recognise the absolute superiority, or even the supra-constitutional value of international law. Secondly, those which recognise only a limited superiority of international law, simply admitting its primacy over ordinary laws, but its inferiority over the Constitution. Finally, systems that deny the superiority of international law, going so far as to establish its submission to national law. The CEMAC[9] states fall into the second category of this distinction. To resolve the problem of the relationship between international law and domestic law. In order to solve the problem of the relationship between international and domestic law, most of the French-speaking black African states and those of the CEMAC in particular are in favour of the superiority of international of international law. The constitutional order of the states in question is of a monistic legal culture with primacy of the international and community legal orders. This monism is justified by the constitutional provisions which confer on international treaties ratified or approved treaties a higher authority than domestic laws[10] and those that allow the Constitution to be revised in case of contradiction[11] . However, things are not so simple. For the constituents of the CEMAC states have provided for safeguards against the overflow of international orders[12] . The question that arises from this is: how do the constitutions of the CEMAC states deal with the question of the systemic relationship? An analysis of the constitutional provisions of the CEMAC states reveals an ambivalent understanding of systemic relations. This statement is justified by the fact that on the one hand, there is a conception favorable to monism with the primacy of international law in the CEMAC states **(2)** and on the other hand, this conception seems to be attenuated

2. A pro-monism view with primacy of the law of external origin in the CEMAC States

The monistic conception with a preponderance of international law has its source in the doctrine of natural law, but can also be explained in terms of the solidarism doctrine of Georges Scelle[13] and the formal doctrine of Hans Kelsen[14] , Alfred Verdross[15]. The monist theory reflects a universalist view of the relationship between international and domestic law[16] . The affirmation of monism with primacy of international law is justified both from a formal (2.1) and a material (2.2) point of view.

2.1. The formal affirmation of monism with primacy of international law

Most of the national constitutions display a monistic position in more or less precise terms, but there are exceptions[17] . The aim is to show the consecration of monism with primacy of international law in the constitutions of the Central African states on the one hand, and in Community texts on the other.

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[6] KELSEN (H.), "Les rapports de système entre droit interne and international law *"RCADI*, vol. 14, 1926 IV, p. 231

[7] Vienna Convention of 23 May 1969 on the Law of Treaties.

[8] CARREAU (D.), *Droit international*, Paris, Pedone, 1986, p. 54.

[9] the Economic and Monetary Community of Central Africa

[10] These are Articles 45 of the Cameroonian Constitution, 215 of the Congolese Constitution, 222 of the Chadian Constitution, and 94 of the Central African Constitution.

[11] These are Articles 44 of the Cameroonian Constitution, 222 of the Congolese Constitution, 93 of the Central African Constitution and 224 of the Chadian Constitution.

[12]NGAH (A.M.), *The Community legal order order and the Constitutions of CEMAC and ECOWAS Member States and ECOWAS Member States, op. cit.* p. 179.

[13] EMANUELLI (C.), "L'application des traités treaties et des règles dérivées dans les pays de droit civil et decommonlaw", *R.G.D.* , 2007, p. 272.

[14] KELSEN (H.), "Les rapports de système entre le droit interne et le droit international *"op. cit.* p. 231.

[15] VERDROSS (A.), "Le fondement du droit international *"R.C.A.D.I.* , 1927, p. 287.

[16] EMANUELLI (C.), "L'application des traités treaties et des règles dérivées dans les pays de droit civil et de commonlaw", *op. cit.* , p. 273.

[17]*Ibid*, p. 274.

2.1.1. The constitutional framework for the primacy of external law

The constitutional provisions relating to the question of the systemic relationship between international law and domestic law in the CEMAC States are inspired in the same way by Articles 54[18] and 55[19] of the French Constitution of 4 October 1958. The African constituents' African constituents have clearly opted for the primacy of the international legal order over all national legislation inferior to the Constitution[20] . The choice of monism with primacy of international law is illustrated in Article 44 of the Cameroonian Constitution which states: *'If the Constitutional Council has declared that a treaty or agreement international agreement contains a clause contrary to the Constitution, the approval or ratification of that treaty or agreement may only take place after the Constitution has been revised*". And Article 45 states that: "*Treaties and agreements duly ratified or approved, have, from the time of their publication, an authority superior to that of the laws, subject to the application of each agreement or treaty by the other party*'. These two constitutional provisions are also found in Articles 222 and 223 of the Congolese Constitution, 93 and 94 of the Central African Constitution, and 224 and 225 of the Chadian Constitution. Several observations can be made from these constitutional provisions.

With regard to the first category of constitutional provisions which make the final conclusion of a treaty containing a clause contrary to the Constitution subject to containing a clause contrary to the Constitution after a decision of the of the Constitutional Council to the revision, it makes it possible to assert the primacy of the law of external origin. One wonders whether Article 54 implies a superiority of the treaty over the Constitution or of the latter over the former[21] . It should be noted that there is a controversy about this constitutional rule between those who think that the Constitution takes precedence over the law of external origin and those who think that it is the law of external origin that takes precedence over the Constitution.

For those who support the primacy of the law of external origin the Constitution, this provision means that in the event of a conflict, the Constitution must adapt to treaties and not the other way round. This conflict rule rules out the applicability of a treaty that is contrary to the Constitution. Therefore, once a treaty is ratified, it is constitutionally perfect[22] . According to Professor Alain Ondoua, '*these authors put forward the fact that in the event of a conflict between an international commitment and the Constitutionit is up to the latter to adapt to the former by means of a constitutional revision*'[23] . It is worth noting the relationship between the revision of the Constitution and the ratification or approval of the treaty. The former is a prerequisite and mandatory condition for the latter[24] . In other words, the revision of the Constitution is an option offered to the President of the Republic in the event of a conflict between the treaty and the Constitution. The ratification or approval of the treaty is conditional on the revision of the Constitution. Professor Dominique Carreau believes that the exclusion of treaty law from the bloc de constitutionality (...) implies its supra-constitutional value[25] . This thesis will be refuted by those who consider instead that the revision of the Constitution is not an obligation and that the constitutionality review provided for this purpose makes it possible to affirm the superiority of the of the Constitution.

On the other hand, some authors[26] believe that Article 54 of the French Constitution, which has been adopted by most CEMAC states , which stipulates that in case of conflict between the treaty and the Constitution, the treaty can only be ratified after an amendment to the Constitution can be seen as the basis for the primacy of the Constitution. For them, it is the Constitution that allows the law of external origin to be incorporated into domestic law. This article is seen as a reception clause for international law[27].

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[18] Article 54 of the French Constitution of 4 October 1958.

[19] Article 55 of the French Constitution of 4 October 1958.

[20] NGAH (A.M.), "L'épineuse question de la place du droit communautaire within the hierarchy of norms Internes: un droit hors hiérarchie? Réflexion à la lumière des systèmes constitutionnels des États d'Afrique francophone', *European Scientific Journal*, April 2019, Edition Vol.15, No.11, p. 197.

[21] NGUYEN QUOC DINH, "Current French case law and the control of the conformity of lawswith des lois aux traités*AFDI*, 1975, p. 867; CARREAU (D.), *Droit international*, Pedone, Paris, 2004, p. 61; BERLIA (G.), "Le juge et la politique étrangère", in Mélanges offerts à Marcel Waline, *Le juge et le droit Public*, Paris, LGDJ, 1974, vol. I, pp. 147-148.

[22]LUCHAIRE (F.), "Le contrôle de constitutionalité des engagements internationaux et ses conséquences relatives à la communauté européenne", *R.T.D.E.* 1979, p. 418 and p. 241.

[23] ONDOUA (A.), *Étude des rapports entre le droit communautaire and the Constitution in France, op. cit,* p. 154.

[24] ABRAHAM (M. R.), *Droit international, droit communautaire et droit français*, Hachette, Paris, 1989, p. 36.

[25] CARREAU (D.), *Droit international*, Paris, Pedone, 5ème Ed., 1997, pp. 56 and 59.

[26] Cf. De BECHILLON (D.): *Hiérarchie des normes et hiérarchie des fonctions normatives de l'État*, ed. Economica, coll. "Droit public positif", 1996, p. 271; Seealso ALLAND (M. D.), "Le droit international" sous "la Constitution de la Ve République", *RDP*, 1998 - n° spécial : Les 40 ans de la V e République, p. 1661.

Indeed, according to this internalist conception, the Constitution being the founding act of the internal legal order domestic legal order and even the enabling act for the creation of the international and community order, it has retained control over the orchestration of the hierarchy of norms[27]. The supremacy of the Constitution is considered as the guarantee of constitutional autonomy. constitutional autonomy of the CEMAC states. Here, the Constitution embodies sovereignty to the highest degree[28] . It is therefore understandable that in these internal legal orders: "*...a text has authority in law only in terms of the value and scope attributed to it by the Constitution*"[29] . This means that the Constitution appears as a founding actor of all the other norms of the internal legal order. In addition, the conflict rule envisages a possibility and does not impose it. In fact, it may happen that the President of the Republic renounces to ratify a treaty which the Constitutional Council has found to be incompatible with the Constitution[30] . According to this provision, it is only if the Constitutional Council "*has declared that an international commitment contains a clause contrary to the Constitution*"[31] that constitutional revision *if it declares nothing simply because it has not been seized, the authorization to ratify and the ratification itself are therefore ratification itself are therefore lawful*"[32] . The argument based on the optional nature of a constitutional revision prior to the approval or ratification of a or ratification of an international commitment remains fundamental to the proponents of this doctrine, who favour the supremacy of the Constitution[33] .

As for the second category of articles, the constitutional rule deriving from Article 55 of the French Constitution attributes a supra-legal place to treaties. Most of the constitutions of the CEMAC states[35] states have purely and simply reproduced Article 55 of the French Constitution[34] with the exception of the Gabonese Constitution of 11 October 2000 revised on 19 August 2003 and the Equatorial Guinean Constitution of 10 January 1995[35] . This constitutional rule determines the supra-legislative status of international treaties or agreements. agreements in the domestic legal order domestic legal order. These international commitments thus take precedence over laws and ordinances, which are assimilated to them, and consequently over domestic regulatory acts and judicial decisions[3637] . In affirming the primacy of international of international law over domestic rules of law the Constituents clearly indicate the place of international conventions in the hierarchy of norms and organize, in a more or less precise manner, the conditions required for their integration into the domestic order[38] .

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[27] NGAH (A.M.), *The Community legal order order and the Constitutions of CEMAC and ECOWAS Member States and ECOWAS Member States, op. cit.* p. 184.

[28]BLUMANN (M. C.), "L'article 54 de la Constitution et le contrôle de constitutionnalité of treaties en France", *RGDIP*, 1978, p. 538. Seealso MATHIEU (M. R.), "La supra constitutionnalité existe-t-elle? Réflexions sur un mythe et quelques réalités", LPA 8/03/1995, n° 29, p. 14. Seealso the position of CHAPUS (M. R.), *Droit administratif français*, tome 1, 14ème Éd., Montchrestien, 2000, p. 137.

[29] HERVOUËT (M. F.), *L'incidence de la jurisprudence of the ECJ on the hierarchy of norms in French en droit français*, in Publications de la Faculté de droit et des sciences sociales de Poitiers, Paris, P.U.F., tome XXI, 1992, p , p. 28; see. FAVRET (M. J.-M.), *Droit et pratique de l'Union européenne*, 2ème , Gualino éditeur, Paris, 1999, pp. 260-261

[30] Cf. CC. 15 June 1999, *European Charter of Regional Languages,* Rec. p. 71, International commitments on the abolition of the death penalty, OJ 20 October 2005, p. 16609. PELLET (A.), "Didyousay 'monism " ? Quelques banalités de bon sens sur l'impossibilité du prétendu monisme constitutionnel à la française", *Mélanges en l'honneur de Michel Troper*, Paris, Economica, 2006, p. 845.

[31] LUCHAIRE (F.), "Le contrôle de Constitutionalité des engagements internationaux et ses conséquences relatives à la communauté européenne", *op. cit.* p. 418 and p. 241.

[32]*Ibid.*

[33] ONDOUA (A.), *Étude des rapports entre le droit communautaire and the Constitution in France, op. cit,* p. 148.

[34] GONIDEC (P.-F.), "Note sur le droit des conventions internationales in Africa", *op. cit.* p. 877.

[35]See BIPELE KEMFOUEDIO (J.), "Droit communautaire d'Afrique centrale et Constitutions of the Member States: the quarrel of the primacy *"op. cit.* p. 186.

[36]MOUELLE KOMBI (N.), "La loi constitutionnelle camerounaise du 18 janvier 1996 et le droit international *"op. cit.* , p. 133. TCHEUWA (J.-C.), "Les préoccupations environnementales en droit positif Cameroon", *RJ*, E 1/2006, pp. 27-28.

[37] MOUELLE KOMBI (N.), "Les dispositions relatives aux conventions internationales in the new Constitutions of French-speakingAfrican States", *op. cit.* p. 255 et seq.; seealso TCHEUWA (J.-C.), "Le droit international à travers la nouvelle Constitution camerounaise du 18 janvier 1996", *op. cit.* Seealso BOES (M.), "La transcription du droit international conventionnel de l'environnement dans le droit national des États quasi fédéraux : le cas de la Belgique", in PRIEUR (M.) and DOUMBE-BILLE (S.), "Droit de l'environnement et développement durable", *PJIM*, 1994, p. 49.

[38]See ONDOUA (A.), "Le droit international dans la Constitution camerounaise", in Le Cameroun et le droit international (ed) ATANGANA-AMOUGOU (J-L.), Actes du Colloque de N'Gaoundéré. Seealso FAVOREU
(L.), 'L'interprétation de l'article 55 de la Constitution', *RFDA*, 1989, p. 993.

This conflict rule highlights the imprecision of the meaning of the term "laws". The vagueness left by the constitutors can apply to all laws, regardless of their place in the hierarchy of the legal order i.e. constitutional laws, organic laws and ordinary laws[39] . To the question of whether the reference to 'laws' in this constitutional rule of the CEMAC states inspired by Article 55 of the French Constitution, Professor Mouéllé Kombi puts forward two hypotheses[40] . The first hypothesis is the indifference of the constituents which implies an assimilation. This means that the reference to laws encompasses all categories of laws, including constitutional laws. Thus, treaties or agreements would be superior to laws in the broad sense of the term. The second hypothesis refers to the silence of the constituents as to the superiority of treaties or agreements to the Constitution. This refusal of reference can be seen as safeguarding the supremacy of the Constitution over international commitments.

The real problem is how to reconcile the autonomy of States with the obligation. The real problem is how to reconcile the autonomy of States with the obligation to fulfil their freely given international commitment. It is true that international law leaves it to national law to lay down national rules on the procedure for the incorporation of international law into domestic law However, when a State ratifies a treaty Once the treaty is ratified, the procedure for its conclusion is completed and the will of the State is no longer relevant[41] . The latter must respect the commitment it has freely entered into[42] . States are bound to respect their international obligations. This argument is based on Article 27 of the Vienna Convention on the Law of Treaties. Convention on the Law of Treaties This argument is based on Article 27 of the 1969 Vienna Convention on the Law of Treaties, which provides that: "*A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty*". This rule is seen as complementary to Article 26 of the same Convention which enshrines the principle of *pacta sun servenda*. The primacy of international law is seen as an international imperative. It is also enshrined in certain universal texts that have been ratified by the States concerned. This is the case of the Charter of the United Nations, which in its preamble calls on States to : "to *create conditions under which justice and respect for international obligations arising out of treaties and other sources of international law may be maintained*"[43]. The United Nations General Assembly has also recognised this principle of the primacy of external law The United Nations General Assembly has also recognised this principle of primacy of externally derived law: "*Each State has the duty to fulfil in good faith its obligations under generally recognised principles and rules of international law*"; "*Each State has the duty to fulfil in good faith its obligations under agreements* "[44] . This also applies to the primacy of Community law over the domestic law of States.

2.1.2. Relatively equal primacy of Community law to that of international law to that of international law

Some authors have taken the view that the domestic provision prescribing the superiority of the international norm derives from the nature of international law[45]. Beyond the general theory we have just outlined on the supremacy of treaties the supremacy of treaties over laws stricto sensu (organic and ordinary), it should be noted that Community law has a particularity compared to international law in general[46] .

The principle of primacy enshrined in Community law allows national judges to disregard any earlier or later national rule that is incompatible with the Community standard[47] . The principle of primacy is the principle that all Community law takes precedence over all national law. According to the principle of primacy, Community law has a higher value than the law of the Member States.

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[39] BIPELE KEMFOUEDIO (J.), "Droit communautaire d'Afrique centrale et Constitutions of the Member States: the quarrel of the primacy *"op. cit*. p. 124.

[40] MOUELLE KOMBI (N.), "La loi constitutionnelle camerounaise du 18 janvier 1996 et le droit international *"op. cit.* , p. 133.

[41] MAGNON (X.), *Théorie(s) du droit*, *op. cit.* , p. 113.

[42]*Ibid.*

[43] Cf. United Nations Charter of 1945.

[44] Resolution 2625 of 24 October 1970, known as the Declaration on Principles of International Law law concerning friendly relations and cooperation between States.

[45] PUECHAVY (M.), "Les contrôles de conventionalité conventionality and constitutionality by the domesticjudge des instruments internationaux relatifs aux droits de l'homme. Un besoin de clarification en France" in *Les droits de l'homme en évolution. Mélanges en l'honneur du Professeur Petros J.Pararas, Athens*, Brussels, ed. Ant.N.Sakkoulas, Éd.Bruylant, 2009, pp. 415-430. Seealso VALTICOS (N.), "Expansion du droit international and National Constitutions national Constitutions, a significant case: the transfer of powers to international organisations and the Belgian Constitution" in *VERHOEVEN J., et alii, Evolution constitutionnelle en Belgique et relations internationales. Hommage à Paul De VISSCHE*R, Paris, Pedone, 1984, p.19

[46] KAMTOH (P.), *Introduction to the Institutional System of CEMACAfridit*, Africaine d'Édition, 2014, p. 21.

[47]*Ibid.* , p. 143.

If a national rule is contrary to a Community provision, the Community provision applies. While it is true that the normative mechanism established by the basic texts of CEMAC does not explicitly show this primacy of Community law, it is justified by elements such as immediate applicability, the direct effect of Community law (and the transfer of powers from the Member States to CEMAC and the unity of the Community legal order), principles formally established by the basic texts. This primacy can also be deduced from the conventions governing the UEAC and the UMAC, which specify that 'Member States shall refrain from any measure likely to impede the application of this Convention and of the legal acts adopted for its implementation' (art 8 UMAC and art 10 UEAC), as well as from the letter and the spirit of the multilateral surveillance mechanism put in place within the framework of the realisation of the Economic Union, the overall logic of which is to ensure the control of the good and effective realisation of the Community objectives. In the event of conflict between the Community and national standards, the former takes precedence. This is what emerges from a reading of the texts governing the CEMAC in Article 21 of the Addendum to the CEMAC Treaty, taken up by Article 41 of the revised Treaty[48] and Article 10 of the Treaty establishing

Thus, it is safe to say that the law of external origin takes precedence over domestic law countries, and the CEMAC states are no exception. States are no exception. The affirmation of monism with primacy of international law at the formal level is an extension of the jurisprudential one.

2.2. The material affirmation of monism with primacy of the law of external origin

The primacy of the law of external origin is affirmed by both international (2.2.1) and Community (2.2.2) case law. **case law (2.2.1)** and Community case law **(2.2.2).**

2.2.1. A primacy from international case law

It is accepted in international jurisprudence that that international law takes precedence takes precedence over the domestic law of States. This assertion is justified by international and arbitral jurisprudence. These court decisions establish the primacy of law of external origin notably constitutional law[49] . With regard to arbitral solutions, we can cite, first of all, the Alabama case of 1872 in which the arbitral tribunal considered that Great Britain could not invoke constitutional grounds to exonerate itself from its international obligations[50] .

Then, in the Montijo case of 1875, it was asserted that the stipulations of a treaty in force between the United States and Colombia in force between the United States and Colombia should prevail over the latter's constitutional provisions[51]. In this case Colombia, by claiming that the provisions of its Constitution prevented it from complying with the terms of a treaty regularly concluded with the United States, asserted the superiority of its Constitution over *are addressed, while leaving to the national authorities the competence as to form and methods. Decisions are binding in their entirety on the addressees they designate...*". international law. of its Constitution over international law[52]. The arbitral award condemned such a view and clearly affirms that "*a treaty is superior to the Constitution*"[53] .

Finally, the Georges Pinson case (1928) between France and Mexico raised the problem of the relationship between an international treaty and the Mexican Constitution. and the Mexican Constitution. The arbitrator ruled that the Franco-Mexican treaty prevailed over the Mexican Constitution. He stated that "*it is indisputable and undisputed that international law is superior to domestic law... National provisions are not without value for international courts, but they are not bound by them*"[54] .

As regards decisions of international courts, let us start by mentioning the opinion of the Permanent Court of Justice (PCIJ) on the treatment of Polish nationals in Danzig of 5 February 1932[55] . In this case, the Free City of Danzig claimed to apply its own constitutional rules to Polish residents to the detriment of the treaty regime to which they were entitled.

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[48] Article 41 of the Treaty establishing CEMAC of 16 March 1994 revised on 25 June 2008 states that: "*The additional acts are annexed to the CEMAC of CEMAC and shall complement it without modifying it. Their respect is binding on the institutions, bodies and specialised institutions as well as the authorities of Member States. Regulations and framework regulations have a general scope. Regulations are binding in their entirety and directly applicable in all Member States. Framework Regulations are directly applicable only in respect of some of their elements. Directives are binding, as to the result to be achieved, upon each Member State to which they*

[49] ONDOUA (A.), *Étude des rapports entre le droit communautaire and the Constitution in France, op. cit,* p. 112.

[50] ONDOUA (A.), *Étude des rapports entre le droit communautaire and the Constitution in France, op. cit,* p. 112.

[51] *Ibid.*

[52] CARREAU (D.), *International Law*, *op. cit,* p. 43.

[53] *Ibid.*

[54] Mixed Arbitral Tribunal France-Mexico, Arbitrator Verzjil, RSA...V., p. 327. Quoted by CARREAU (D.), *op. cit.* p. 43.

[55] ONDOUA (A.), *Étude des rapports entre le droit communautaire and the Constitution in France, op. cit,* p. 112.

In its advisory opinion, the Permanent Court of International Justice rejected this view and affirmed the principle of the superiority of international law over local constitutional law. law. The Court ruled that: '*A State may not invoke its own Constitution against another State in order to avoid its obligations under international law or treaties in force*"[56] . The Court's decision is consistent with the provisions of Article 27 of the 1969 Vienna Convention on the Law of Treaties. This means that a State is obliged to respect its international commitments and in case of their violation it cannot invoke its Constitution as a justification for its illegal act.

2.2.2. A primacy from European Community European Community case law

With regard to the assertion of the primacy of Community law of Community law, we will refer to comparative law. We will refer to comparative law. Indeed, there is a certain need to strengthen the jurisprudence on the material primacy of Community law over the constitutions of the Member States. of the States[57] . Thus, it is the task of the national judge to ensure that the Member States respect the application of Community law. Each national court must ensure that Community law and the rights and the rights they confer on individuals. This is reflected in the decision *The national court responsible for applying the provisions of Community law within the scope of its jurisdiction has a duty to ensure that the provisions of Community law prevail. The national court responsible for applying, within its jurisdiction, the provisions of Community law is under an obligation to ensure the full effect of those rules, if necessary by disapplying, on its own authority, any contrary provision of national legislation, even if it is subsequent, without having to request or wait for the prior elimination of that provision by legislation or by any other constitutional procedure*"[58] . This case law calls on the national judge to guarantee the integration of Community law by setting aside any obstacle, even of a constitutional nature, that national law might place in the way of the full effect of the Community rule, whether it be original or derived[59] .

Furthermore, the primacy of Community law over national law is the work of the European Court of Justice, which, through a finalistic reading of the Treaties. In the famous Costa v. ENEL judgment of 15 July 1964[60] . The Court of Luxembourg established the principle of the primacy of Community law over the law of the member states[61] . The European Court of Justice declared that Community law "...*stemming from an autonomous source, the law born of the treaty could not, by reason of its specific original nature, be judicially opposed to any domestic text without losing its Community character and without the legal basis of the Community itself being called into question*". The Court In this famous judgment, the Court highlights the specificity of the legal order created by the Treaty, which is integrated into the legal system of the Member States and is binding on their courts. The primacy is exercised over all national norms, administrative, legislative, jurisdictional, and even those of constitutional level[62] . The Court initially stated that domestic constitutional provisions could not be used to .

Later in the International Handles gesellschaft case, the Court clarified that: "*the plea of infringement of either fundamental rights as set out in the Constitution of a Member State of a Member State or to the principles of a national constitutional structure, cannot affect the validity of an act of the Community or of a Member State. of an act of the Community or its effect in the territory of that State*"[63] . In other words, by this judgment, the Court reaffirms the primacy of Community law but also decides to take responsibility for the protection of fundamental rights for which there are no written rules.
The primacy of Community law. The primacy of Community law over domestic laws has also been affirmed in the European Convention on Human Rights system. Here, it is considered that "*the Convention takes precedence over all domestic acts, whatever their nature or the body that adopted them*"[64] .

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[56] Opinion of 4 February 1932, Series A/B No. 44, p. 24. Quoted by CARREAU (D.), Droit international, *op. cit,* p. 44.
[57] BIPELE KEMFOUEDIO, "Central African Community Law and the Constitutions of Member States: the dispute over primacy *"op. cit.* p. 119.
[58] ECJ, 09 March 1976, SIMMENTHAL, 106/77, ECR, p. 629, point 21.
[59] BIPELE KEMFOUEDIO, "Central African Community Law and the Constitutions of Member States: The Primacy Dispute *"op.cit.* p. 119.
[60] ECJ, 15 July 1964, Costa v/ENEL, Case 6/64. Cited by KAMTOH (P.), *Introduction au Système Institutionnel de la CEMACop. cit.* pp. 143-144.
[61] GÖZLER (K.), "The question of the superiority of of international law norms over the on the Constitution", 1993, p. 198, www.anayasa.gen.tr, accessed on 27/07/2019.
[62] GUY (I.), *Droit communautaire général,* Paris, Masson, 4e Edition, 1994, p. 179. Seealso GAUTRON (J.-Cl.), *Droit européen*, Paris, Dalloz, 6e Edition, 1994, p. 145; BOULOUIS (J.), *Droit institutionnel des communautés européennes*, Paris, Montchrestien, 4ème Edition, 1993, pp. 249-250.
[63] ECJ, 17 December 1970, International Handelsgelsellschaft, Case 11/70, Rec.
[64] COHEN-JONATHAN (G.), *La Convention européenne des droits de l'homme*, Paris, Economica, Presses universitaires d'Aix-Marseille, 1989, p. 246. Cited by GÖZLER (K.), "La question de la supériorité of the norms of international law on the Constitution", *op. cit.* p. 198.

This is why Dean Louis Favoreu believes that '*even constitutional norms must bow to European norms*'[65]. In the same vein, the judge of the European Court of Human Rights states that "*the constituent or the national legislature must not adopt legislative acts containing norms contrary to those of the Convention*"[66] . Primacy is thus "*an existential condition*" of Community law, which can only exist as a right if it cannot be overridden by the rights of the Member States, argues Judge Pescatore[67] .

In the light of the above, it can be noted that the primacy of the law of external origin is recognised at both the domestic and international levels. It should be noted that, apart from a few exceptions, all States formally recognise the superiority of international law and its binding nature[68] . This principle is confirmed by arbitration and judicial practices. However, the primacy of external law seems to be limited. Despite the existence of the provisions on the primacy of external law conferring on treaties superior authority to that of laws, some constitutional provisions of the CEMAC states condition this conflict rule. These are Article 44 of the Cameroonian Constitution, Article 216 of the Congolese Constitution, Article 224 of the Chadian Constitution and Article 68 of the Central African Constitution, which deal with the constitutionality review of international treaties. In addition, mention should be made of Articles 45 of the Cameroonian Constitution, 215 of the Congolese Constitution, 225 of the Chadian Constitution, and 69 of the Constitution, which establish the condition of reciprocity. It must be demonstrated that the constitutionality review of international commitments **(3.1)** and the reciprocity reservation **(3.2)** constitute a limit to the primacy of the law of external origin in domestic law.

3.1. Limitations of the constitutionality review of international treaties

The constitutions of the states concerned intend to limit the primacy of treaties in favour of the preservation of national sovereignty by instituting a constitutionality review of international laws and commitments. The aim is to demonstrate that the review of the constitutionality of treaties is limited by the referral to the constitutional court (3.1.1) and the review procedure (3.1.2). judge (3.1.1) and the review procedure (3.1.2).

3.1.1. Limits on referral to the constitutional court constitutional jurisdiction

On reading the constitutions of French-speaking African states in general and those of the CEMAC states in particular, it is clear that the initiative to refer cases to the constitutional court is held by the political constitutional court is held by the political authorities. Citizens cannot refer cases directly to the Constitutional Council in some States because this is reserved for a category of constitutionally enshrined authorities or through the intermediary of the ordinary court. ordinary jurisdiction. This is in fact what emerges from article 47 paragraph 2 of the Cameroonian Constitution: '*The Constitutional Council shall be seized by the President of the Republic, the President of the National Assembly, the President of the Senate, one third of the deputies or one third of the senators*'. It is in this same perspective that the Congolese

The *Constitutional Court is seized by the President of the Republic, the President of the National Assembly, the President of the Senate or by one third of the members of each chamber of Parliament.*[69] .

For the Gabonese constituent Gabonese constituent, "*International commitments provided for in Articles 113 to 115 below, must be referred to the Constitutional Court before their ratification. Constitutional Courteither by the President of the Republic, or by the Prime Minister, or by the President of the National Assembly or by one tenth of the deputies*"[70] . The Equatorial Guinean Constitution establishes the authorities responsible for referring cases to the Constitutional judge in the following terms: *'The bodies The bodies with legitimacy to lodge appeals for unconstitutionality are : The President of the Republic, Head of State, the Vice-President of the Republic and the Prime Minister, the Chamber of Deputies and the Senate by a qualified*

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[65] FAVOREU (L.), "Souveraineté et supra constitutionnalité", *Pouvoirs*, 1993, p.76.

[66] FEYYAZ GÖLCÜKLÜ, "The hierarchy of constitutional norms and its Function in the Protection of Fundamental Rights", Report to the VUT Conference of European Constitutional Courts "Report to the VUT Conference of European Constitutional Courts, (Ankara, 7-10 May 1990), *Revue Universelle des Droits de l'Homme*, 1990, p. 299. Cited by GÖZLER (K.), "La question de la supériorité of the norms of international law on the Constitution", *op. cit.* p. 198.

[67] ISAAC (G.) and BLANQUET (M.), *Droit Général de l'Union Européenne*, Sirey, 10ème Ed.

[68] CARREAU (D.), *International Law*, *op. cit,* p. 55. Quoted by GÖZLER (K.), "La question de la supériorité of the norms of international law on the Constitution", *op. cit.* p. 199.

[69] Article 148 of the Congolese Constitution Constitution.

[70] Article 87 of the Gabonese Constitution Gabonese Constitution.

majority of three quarters of their members, and the Attorney General; 2. Any natural person or person entitled to appeal to the Constitutional Court may do so if he or she has a legitimate interest"[71] .

Article 97 of the Central African Constitution states that: '*The President of the Republic, the President of the National Assembly, the Prime Minister, or a quarter of the members of each chamber may refer a request for an opinion to the Constitutional Court*'[72] . With regard to these constitutional provisions, the Constitutional Council is much more like a political body, through the authorities empowered to refer matters to it[73] . The constitutionality review is limited in terms of the referral and composition of the constitutional court. constitutional court. Citizens are powerless because they cannot directly refer matters to the constitutional court[74]. Moreover, the composition of the Constitutional Court can also make the effectiveness of such a review difficult. of such a review. However, the Central African Constitution is becoming more powerful and can serve as an example to other constituents which opens up the referral of cases to the Constitutional Court to citizens. This is what emerges from Article 98: '*Any person may refer to the Constitutional Court the constitutionality of laws, either directly or by the procedure of the exception of unconstitutionality invoked before a court in a case that concerns him*"[79] . A similar provision is enshrined in the Gabonese Constitution in Article 86: '*Any person may, during a trial before.*

an ordinary court, raise an objection of unconstitutionality against a law or an act that would disregard his fundamental rights. The judge of the court shall refer the matter to the Constitutional Court by way of a preliminary objection"[75] .

In view of the above, it should be noted that the review of the constitutionality of African constitutional texts does not allow any direct recourse by individuals against acts taken by the legislator in violation of their constitutional rights[76] . Except by way of an exception of unconstitutionality[77] . Indeed, referral to the Constitutional Council is reserved for a restricted political-institutional elite[78] . Any citizen wishing to refer a case to the Constitutional Council must go through these authorities to have access to the constitutional judge. Consequently, the citizen is denied any right of access to constitutional justice[79] . Awareness of the role and place of the high constitutional courts on the part of the authorities empowered to refer cases to them is necessary[80] . It is incongruous and Kafkaesque that justice is rendered in the name of the people, even though the people are stifled and rendered mute[81] .

As a matter of comparative law, the French Constitutional Council is now regarded as a true guardian of the Constitution and protector of fundamental rights. Before 2008, the right to refer a matter to the French Constitutional Council was quite limited and could only be exercised a *priori*, i.e. before a law was enacted or a treaty ratified. Since a constitutional revision of 2008, it can be exercised a posteriori and French citizens can, as is the case in other countries[82] , request a constitutionality review of laws in force, at the laws in force, in the course of legal proceedings concerning them, if they consider that the law infringes their rights and freedoms, by means of an objection of unconstitutionality raised before an ordinary judge. This procedure is better known in France as the QPC, which stands for question prioritaire de constitutionnalité This new means of *a posteriori* constitutionality review has the merit of being concrete and, above all, a means of appeal open to all litigants[88].

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[71] Article 101 of the Guinean Constitution.

[72] Article 97 of the Central African Constitution.

[73] TCHEUWA (J.-Cl.), "Quelques aspects du droit international à travers la nouvelle Constitution camerounaise du 18 janvier 1996", *op. cit.* , p. 102.

[74] See Article 47 of the Cameroonian Constitution and 224 of the Chadian Constitution. [79] Article 98 of the Central African Constitution.

[75] Article 86 of the Gabonese Constitution.

[76] DIATE (I.), "African Constitutions and African Constitutions and International Law "*op. cit.* , p. 36

[77]The exception of unconstitutionality is provided for in Article 98 of the Central African Constitution and Article 86 of the Gabonese Constitution.

[78] ONDO (T.) " Constitutionality review of of international commitments by the Constitutional Court Constitutionnelle Gabon", *op. cit.* p. 220.

[79] NYABEYEU TCHOUKEU (L.), "Le contrôle des engagements internationaux par le juge constitutionnel Cameroon", *op. cit.* , p. 17.

[80] NGAH (A.M.), *The Community legal order order and the Constitutions of CEMAC and ECOWAS Member States and ECOWAS Member States*, *op. cit.* , p. 146.

[81] DJONWA HOINSALA, "L'expression populaire par les urnes en droit positif camerounais", *op. cit,* p. 786.

[82] In Europe, Belgium, Spain, Italy and Germany, Bulgaria and Russia have this mechanism in similar forms. [88] For more details on the issue read: APCHAIN (H.), "La QPC et le contrôle de conventionalité : complémentarité ou antagonisme ?", *AFDC*, 2012, available on www.credho.org of 26/08/2014, 14h28, BON (P.), "La question prioritaire de constitutionnalité après la loi organique du 19 décembre 2009", *RFDA*, n° 6, 2009, pp. 1107-1124;

Indeed, '*When, during proceedings under way before a court. When, in the course of proceedings pending before a court, it is claimed that a legislative provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred to the Constitutional Council by the Council of State or the Court of Cassation, which shall give its ruling within a specified period. An organic law shall determine the conditions of application of this article*"[83] .

Thus, the QPC allows any party to a trial or proceeding, whether an individual or a legal entity, to challenge the constitutionality of a legislative provision during a trial before an administrative or judicial court, when he or she considers that a text infringes the rights and freedoms guaranteed by the Constitution. administrative or judicial court, when it considers that a text infringes the rights and freedoms guaranteed by the Constitution. It thus enables the Constitutional Council, through specific mechanisms and procedure, to repeal a law deemed contrary to the Constitution. It contributes to a better protection of constitutionally guaranteed rights and freedoms and to the consolidation of the rule of law. This example should serve as a spur to CEMAC states states that are reluctant to extend the right of referral to the Constitutional Council to citizens.

The referral of international commitments to the Constitutional Courts should be made a constitutional obligation, to the extent that provisions similar to Article 87 of the Gabonese Constitution should be adopted, which states that '*The international commitments provided for in Articles 113 to 115 below must be referred to the Constitutional Court before their ratification, either by the President of the Republic, the Prime Minister, the President of the National Assembly or one tenth of the deputies*'[84] . The control of the constitutionality of international commitments appears here as an obligatory and prior condition to their ratification. Thus, the submission of a commitment to a constitutionality review would no longer be a simple option or a mere formality, but one of the obligatory steps prior to their ratification[85] . The rise of the Gabonese Constitutional Court can serve as an example for the constitutional courts of the CEMAC states that are struggling to assert themselves in the noble mission entrusted to them: that of monitoring the Constitution[86]. This would avoid the misuse of the procedure for reviewing the constitutionality of international commitments provided for in the constitutions.

3.1.2. Limitations of the control procedure

The constitutionality review of international commitments can be defined as all the legal means put in place to ensure the internal and external regularity of international legal norms in relation to the Constitution[87] . The Constitutional Council therefore monitors the regularity of international commitments.

Provided for in Article 44 of the Cameroonian Constitution, Article 216 of the Congolese Constitution, Article 224 of the Chadian Constitution and Article 68 of the Central African Constitution, the constitutionality review of international commitments means that when an international commitment is contrary to the Constitution, it cannot be incorporate into the domestic legal order domestic legal order only after revision of the Constitution. Indeed, these provisions are simply an inspiration of Article 54 of the French Constitution according to which when *"... an international commitment contains a clause contrary to the Constitution, the authorisation to ratify or approve it can only be given after the revision of the Constitution*"[88] .

It is clear that any unconstitutionality, declared by a Constitutional Council of an international commitment, makes authorisation to ratify it conditional on the prior ratification of this commitment to the prior amendment of the Constitution[89] .

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[83] Article 61-1 paragraph 1C of the French Constitution of 4 October 1958. It should be recalled that the QPC came into practical application in March 2010. This procedure is based on Article 61-1 of the Constitution of 4 October 1958, an organic law n°2009-1523 of 10 December 2009, two decrees 2010-148 and 2010-149 of 16 February
2010, the second relating to legal aid and two circulars n° CIV/04/10 of 24 February 2010 and SG/SADJPV of 1 March 2010, the latter indicating the modalities of implementation of the continuity of legal aid. This set of rules is also completed by the internal rules of procedure of the Constitutional Council.

[84]See to thiseffect, ROSSATANGANA-RIGNAULT, "La Cour Constitutionnelle: pierre d'angle de l'État de droit au Gabon? *et de droit comparé*, Brussels, 1998, pp. 272-302.

[85] NGAH (A.M.), The Community legal order order and the Constitutions of CEMAC and ECOWAS Member States and ECOWAS Member States, *op. cit.* , p. 146.

[86]*Ibid.*

[87] AVRIL (P.) and GICQUEL (J.), *Lexique de Droit Constitutionnel*, Paris, P.U.F? 2ème , 2009, p. 31.

[88] See French Constitution of 4 October 1958.

[89] NGAH (A.M.), *The Community legal order communautaireand the Constitutions of the CEMAC and ECOWAS Member States and ECOWAS Member States,* p. 141.

If the Constitutional Council finds an incompatibility between the Constitution and a treaty or an agreement in the process of being adopted, the adoption in question must first go through a procedure of revision of the Constitution[90] . Two possibilities[91] can follow the constitutionality review of international commitments. Firstly, if the treaty is declared incompatible, the competent authorities can either revise the Constitution (which historically is the normal hypothesis), or renegotiate the treaty (which, in the contemporary context of multilateral treaties, is rather unlikely) or refuse to ratify the commitment that they had signed[92] . Secondly, if the Constitutional Council finds no unconstitutionality, the authorities are then free to ratify the international commitment[93] .

This practice can be considered as a breach of the principle of primacy of international of international law, and even worse to the practice of monism. For, despite the existence of this provision in the constitutions of the CEMAC states, this procedure has not been implemented in the context of the ratification of treaties treaties of this organisation. The circumvention of the procedure for reviewing the constitutionality of international commitments means that an international commitment has been introduced into the constitutional order with a clause that is contrary to the Constitution, and later on the theory of acquired rights is used to avoid any subsequent constitutionality review.[94] review.

In view of the serious infringements of the Constitution that membership of an integration organisation can entail, one can only be surprised by the passivity and indifference of the African constitutional court in the face of the community phenomenon. African constitutional judge in the face of the community phenomenon[95] . Neither the constitutive treaties of the CEMACs constitutive treaties, nor the additional protocols or addenda were submitted to the constitutional court for assessment before their ratification[96]. It should also be added that the control of constitutionality of international commitments is optional, but it also and above all participates in the procedure for inserting international commitments into the domestic legal order. domestic legal order .[97]. This attitude taken by the constitutions of the French-speaking African states and almost all African countries reveals the way in which they safeguard their 'national *sovereignty national sovereignty acquired after many struggles*'[98] or Moreover, as domestic courts cannot review the conformity of the of the treaty to the Constitution, which is their supreme law, the only question that arises is whether they agree to apply a treaty that is contrary to the Constitution[99] . Despite the enshrinement of constitutional requirements on the primacy of international of international law domestic judges often adopt a reluctant position. This means that in order to safeguard the sovereignty of the state, judges of the State, judges refrain from verifying the conformity of the treaty with the Constitution as the supreme norm of the domestic legal order domestic legal order. This practice is justified by the fact that the Constitutions have not given the judge the competence to invalidate or validate a treaty in case of contradiction.

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[90] FAVOREU (L.), "Le Conseil Constitutionnel régulateur de l'activité normative des pouvoirs publics", *Revue de Droit Public*, 1967, p. 5.

[91] FAVOREU (L.) et al, *Droit Constitutionnel*, coll. Précis, Paris, Dalloz, 20ème Éd., 2017, p. 189.

[92] An example of the latter is the failure of the European Charter for Regional Languages which, after being declared incompatible with the Constitution, was simply set aside and has still not been ratified. Decision No. 99412 DC of 15 June 1999. Cf. European Parliament Research Service Parliament Research Service, *The Ratification of international treatiesA Comparative Law Perspective*, Study June 2012*, op. cit.* p. 15.

[93]This was the case, for example, with the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, more commonly referred to as the European Budgetary Pact, signed on 2 March 2012. Decision No. 2012-653 DC of 9 August 2012. Cf. European Parliament Research Service Parliament Research Service, *The Ratification of international treatiesa comparative law perspective, op. cit.* p. 16.

[94] FAVOREU (L.), "Le Conseil Constitutionnel régulateur de l'activité normative des pouvoirs publics",*op. cit*, p. 5.

[95] NGAH (A.M.), *The Community legal order communautaire and the Constitutions of CEMAC and ECOWAS Member States and ECOWAS Member States, op. cit.* p. 141.

[96]*Ibid.*

[97] ONDOUA (A.), "International Law dans la Constitution Cameroon", *op. cit.* , p. 302.

[98] BIPELE KEMFOUEDIO (J.), "Droit communautaired'Afrique centrale et Constitutions of the Member States: the quarrel of the primacy *"op. cit.* pp. 126-127.

[99] DAILIER (P.), FORTEAU (M.), PELLET (A.), *Droit International Public*, *op. cit.* , p. 311.

In view of these shifts away from monism most of the CEMAC states provide, as we have seen above, for the review of the constitutionality of of international commitments before their ratification. However, it is curious to note that these provisions shine through their purely theoretical existence[100] . For it is the Constitution itself that provides for the possibility of limiting the primacy of external law proclaimed by the Constitution itself.

3.2. Limitations related to the reciprocity reserve

In constitutional law reciprocity in the execution of international treaties is a condition for the application in the national legal order of a treaty that has become valid as a result of its ratification. of a treaty that has become valid by virtue of its ratification[101]. According to article 2, paragraph 1 (d), of the Vienna Convention on the Law of Treaties, "*reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State*". It is a technique for restricting the commitment of a party, on its own initiative and according to the terms it chooses[102] . The reciprocity reservation is a requirement of the constitutions of the CEMAC states, which allows states, once treaties are in force in their domestic legal order to be able to avoid its obligations. The assessment of the reciprocity reservation **(3.2.1)** as well as its implications **(3.2.2)** constitute limits to the application of the primacy of international law.

3.2.1. Limitations on the assessment of the reservation

In general, all constitutions establish reservations at the time of the adoption of international treaties by states, but these reservations are very often related to the preservation of democratic principles or the protection of fundamental rights[103]. They are different from the reservations provided for in the articles below, which are more aimed at safeguarding national sovereignty[104]. The reciprocity reservation is found in articles 45 of the Cameroonian Constitution, 215 of the Congolese Constitution, 225 of the Chadian Constitution and 69 of the Central African Constitution, which were inspired by article 55 of the French Constitution of 1958. Indeed, treaties or agreements ratified or approved have, from the moment of their publication, an authority superior to that of the laws, subject, for each agreement or treaty, to its application by the or treaty, of its application by the other. Reciprocity is considered an essential condition for the primacy of the treaty over the law of the treaty over the law[105] .

According to Nguyen Quoc Dinh, the reciprocity imperative should be understood as "*a sanction the deprivation of the guarantees of monism* "[106] . The primacy in the domestic order is, however, subject to conditions: the treaty must be must be duly ratified and published and that the other party also performs its obligations, i.e. there must be reciprocity[107] . The last point refers to the obligation of reciprocity. In other words, a state is entitled, in the event that a cosignatory state to a treaty has not complied with its obligations under that treaty, to adopt the same behaviour, i.e. to refrain from implementing the treaty on its side, even though it has already been ratified. One thinks, inevitably, of the exception of non-performance which governs synallagmatic contracts in civil law[108] . In reality, the reciprocity reservation contained in these constitutional provisions concerns the application of international commitments and in particular bilateral commitments[109] . Once the parties have ratified the treaty they must perform it reciprocally or one party may refrain from performing it because of non-reciprocity of application by the other party. The conflict rule derived from Article 55 of the French Constitution as set out above serves to emphasise that the primacy of international law is limited by a condition of reciprocity. All of the above constitutional provisions provide for a condition of reciprocity in the following terms: "*subject, for each agreement or treaty, of its application by the other party*".

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[100] NGAH (A.M.), *The Community legal order communautaire and the Constitutions of the CEMAC and ECOWAS Member States and ECOWAS Member States, op. cit,* p. 141

[101] NEILA (D.J.), "Reciprocity in the execution of international treaties in the Tunisian Constitution Constitution", *RCADI*, 1935, p. 119.

[102] COMBACAU (J.), SUR (S.), *Droit international public*, *op. cit,* p. 135.

[103] TCHUINTE (J.), *L'application effective du droit communautaire in Central Africa*, *op. cit.* , p. 73.

[104] *Ibid.*

[105] CE, Assemblée, 29 May 1981, *Rekhou*, Rec. 220.

[106] NGUYEN QUOC (D.), "La Constitution de 1958 et le droit international *"op. cit.* p. 557.

[107] Cf. European Parliament Research Service Parliament Research Service, *The Ratification of international treatiesa comparative law perspective, op. cit.* p. 16.

[108] NEILA (D.J.), "Reciprocity in the execution of international treaties in the Tunisian Constitution Tunisian Constitution", *op. cit.* pp. 120-121.

[109] ONDOUA (A.), "International Law dans la Constitution Cameroon", *op. cit.* , p. 301.

For some authors this rule is only conceivable for agreements and agreements and treaties[110] . This is all the more true since the use of the singular to designate the State that is not respecting the commitments in question testifies to the bilateral nature of the relationship: "*its application by the other party*"[111] . According to this constitutional provision the reciprocity rule is inoperative for multilateral treaties. Consequently, this constitutional rule is not also applicable to Community-type treaties. For these falls into the category of multilateral treaties. It follows from this analysis that the constitutors have not provided for a special place for Community treaties in their legal system. We note an assimilation of the place of treaties of the classical type to those of the Community type.

Moreover, reciprocity could raise the problem of the competent authority for verification[112] or for monitoring compliance with this condition[113] . To answer this question, it seems that it is up to the government and more particularly the foreign ministry of each State to carry out this verification[114] . This practice has led some authors such as Nguyen Quoc Dinh[122] and Mouéllé Kombi[115] to say that this competence is a matter for the executive. As a matter of comparative law, this solution has been enshrined by the judicial and administrative courts. In the Rekhou case, the French Conseil d'Etat declared that "*it will defer ruling on Mr Rekhou's request until the Minister of Foreign Affairs has given his opinion...*"[116] . The same is true of the position taken by the Cour de cassation in the Males case of 29 June 1972. The Court stated: "*It is for the judges to question the Ministry of Foreign Affairs on this precise point before deciding on the merits of the case, and by ruling on the merits without first having the competent authority decide on the preliminary questions which arose in this case, the Court of Appeal violated the above-mentioned principle*"[117] . It is therefore clear that the decision of the depends on the answer given by the authority competent to assess reciprocity in the execution of treaties. This means that the answer given by the competent authority conditions the decision of the judge.

3.2.2. Limitations on the implications of the reciprocity reservation

In France, it could even be said that in the area of interpretation of the reciprocity reservation kind of preliminary question is raised[118] . When the domestic court is seized of this question, it is seized of this question, it is called upon to refer the problem to the competent authority, i.e. the Minister for Foreign Affairs, in order to verify the application of the treaty by the parties[119] . Hence the consequences of non-performance of the treaty or agreement by the other party[120] . The reference to the Minister of Foreign Affairs for the assessment of the condition of reciprocity and even for the interpretation of an international convention is frequent in the decisions of the administrative judge[121]. No constitutional provision whether in France or in the CEMAC states has provided a solution to this question, since these provisions provide both for the binding force of international commitments and their superiority to domestic laws[122] . In other words, it is necessary to ask whether the non-application of the treaty by the other party only results in the absence of the primacy of the treaty over domestic law, or whether it is a matter of the treaty over domestic law or whether it also affects its binding force[123] .

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[110] NGAH (A.M.), *The Community legal order order and the Constitutions of CEMAC and ECOWAS Member States and ECOWAS Member States, op. cit.* p. 179.

[111] *Ibid.*

[112] DIATE (I.), "African Constitutions and African Constitutions and International Law *"op. cit.* p. 49.

[113] ONDOUA (A.), "International Law dans la Constitution Cameroonian Constitution", *op. cit,* p. 301.

[114] DIATE (I.), "African Constitutions and African Constitutions and International Law *"op. cit.* , p. 49. [122] NGUYEN QUOC (D.) " The French Constitution of 1958 and international law *"Revue de Droit International Public*, 1959, p. 558.

[115] MOUELLE KOMBI (N.), "Les dispositions relatives aux conventions internationales in the new Constitutions des États d'Afrique francophone", *op. cit.* , p. 32.

[116] Council of State, Assembly, Rekhou and Bellildu case 29 May 1981, *R.G.D.I.P.* , 1982, p. 407.

[117] See Annuaire Française de Droit International, 1972, p. 979

[118] NGUYEN QUOC (D.), "La Constitution Constitution of 1958", *op. cit.* pp. 560-564.

[119] MOUELLE KOMBI (N.), "Les dispositions relatives aux conventions internationales in the new Constitutions of French-speakingAfrican States", *op. cit*, p. 32.

[120] DIATE (I.), "African Constitutions and African Constitutions and International Law *"op. cit.* , p. 49.

[121] See Trib. admin. Marseille, 20 May 1966, SieurSadji, Rec. 1966 at p. 756: "*The court not having the necessary elements to decide on the competencein view of the agreements in force between the French State and the Algerian State, it was necessary to postpone the decision in order to allow the Minister of Foreign Affairs, to whom the application will be communicated, to formulate his observations*.

[122] DIATE (I.), "African Constitutions and African Constitutions and International Law *"op. cit.* p. 49.

[123] NEILA (D.J.), "Reciprocity in the execution of international treaties in the Tunisian Constitution Tunisian Constitution", *op. cit.* , p. 125.

There are two opposing views on this issue. On the one hand, the so-called minimalist one according to which the treaty will only be deprived of its primacy in the internal order while retaining its binding force. The treaty is in fact binding on the judge with the force of law, and in the event of a conflict with a contrary law, it is the later norm that will prevail over the earlier norm[124] . On the other hand, the so-called maximalist approach, according to which the lack of reciprocity is such as to deprive the treaty of all effect in the domestic order. The treaty will simply not be applied[125] . In view of these two theses, we conclude by fully endorsing the position of Mr. Nguyen Quoc Dinh according to which Article 55 of the French Constitution must be interpreted in such a way that it can be reconciled with the positive rule of international law according to which, in the absence of an express denunciation, the nonperformance of an international commitment by one of the parties automatically entails its termination[126] . This interpretation is also valid for the above-mentioned articles which are merely a copy of the above-mentioned Article 55.

4. Conclusion

The constitution of the CEMAC states deal with the issue of system relationships in an ambivalent manner. This ambivalent approach is justified on the one hand by a conception that favor monism with primacy of international law in the States concerned and on the other hand through this attenuated conception of monism. In the first aspect of this ambivalence, the constitutional provisions reveal the existence of monism with primacy of international law. Here, the constituents subscribe to the variant of monism with primacy of treaties and agreements over domestic laws. However, the second aspect of the ambivalent conception appears in certain constitutional provisions that limit the primacy of treaties. Thus, these constitutional provisions relating to the establishment of the constitutionality review of international commitments and the reciprocity reservation constitute a limit to the primacy of international law clearly stated in both constitutional and Community texts. The question of the relationship between the international legal order and the domestic legal orders, which is still a thick fog, does not always allow the major authors to agree. It is easy to understand why one of them described the study of the relationship between domestic and international law as a real "donkey bridge". The conception of the relationship between systems is best understood as a process of "*maintaining a separation, without imposing a merger, and yet constructing something like an order, or an ordered space*"[135]. In this framework, conflict regulation could be conceived as an '*open and heterogeneous field organised along multiple conceptions as lines of flight or rhizomes*'[127] . Thus, there will be an orderly arrangement of different legal orders.

[124] This thesis is supported by NGUYEN QUOC (D.), *Droit international public,* Paris, L.G.D.J., 1994, pp. 301305.

[125] NEILA (D.J.), "Reciprocity in the execution of international treaties in the Tunisian Constitution Tunisian Constitution", *op. cit.* , p. 126.

[126] See NGUYEN QUOC (D.), "La Constitution The French Constitution of 1958 and International Law "quoted by DIATE (I.), "Les Constitutions africaines et le droit international", *op. cit.* , p. 49. [135] DELMAS-MARTY (M.), *Le pluralisme ordonné*, *op. cit,* p. 26.

[127] DELMAS-MARTY (M.), "Les nouveaux lieux et les nouvelles formes de régulation des conflits", textavailable on the website of the European network Droit& Société:http://www.reds.mshparis.fr/communication/textes/cplx01.htm. Accessed on 10/01/2020 at 12h39 min.