

The Role of the Bank for International Settlements in International Monetary Cooperation and Its Tasks Relating to the European Currency Unit

I. The Specific Role of the Bank for International Settlements in International Monetary Cooperation

The Bank for International Settlements (BIS), whose headquarters are in Basle, Switzerland was founded in 1930 and is the oldest international organization in the field of international monetary cooperation. Its creation represented the materialization of various plans dating from the period prior to the First World War.¹ At that time, the former Italian Finance Minister, Luzzati, and a German professor named Wolf proposed setting up a multilateral body whose task would be to promote cooperation between central banks on a permanent basis. Prior to this, there had been some history of cooperation between central banks, although on an ad hoc and usually only bilateral footing. Indeed, the earliest case of support between central banks seems to have occurred in 1825, when a loan was granted to the Bank of England by the Bank of France and the Netherlands Bank.

The international economic conference held in Genoa in 1922 took up the ideas of Luzzati and Wolf, and recommended developing the practice of permanent cooperation between the central banks or banks entrusted with the

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1. P. CECCHINI, *LA BANCA DEI REGOLAMENTI INTERNAZIONALI—ORIGINI E SVILUPPI* 41–46 (1988); E. DULLES, *THE BANK FOR INTERNATIONAL SETTLEMENTS AT WORK* 15 (1932); Duchesne, *La collaboration des banques centrales et la Banque des Règlements Internationaux*, *LA REVUE DE LA BANQUE* 387–401, 538–59 (1955); Piérot, *La Banque des Règlements Internationaux*, *NOTES ET ÉTUDES DOCUMENTAIRES*, Nos. 3953–3954, at 6–7 (Jan. 8, 1973).

monitoring of credit policy in the various countries. Ultimately, however, the deadlock reached on the question of German reparations in 1930 proved the catalyst for the realization of these long-standing plans. It was thought that one institution, whose principal and permanent role would be to promote cooperation between central banks, might also—as its first, temporary mission—channel the international settlements connected with the German reparations. Hence the name by which the BIS is known, although the name scarcely conveys the range of the Bank's activities.

Today, however, the BIS is by no means the only international institution in the field of monetary cooperation: Mention needs only to be made of the International Monetary Fund (IMF) and the other Bretton Woods institutions, and of the European Monetary Cooperation Fund (EMCF). So what, today, is the specific role of the BIS? The question is all the more pertinent as, in 1944, on the occasion of the Bretton Woods Conference, the decision was taken to liquidate the BIS following the founding of the IMF.² In the event things turned out rather differently, with the BIS experiencing a great expansion after the Second World War. Far from disappearing from the scene, the BIS today cooperates with the IMF at various levels. In 1974, for example, the BIS became the first institution not a member of the Fund to be granted the status of holder of Special Drawing Rights (SDRs) and, since 1978, it has received from the International Monetary Fund deposits denominated in SDRs.³ In 1981 and 1984 the BIS granted to the IMF, with the backing of various central banks, credit facilities of SDR 675 million and SDR 2,505 million respectively.⁴ Furthermore, the BIS has participated as an observer for many years in the work of the Interim Committee of the Board of Governors of the IMF on the International Monetary System. In short, while the two institutions are very different, they are complementary.

It is, perhaps, helpful to try to pinpoint the main differences between the BIS and the International Monetary Fund in order to illustrate the particular nature of the contribution the BIS has made to international monetary cooperation. Five aspects are worth highlighting:

(1) The members of the IMF are governments, and the financial assistance granted by the Fund in connection with balance-of-payments disequilibria goes to governments. In the case of the BIS, its members and principal shareholders are central banks, which is why the Basle organization has more of a technical

2. Resolution V of the Final Act of the Bretton Woods Conference reads: "The United Nations Monetary and Financial Conference recommends the liquidation of the Bank for International Settlements at the earliest possible moment." 1 PROCEEDINGS AND DOCUMENTS OF THE UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE, BRETTON WOODS, NEW HAMPSHIRE, JULY 1-22, 1944, at 939 (Washington 1948). The Final Act, however, was not an international agreement imposing obligations on parties but merely a final record of the discussions and resolution V, as opposed to other resolutions of the final act, was neither acted upon nor ever incorporated into a ratified treaty.

3. Press Release No. 74/7, published by the IMF on Jan. 23, 1974.

4. 54 BIS ANN. REP. 152 (1984).

and banking orientation than a political one. In particular, membership of the BIS does not imply any restriction or delegation of sovereignty; on the contrary, by virtue of article 19 of its Statutes, the operations of the BIS must be in conformity with the monetary policy of the central banks concerned.

(2) It is hardly surprising, then, that the Bank's approach in carrying out its tasks is pragmatic, rather than institutional. The BIS is not concerned with establishing either a set of rules to govern the international monetary system, or a code of conduct for the management of member central banks' monetary policy.

(3) Likewise, the financial assistance extended by the BIS is granted in accordance with generally accepted banking principles.⁵ Unlike financial aid from the IMF, the credit facilities provided by the BIS are not tied to conditions involving economic and monetary policy.⁶ Further, unlike loans from the World Bank or other comparable institutions, the BIS advances are purely at short term. This policy simply reflects the nature of the financial resources available to the BIS: more than 95 percent of all deposits placed with the Bank are at sight or at not more than three months. For this reason the financial assistance provided by the BIS, which is notable for the speed with which it is arranged, has often taken the form of bridging facilities extended to the central banks of countries in need of assistance until such time as longer-term advances from the IMF, or some other source, become available.

(4) The BIS is also a bank, which holds between 10 and 15 percent of global monetary reserves in the form of deposits made by central banks. The funds received in this way are reinvested by the BIS on the financial markets. The BIS thus makes good use of its vast experience of the international financial markets.

(5) Finally, as regards its membership, the BIS—unlike the IMF—is not a global or quasi-global institution. Its member central banks are those of the Group of Ten, those of all the remaining European countries, both West and East (with the exception of Albania, the German Democratic Republic, and the U.S.S.R., but including Turkey), together with the central banks of Australia and South Africa.⁷ The central banks or monetary authorities of all the major

5. For further details of the development of the banking activities of the BIS, see *THE BANK FOR INTERNATIONAL SETTLEMENTS AND THE BASLE MEETINGS 24–41* (1980) (published on the occasion of the fiftieth anniversary 1930–1980), [hereinafter *BIS 1930–1980*] and the subsequent Annual Reports of the BIS.

6. On "conditionality" as a distinctive feature of the IMF's financial assistance to members, see Gold, *Continuity and Change in the International Monetary Fund* in 2 *LEGAL AND INSTITUTIONAL ASPECTS OF THE INTERNATIONAL MONETARY SYSTEM: SELECTED ESSAYS* ch. 4, at 436–40.

7. The right of representation and of voting at the General Meeting is exercised, in proportion to the number of shares subscribed in each country, by the central banks—or the financial institutions acting in their stead—of the following countries: Australia, Austria, Belgium, Bulgaria, Canada, Czechoslovakia, Denmark, Finland, France, the Federal Republic of Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Romania, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States, and Yugoslavia.

industrialized western countries are thus represented in the BIS, with the one qualification that the participation of the monetary authorities of the United States is subject to particular arrangements.⁸

On the basis of a major proportion of its membership, one might be tempted to see the BIS as a "regional" institution—in the sense in which that term is used by the United Nations—in the same way as the EMCF, the monetary institution set up by the European Economic Community (EEC) in 1973, is a regional institution. In fact, the EMCF is very different from the BIS, whose membership spans five continents and not just Europe, whereas the EMCF is a European Community (EC) agency.⁹ More important though, in this context, is that the objectives of the EMCF are an integral part of the process of bringing about European economic and monetary union, which, in due course, may involve the creation of a single currency and a European central bank.¹⁰ Such objectives are completely alien to the BIS, which has no role in institutionalizing a monetary order, whether on a global, European, or any other regional basis. This fundamental difference does not stop the BIS from fulfilling important functions both relating to the EMCF—for which the BIS acts as Agent—and thus the official ECU, and in connection with the private use of the ECU.

Before dealing with the functions of the BIS in connection with the official and the private ECU (functions that constitute only one small area of its numerous activities), it is necessary to examine both the dual nature of the BIS as an international organization and a banking institution, and the threefold role of the BIS as banker to the central banks, promoter of international monetary cooperation, and agent for international settlements.

II. What Kind of Entity Is the BIS?

The legal character of the BIS has always intrigued legal experts and has caused controversy ever since the foundation of the Bank, although the issue

8. See *infra* note 27 and the accompanying text.

9. On the EMCF (also known as FECOM, the abbreviation of Fonds européen de coopération monétaire), see Louis, *Le Fonds européen de coopération monétaire*, CAHIERS DE DROIT EUROPÉEN 255–97 (1973); see also *Regulation (EEC) No. 907/73 of the Council of the European Communities of April 3, 1973*, O.J. EUR. COMM. (No. L 89) (1973) (Committee of Governors of the Central Banks of the Member States of the European Economic Community—European Monetary Cooperation Fund), also to be found in TEXTS CONCERNING THE EUROPEAN MONETARY SYSTEM 65–68 (1985).

10. The European Council, at its meeting in Hanover on June 27–28, 1988, decided to entrust to a committee the task of studying and proposing concrete stages leading towards the realization of economic and monetary union. This committee, which was presided over by M. Jacques Delors, President of the European Commission, consisted of another member of the European Commission, the Presidents or Governors of the central banks of the member countries of the European Community, the General Manager of the BIS, and two experts. The Committee's report was examined by the Ministers for Economic Affairs and Finance of the member countries of the European Community before the European Council meeting in Madrid in June 1989. The conclusions of this meeting were set out in a communiqué issued at the end of the meeting, on June 27, 1989. BIS REVIEW No. 129, at 6, 7 (June 29, 1989).

seems largely academic today. The origin of those debates is not difficult to trace and lies in the two very different—though complementary—facets of the BIS. On the one hand, the Bank is unquestionably an international organization, possessing the international legal personality and the privileges and immunities customarily conferred on intergovernmental organizations. On the other hand, the BIS is a banking institution established in the form of a company limited by shares, although its legal structure deviates in many respects from that found in ordinary company law and, above all, is de facto and de jure controlled by its member central banks.

To what is this dual organization's basis attributable? At the time the BIS was established, most of the founder central banks, though performing functions of public interest since their inception and under State control, themselves had the legal structure of limited companies. Certainly, since that time, a number of central banks have been nationalized or have become public institutions, but a duality similar to that of the BIS in terms of its legal structure still exists, notably in the case of the National Bank of Belgium and the Swiss National Bank. Above all, however, the particular legal structure of the BIS reflects a concern on the part of the Bank's founding fathers to ensure that the BIS should, as far as possible, be free from direct governmental influence, both at the institutional and at the financial level.

Doubtless owing to this duality, legal doctrine was long divided as to the legal character of the BIS. Pointing to its form as a limited company, one school of thought, which gained credence mainly during the Bank's early years when its future appeared uncertain, held that the BIS was essentially comparable to a limited company incorporated under Swiss law, though accepting that it enjoyed certain special, but limited, rights.¹¹ Other writers took the view that the BIS, as an association of central banks, was so exceptional that it could not be classed in any known legal category and was thus an organization *sui generis*.¹² The opinion that clearly predominates today and that, since the conclusion of the Headquarters Agreement with the Swiss Government in 1987,¹³ now seems

11. For this view, see, e.g., BEITZKE, *DIE RECHTSSTELLUNG DER BANK FÜR INTERNATIONALEN ZAHLUNGS AUSGLEICH* (1932); Graner, *Bank für Internationalen Zahlungsausgleich (BIZ)*, 4 BANKEN UND BÖRSEN, SCHWEIZ. JURISTISCHE KARTOTHEK, Karte No. 123, Sektion XV (1941); Hudson, *The Bank for International Settlements*, AM. J. INT'L L. 562–63 (1930). After World War II it seems that this view was only upheld by Sereni, *International Economic Institutions and the Municipal Law of States*, 96-I ACADEMIE DE DROIT INTERNATIONAL, RECUEIL DES COURS 129–239 (1960).

12. This was the position taken, in particular, by Guindey, *La Banque des Règlements Internationaux hier et aujourd'hui*, REVUE D'ÉCONOMIE POLITIQUE 37–57 (1960); Williams, *The Legal Character of the Bank for International Settlements*, AM. J. INT'L L. 665–73 (1930); Daubitz, a.k.a. Joachim, *Zur Gerichtsbarkeit über die Bank für Internationalen Zahlungsausgleich* (Dissertation, Zürich, 1937). Perhaps reference should be made here to Cecchini who considers the BIS as an "organisme international de gestion"; however, the basis on which this description is made seems to lack a full analysis. P. CECCHINI, *supra* note 1, at 272 & n.88.

13. Accord entre le Conseil fédéral suisse et la Banque des Règlements Internationaux en vue de déterminer le statut juridique de la Banque en Suisse, du 10 février 1987 [hereinafter Headquarters

difficult to dispute is that the BIS is an international organization possessing an international legal personality in the same way as any intergovernmental organization, even though its members are not actually governments but central banks.¹⁴

A. THE BIS AS AN INTERNATIONAL ORGANIZATION

Turning to the first characteristic of the BIS—its status as an international organization—it should be noted that the international legal status of the Bank stems from the Convention respecting the Bank for International Settlements.¹⁵ This Convention was signed at The Hague on January 20, 1930, by the Government of the Swiss Confederation on the one hand and the Governments of Germany, Belgium, the United Kingdom, France, Italy, and Japan on the other.¹⁶ By virtue of this Convention, Switzerland undertook to grant to the BIS a Constituent Charter (the text of which was annexed to the Convention), and neither to abrogate nor to modify this Charter nor to authorize any amendment of the most important provisions—the so-called “protected” Articles—of the Statutes of the Bank (likewise appended to the Convention), except with the agreement of the other signatory Governments. The actual foundation of the Bank occurred shortly after, with the signing of the instrument of foundation in Rome on February 27, 1930, by the founder central banks and an American banking group acting in the absence of the U.S. monetary authorities.¹⁷ While the texts of 1930 do not specifically mention that the Bank possesses an international legal personality, article 1 of the Headquarters Agreement con-

Agreement], *Recueil officiel des lois fédérales* [RO] 8 (Mar. 3, 1987); *Systematische Sammlung des Bundesrechts* [SR] 0.192.122.971.3 (Switz.), English translation reprinted in *BANK FOR INTERNATIONAL SETTLEMENTS: BASIC TEXTS* 29–39 (1987).

14. Supporters of this point of view include CAHIER, *ÉTUDE DES ACCORDS DE SIÈGE CONCLUS ENTRE LES ORGANISATIONS INTERNATIONALES ET LES ÉTATS OÙ ELLES RÉSIDENT* 73–82 (1959); D. CARREAU, P. JUILLARD & T. FLORY, *DRIT INTERNATIONAL ÉCONOMIQUE* 191 (3d ed. 1980); EDWARDS, *INTERNATIONAL MONETARY COLLABORATION* 52–63 (1985); KLATTE, *DIE BANK FÜR INTERNATIONALEN ZAHLUNGS AUSGLEICH—EINE JURISTISCHE ABHANDLUNG ÜBER AUFBAU UND AUFGABEN DER BANK* 11–12 (1931); SCHLÜTER, *DIE BANK FÜR INTERNATIONALEN ZAHLUNGS AUSGLEICH* 343–347, 399–407 (1932); AUBOIN, *The Bank for International Settlements, 1930–1955*, in 22 *PRINCETON UNIVERSITY ESSAYS IN INTERNATIONAL FINANCE* 7 (1955); Coing, *Bank for International Settlements*, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 1–2 (1983); Mann, *International Corporations and National Law*, *BRIT. Y.B. INT'L L.* 145 (1967); Piérot, *supra* note 1, at 22; BIS 1930–1980, *supra* note 5, at 94–104. In view of these developments, it would be appropriate if the rather brief details of the BIS which are to be found under the heading *International Public Corporations* in 1 *RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES* § 221 n.3, were revised and updated accordingly.

15. *Convention Respecting the Bank for International Settlements*, Jan. 20, 1930, 104 L.N.T.S. 441 [hereinafter *Convention*]. The *Convention* includes the *Constituent Charter* (104 L.N.T.S. 444) and the *Statutes of the Bank for International Settlements* (104 L.N.T.S. 448) [hereinafter *Statutes*]. All texts are reprinted in *BANK FOR INTERNATIONAL SETTLEMENTS: BASIC TEXTS* (1987).

16. Japan subsequently renounced the prerogatives acquired through its participation in the founding of the Bank; see 1953 RO 24.

17. BIS 1930–1980, *supra* note 5, at 94–95. The text of the *Convention*, the *Constituent Charter*, and the *Statutes of the BIS* are reprinted *id.* at 122–35.

cluded on February 10, 1987, between the Swiss Government and the Bank, which simply clarifies and confirms the legal position obtaining hitherto, does contain a specific provision to this effect, namely that: "The Swiss Federal Council acknowledges the international legal personality and the legal capacity within Switzerland of the Bank for International Settlements."¹⁸

Moreover, on a number of occasions after the Second World War the BIS concluded international treaties that unquestionably fell under public international law, in particular with France, the United Kingdom, and the United States in 1948,¹⁹ with the Federal Republic of Germany of 1953 and in 1966,²⁰ and the above-mentioned Headquarters Agreement with Switzerland in 1987.²¹ In this same context one might also mention the credit agreements concluded in 1981 and 1984 with the International Monetary Fund.

Furthermore, the texts of 1930 establishing the Bank themselves made provision for considerable normative and jurisdictional independence, which has been further clarified and extended since. For example, from the outset, paragraph 5 of the Constituent Charter stated that the Bank's Statutes and any duly adopted amendments thereto "shall be valid and operative notwithstanding any inconsistency therewith in the provisions of any present or future Swiss law." As a consequence, while the structure of the BIS is modelled in many ways—particularly as regards its share capital—on that of a company limited by shares, its Statutes are in numerous respects inconsistent with prevailing domestic company law in Switzerland or, indeed, in other countries. This is notably the case as regards the status and the prerogatives of the Board of Directors. Similarly, the BIS is wholly outside the ambit of Swiss banking legislation, which was introduced in 1934 and which has evolved substantially since.

At the jurisdictional level, it should be noted that any dispute relating to the interpretation of the basic texts governing the legal status of the BIS is subject to the jurisdiction of the international Arbitral Tribunal established under the Hague Agreements of January 20, 1930,²² and is thus placed outside the competence of national courts, and in particular of Swiss courts. Furthermore, any disputes arising in matters of employment relations or pension rights between the Bank and its officials or former officials, or persons claiming through them, must be settled by the Administrative Tribunal of the Bank referred to in article 4, paragraph 2 of the Headquarters Agreement. Finally, articles 10 and 11 of the

18. See Headquarters Agreement, *supra* note 13.

19. See Exchange of Letters Constituting an Agreement, 140 U.N.T.S. 187-95.

20. 1953 Bundesgesetzblatt [BGBl.] II 331, 380 (W. Ger.); 1966 *id.* II 209, 436.

21. *Supra* note 13.

22. See Convention, *supra* note 15, art. 2; Constituent Charter, *id.* para. 11; Statutes, *id.* art. 54; Headquarters Agreement, *supra* note 13, art. 27, para. 1; Protocol Regarding Immunities, July 30, 1936, art. 4, 197 L.N.T.S. 30, reprinted in 1956 BGBl. II 331, and BANK FOR INTERNATIONAL SETTLEMENTS: BASIC TEXTS 25-27 (1987).

Headquarters Agreement expressly provide that the various Swiss legal or regulatory texts in the sphere of social security or staff welfare arrangements shall not apply in the case of the Bank.

The status of the BIS as an international organization also derives from the very extensive immunities it enjoys in Switzerland and in many other countries.²³ For example, paragraph 10 of the Constituent Charter stipulates that:

The Bank, its property and assets and all deposits and other funds entrusted to it shall be immune in time of peace and in time of war from any measure such as expropriation, requisition, seizure, confiscation, prohibition or restriction of gold or currency export or import, and any other similar measures.²⁴

This provision, the scope of which was defined more fully in the Brussels Protocol of 1936, is supplemented at the jurisdictional level by the provisions of the second paragraph of article 55 of the Statutes and article 4, paragraph 4 of the Headquarters Agreement, which state that "all deposits entrusted to the Bank, all claims against the Bank and the shares issued by the Bank shall, without the prior agreement of the Bank, be immune from seizure or other measures of compulsory execution and sequestration, particularly of attachment within the meaning of Swiss law."²⁵ In addition, the Bank enjoys fiscal immunities in Switzerland, together with the other privileges and immunities customarily conferred on intergovernmental organizations, as defined in the Headquarters Agreement of February 10, 1987.²⁶ A number of other countries have also granted the BIS some of the immunities in question, notably with respect to the protection of the Bank's own assets and of the assets entrusted to it, which is the subject of the Brussels Protocol of 1936 mentioned earlier.

The Bank's status as an institution subject to international law is also reflected in various key provisions of its Statutes, all of which are "protected" articles that can be amended only with the consent of all the governments that are parties to the Convention respecting the BIS. By way of example, article 19 stipulates that "the operations of the Bank shall be in conformity with the monetary policy of the central banks of the countries concerned. Before any financial operation is carried out by or on behalf of the Bank on a given market or in a given currency, the Board shall afford to the central bank or central banks directly concerned an opportunity to dissent."

23. On the Bank's immunities, see Protocol Regarding Immunities, *supra* note 22; BIS 1930-1980, *supra* note 5, at 101-04.

24. *Supra* note 15.

25. See *supra* notes 13 and 15.

26. In addition, the names and initials of the BIS in English, French, German, and Italian benefit from the particular protection conferred by the Swiss Federal Law "concernant la protection des noms et emblèmes de l'O.N.U. et d'autres organisations internationales," in accordance with Paris Convention for the Protection of Industrial Property, art. 6, 1er. See 1987 RO 286; 1965 Feuille fédérale [FF] II 1075 (Switz.), RS 232.23.

In addition, article 27 automatically confers the status of ex officio member of the Board of Directors of the BIS on the Governors in office of the central banks of Belgium, France, the Federal Republic of Germany, Great Britain, and Italy, each of whom is entitled to appoint a second director of the same nationality. Although under article 27 the U.S. monetary authorities similarly have the right to two seats on the Board, they have never taken them up nor formally exercised their prerogatives arising from the status of founder central bank conferred on them by the Statutes of the BIS,²⁷ despite the ties of close cooperation that have long existed between them and the Bank. Apart from the ex officio directors and the directors appointed by them, the Board may also elect up to nine further directors from among the Governors of other member central banks, and the Presidents of the Netherlands Bank and the Swiss National Bank and the Governor of the Bank of Sweden have traditionally been so elected.

Finally, article 14 of the Statutes restricts to member central banks the voting rights deriving from all the shares subscribed in their respective countries, even if some of the shares originally subscribed were subsequently issued to the public pursuant to the power to make such an issue to the public contained in article 15. Approximately 16 percent of the issued share capital of the BIS, representing the whole of the American issue and almost half of the Belgian and French issues, is held by the public.²⁸ The shares of the American issue of the Bank's capital were originally subscribed, at the time when the BIS was founded, by a consortium of three leading U.S. banks, the successor of one of which, Citibank, N.A., is appointed by the Board of the BIS to exercise the rights of voting and representation at General Meetings of the BIS in the place of the U.S. monetary authorities.

These various provisions, which deviate significantly from those governing ordinary limited companies incorporated under municipal law, all have to do with the Bank's principal object, that of promoting cooperation among central banks, which unquestionably falls under international public law. The international character of the BIS is also highlighted by the Bank's special unit of account, the gold franc, equivalent to 0.29032258 ... grams fine gold. This BIS gold franc is identical to the old "franc germinal" of 1803, to the franc of the now defunct Latin Monetary Union (which existed from 1865 to 1926), and to the pre-1936 Swiss franc. It enjoyed a golden age as a unit of account in numerous international conventions and treaties, but has now ceded that role, by and large,

27. With respect to the particular arrangements relating to the US participation in the Bank, see Auboin, *The Bank for International Settlements, 1930-1955*, *supra* note 14, at 4-5; BIS 1930-1980, *supra* note 5, at 96.

28. However, article 12 of the Statutes provides that the Bank shall be entitled to decline to accept any person or corporation as the transferee of these shares and that the Bank may not transfer these shares without the prior consent of the central bank, or the institution acting in place of a central bank (in the case of the American issue) by or through whom the shares were issued to the public.

to the IMF's Special Drawing Right. In the case of the BIS, the gold franc defines its authorized capital and thus the nominal value of its issued share capital; it also serves as an accounting unit for purely bookkeeping purposes.²⁹ The Bank's assets and liabilities in currencies are currently valued on the basis of a price of U.S. \$208 per fine ounce of gold, after conversion of the other currencies into U.S. dollars at market rates. The adoption of this method of conversion puts the gold franc at just under U.S. \$2.

B. THE BIS AS A BANKING INSTITUTION

The other facet of the BIS, that of a banking institution with the structure of a company limited by shares, at first sight would appear to contrast sharply with its character as an international organization. The BIS has a share capital and the classic administrative organs of a limited company: a General Meeting of shareholders and a Board of Directors, besides, of course, a management. All the details of the organization of the Bank are thus to be found in its Statutes.

Three general features of particular interest that derive from this structure as an international institution in the form of a company limited by shares are the autonomy of action of the BIS, its financial independence, and its character as a bank.

(1) The constitution of the BIS in the form of a limited company, like the majority of the founder central banks in 1930, is clearly connected with the fact that the BIS is primarily an association of central banks, and not directly of governmental authorities. Hence, it is central banks that take part in the Basle meetings, central banks that are the principal shareholders of the Bank, and central banks that are represented on the Board of Directors. Of course, the independence enjoyed by the member central banks vis-à-vis their respective governments varies in degree from country to country. Nonetheless, the participation of central banks rather than governmental authorities—a feature that sets the BIS apart from most if not all international intergovernmental organizations—endows the BIS with a character more technical and bank-oriented than political and institutional. Moreover, various provisions in the Bank's Statutes clearly illustrate that this autonomy had been envisaged from the start. For example, article 30 stipulates that no person who is a member or an official of a government shall be appointed or hold office as a Director of the BIS unless he is the Governor of a central bank. The same applies to any member of a legislative body unless he is the Governor or a former Governor of a central bank. Even more important are the regulations contained in article 24, clauses (c) and (d), which forbid the Bank to make advances to governments or to open current accounts in the name of governments.

29. Cf. Guisan, *L'unité de compte de la Banque des Règlements Internationaux*, BANQUE 1201-05 (1978).

(2) Another fundamental reason for the adoption of the form of a company limited by shares was undoubtedly to ensure the Bank's financial independence. The BIS has an authorized capital of 600,000 shares, whose nominal value is 2,500 gold francs each; 473,125 of these shares, paid up to the extent of 25 percent, have been issued, resulting in a paid-up capital of almost 300 million gold francs. In addition, the Bank currently has reserves amounting to over one billion gold francs.³⁰ Furthermore, the BIS is required to operate according to banking criteria and to distribute profits in conformity with the rules in article 51 of the Statutes, which, in addition to the maintenance of specific reserve funds, include the payment of a dividend. The major part of the annual dividend is paid to the shareholding central banks, with the remainder going to the Bank's private shareholders, who do not, however, enjoy rights of voting or representation at the General Meeting. The effect of this structure is to give the BIS considerable financial independence, enabling it to perform its functions and, in particular, to intervene rapidly in order to assist central banks without having to depend on governmental contributions.

(3) Benefiting, as it does, from a high degree of independence at an organizational as well as a financial level, the BIS is first and foremost a bank at the service of, and fostering cooperation between, central banks. It is authorized, under article 22 of its Statutes, to conclude with banks, bankers, corporations, or individuals of any country any of the operations it is authorized to carry out with central banks. It is this provision that enables the BIS to be active on the markets. Moreover, in the interest of its credit standing as a bank, the BIS is subject, in respect of its own operations, to the jurisdiction of the ordinary courts. Under article 55 of the Statutes, the Bank may be proceeded against in any court of competent jurisdiction and its own assets (as distinct from the deposits and assets entrusted to the Bank, which benefit from immunity in this regard) may be subject to measures of compulsory execution. The position of the BIS in this respect is similar to that of the World Bank, which, for the same reason—to ensure its credit standing on the financial market—may, under article VII, section 3 of its Articles of Agreement, be proceeded against by creditors in any court of competent jurisdiction.³¹

III. What the BIS Does

The activities of the BIS may be grouped in three headings: the BIS as central banks' bank, as promoter of international monetary cooperation, and as agent for international settlements.

30. Balance Sheet at March 31, 1989; 59 ANN. REP. 219 (1989).

31. On jurisdictional immunities of international organizations, see also G. DELAUME, *TRANSNATIONAL CONTRACTS—APPLICABLE LAW AND SETTLEMENT OF DISPUTES*, Binder II, Booklet 13, Release 86-2 (1986), ch. XI (*Immunity from Suit of Foreign States and International Organizations—Text, § 11.03 International Organizations*), at 22–28.

A. CENTRAL BANKS' BANK

The BIS carries out a wide range of banking operations, which derive in the main from its ability to assist central banks in managing and investing some of their monetary reserves. At present more than eighty central banks from all over the world have deposits with the BIS. As already mentioned, between 10 and 15 percent of world foreign exchange reserves are currently invested with the BIS in this way (about U.S. \$58 billion at the end of March 1988). The continuing expansion of the Bank's functions as banker to the central banks is reflected in the sharp increase in its balance-sheet total over the last few years³² in line with the growth of international monetary reserves, especially official holdings of foreign exchange.

The major part of the funds deposited with the BIS, those not required for lending to central banks, are placed in the market. Here the BIS draws largely on the services of first-class commercial banks. The main forms of investment include deposits with commercial banks and purchases of short-term negotiable paper, including Treasury bills. These operations today constitute a major segment of the banking side of the Bank's activities. Because most of the reserve assets that central banks hold in the form of deposits with the BIS need to be available to them at rather short notice, the Bank's employment of these resources emphasizes the maintenance of a high degree of liquidity.

In addition to placing surplus funds in the international markets, the BIS sometimes has occasion to make liquid resources available to central banks. Such facilities may take the form of swaps against gold; covered credits secured by means of a pledge of gold or marketable short-term securities; credits against gold or currency deposits of the same amount and for the same duration held with the BIS; unsecured credits in the form of advances or deposits; or standby credits, which in individual instances are backed by guarantees given by member central banks. In addition the Bank undertakes operations in foreign exchange and in gold both with central banks and with the markets.

In late 1982 a further dimension was added to the Bank's role as a source of credit for central banks. Faced with the increasingly critical debt situation of some Latin American and Eastern European countries and the resultant threat to the viability of the international financial system, the BIS responded to the desire expressed by the leading central banks by granting fairly large-scale loans to central banks, some of which were outside its traditional areas of operation: the central banks of Mexico, Brazil, and Argentina were granted bridging loans pending the disbursement of balance-of-payments credits extended by the IMF subject to the fulfillment of certain economic policy requirements in those countries. Backing for these loans was provided by a number of BIS member

32. The balance sheet total on March 31, 1989, amounted to 42.32 billion gold francs, which is the equivalent of some U.S. \$82 billion. *See* 59 ANN. REP. at 218-19 (1989).

central banks. The BIS has more recently made similar bridging loans to central banks in a number of countries, both in Latin America and elsewhere, but with decreasing frequency.³³

B. PROMOTER OF INTERNATIONAL MONETARY COOPERATION

1. *Meetings of Central Bank Governors*

Today, it seems hardly believable that before the foundation of the BIS the Governors of the leading central banks rarely had an opportunity to meet together. This fact underlines the useful role performed by the BIS since 1930 as a forum for central bank cooperation.

The Bank's offices in Basle are the regular meeting place for central bank Governors from the major industrialized countries. The purpose of these meetings is to achieve a high degree of mutual understanding and, when practicable, to coordinate monetary policy internationally and thus help to ensure orderly conditions on the international financial markets. The central bank Governors of the Group of Ten play a crucial role in this process, but the Basle meetings also offer a regular opportunity for exchanges of view with and among most central banks of the Organization for Economic Cooperation and Development (OECD) countries as well as occasions for contacts with other central banks, including several central banks of the countries with centrally planned economies in Eastern Europe.

The precise functions of the BIS in the field of international monetary cooperation depend on the current requirements of the continually evolving international monetary system. Following the Second World War the immediate need to restore currency convertibility, and subsequently the laying of secure foundations for the Bretton Woods system of fixed exchange rates, presented the central banks with difficult problems for joint solution. In addition to providing a regular forum for discussion among central banks, the BIS played an important role in the establishment and operation of the various intra-European payments arrangements between 1947 and 1958.³⁴ Then, during the period between 1960 and 1971, which was marked by recurrent waves of speculation against a number of different currencies, the Basle meetings on many occasions resulted in important monetary policy moves being undertaken by the central banks. In addition, the gold pool, which existed from 1961 to 1986 to ensure that gold

33. As regards financial assistance granted by the BIS to central banks, see the following recent Annual Reports of the BIS: 53 ANN. REP. 164 (1983); 54 ANN. REP. 151 (1984); 57 ANN. REP. 184 (1987); 58 ANN. REP. 199 (1988). See also Bederman, *The Bank for International Settlements and the Debt Crisis: A New Role for the Central Bankers' Bank?*, 6:92 INT'L TAX & BUS. LAW. 104-09 (1988).

34. On the European Payments Union, see Auboin, *La Banque des Règlements Internationaux et l'Union Européenne de Paiements*, KYKLOS, 7 INT'L REV. FOR SOCIAL SCIENCES 39-60 (1954); EDWARDS, *supra* note 14, at 300-02. In addition, a comprehensive study on the Financial Diplomacy in the 1950s and the European Payments Union by Kaplan and Schleiminger is due to be published in 1989.

prices on the private markets corresponded to the official gold price, operated on the basis of directives formulated and issued in Basle by the central bank Governors of the Group of Ten.³⁵ The network of swap arrangements established between the U.S. monetary authorities and a number of central banks in order to reinforce confidence in the dollar and to provide emergency short-term liquidity to the system generally also had its origins in 1962 within the framework of the BIS.³⁶

The general change-over to floating exchange rates in March 1973 brought a new need for coordination in connection with the central banks' desire to avoid potentially damaging fluctuations in exchange rates. However, fixed but adjustable exchange rates apply between those countries participating in the Exchange Rate Mechanism of the European Monetary System (EMS).

2. *Permanent Secretariats*

In fulfilling its role as a center for cooperation among central banks, the BIS has been called upon to provide permanent secretariats in two particular fields, both of which have acquired great significance.

The Bank has, since 1964, provided the secretariat for the Committee of Governors of the EEC central banks and subsequently for the Board of Governors of the EMCF,³⁷ both of which are official organs of the European Communities. The importance of the Governors' Committee has grown since the implementation of the EMS in March 1979, given the need for closer convergence of the monetary policies pursued in the System's individual member countries, and the continuing efforts to improve the working of the System.

In December 1974, in the light of recent banking problems, the central bank Governors of the Group of Ten countries set up a Committee on Banking Regulations and Supervisory Practices (or Basle Supervisors' Committee), the secretariat of which is provided by the Bank, in order to coordinate banking supervision at the international level. This committee, also known as the Cooke Committee since until very recently Peter Cooke of the Bank of England had been its chairman for a number of years, pools information on banking supervisory regulations and surveillance systems in the individual countries, including the supervision of banks' foreign currency business, identified danger areas, and proposes measures to safeguard the banks' solvency and liquidity.³⁸

35. BIS 1930-1980, *supra* note 5, at 15.

36. *Id.* at 15-16. On reciprocal currency (swap) arrangements between central banks, involving the BIS, see EDWARDS, *supra* note 14, at 135-66; Crochat, *Les accords-swap*, 8 REVUE D'ÉCONOMIE POLITIQUE 476-500 (1981). Federal Reserve Bank of Atlanta, *Central Bank Swaps—A Bulwark of International Monetary Cooperation*, MONTHLY REVIEW 162-72 (1967).

37. On the EMCF, see *supra* note 9.

38. Among the most significant documents published by the Basle Supervisors' Committee, the following should be mentioned: *Principles for the supervision of banks' foreign establishments* (1983) (the so-called "Basle Concordat" replacing an earlier version of 1975); *The management of*

3. *Meetings of Central Bank Experts*

A Euro-currency Standing Committee was set up at the BIS in 1971 to provide the central bank Governors of the Group of Ten countries with information concerning the monetary policy aspects of the Euro-currency market. Circumstances have from time to time prompted the central banks concerned to deal with specific aspects of the Euro-currency market, such as the placement of central banks' reserves in the market (1971) and the apparent lack of a lender of last resort in the Euro-market (1974). More recently, the Euro-currency Standing Committee has focused on the implications of the debt problem not solely for the Euro-market but for the entire international credit system. In April 1986 the Bank was able to publish a comprehensive report on Recent Innovations in International Banking, which had been prepared by a study group working in the context of the Euro-currency Standing Committee. This report, perhaps better known as the Cross Report since Sam Cross of the Federal Reserve Bank of New York was the chairman of the study group, became an immediate best seller in the financial world.³⁹

The Bank also organizes regular meetings of central bank experts on matters of mutual interest such as the gold and foreign exchange markets and other economic, monetary, technical, and legal questions of interest to central banks. Mention may be made, for instance, of the Group of Computer Experts and the Group of Experts on Payment Systems established by the central banks of the Group of Ten countries,⁴⁰ and also of the central bank Group of Experts on Monetary and Economic Data Bank Questions, which is in charge of developing the data bank set up at the BIS. The BIS provides the secretariat for all these groups.

4. *Publications and Statistical Research*

In its various executive and coordinating tasks, the BIS receives strong support and stimulus from the research, particularly in the monetary field, conducted by its Monetary and Economic Department. That part of the department's work that attracts the widest public attention is the Bank's Annual Report, whose analysis of monetary and economic developments and independent views have won it a widespread reputation.

Since 1963 the Bank has acted as the reporting center for statistics on international banking. The purpose is to bring greater transparency to the

banks' off-balance-sheet exposures: a supervisory perspective (1986); *Proposals for international convergence of capital measurement and capital standards* (1988); *Prevention of criminal use of the banking system for the purpose of money-laundering* (1988).

39. BANK FOR INTERNATIONAL SETTLEMENTS, *RECENT INNOVATIONS IN INTERNATIONAL BANKING* (Prepared by a Study Group established by the Central Banks of the Group of Ten Countries) (1986).

40. See, for instance, the publications prepared by the Group of Experts: *BANK FOR INTERNATIONAL SETTLEMENTS, PAYMENT SYSTEMS IN ELEVEN DEVELOPED COUNTRIES* (3d ed. 1989); *BANK FOR INTERNATIONAL SETTLEMENTS, SECURITY AND RELIABILITY IN ELECTRONIC SYSTEMS FOR PAYMENTS* (2d ed. 1982 & add. 1985).

Euro-currency markets. The main results of this work have been published at quarterly intervals since the end of 1974.⁴¹ Since 1985 these quarterly reports have also included information on other questions of current interest, such as the ECU market or the total financing facilities arranged on the international financial markets. Since 1978 the Bank has, in addition, published more comprehensive half-yearly statistics on the maturity distribution of international bank lending in an endeavour to offer a clearer picture of credit risks in individual countries.⁴² Furthermore, since 1983 the Bank has published, at irregular intervals, statistics on the nationality structure of the international banking market and the role of interbank operations for fifteen countries and the branches of U.S. banks in five offshore centers. Since 1982 the Bank has also been publishing jointly with the OECD half-yearly reports on foreign indebtedness, which include trade-related nonbank credits in addition to bank lending.

One of the most recent example of economic and statistical publications in which the BIS has been involved is a joint work compiled by the BIS with the IMF, the World Bank, and the OECD, consisting of a report by an international working group on external debt statistics. As befits such an international effort, the publication appeared in English and in French in early 1988.⁴³

5. *Cooperation with Other International Organizations*

The Bank participates as an observer both in the work of the Interim Committee of the Board of Governors of the International Monetary Fund on the International Monetary System and at meetings of the Finance Ministers and central bank Governors of the Group of Ten countries and of their deputies. Furthermore, the Bank performs the functions entrusted to it in August 1964 by the Ministers and Governors of the Group of Ten of collecting and distributing to all the participants in the Group and to Working Party No. 3 of the OECD statistical data concerning the financing of external surpluses and deficits of the Group of Ten countries.

In this connection, it should be recalled that the BIS provides the Secretariat for the Governors of the EC central banks and for the EMCF. The agency role performed for the latter is mentioned below.

41. MONETARY AND ECONOMIC DEPARTMENT, BANK FOR INTERNATIONAL SETTLEMENTS, *BIS STATISTICS ON INTERNATIONAL BANKING*; these statistics include external positions in domestic and foreign currencies of banks in eighteen industrial countries and six offshore centers—the Cayman Islands, the Netherlands Antilles, Bahrain, the Bahamas, Singapore, and Hong Kong—and of the branches of U.S. banks in Panama vis-à-vis all third countries. *See also* BANK FOR INTERNATIONAL SETTLEMENTS, *GUIDE TO THE BIS STATISTICS ON INTERNATIONAL BANKING* (1988).

42. These statistics include the liabilities, claims, and undisbursed credit commitments of commercial banks in fifteen industrial countries vis-à-vis third countries. The third-country coverage is worldwide, with each country being listed individually and claims shown on a consolidated basis and broken down according to maturity and sector (banks, public sector nonbanks, and private sector nonbanks).

43. OECD, *EXTERNAL DEBT: DEFINITION, STATISTICAL COVERAGE AND METHODOLOGY/L'ENDETTEMENT INTERNATIONAL: DÉFINITION, COUVERTURE STATISTIQUE ET MÉTHODOLOGIE* (1988).

C. AGENT FOR INTERNATIONAL SETTLEMENTS

The third of the statutory objects of the BIS is to act as trustee or agent in regard to international financial settlements entrusted to it under agreements with the parties concerned. Indeed, various trustee and agency functions have accompanied all stages of the history of the Bank.

As already mentioned, the functions of the BIS under the Young Plan for the settlement of the German reparations problem and as trustee for the related Young Loan of 1930 (the German Government International 5½ percent Loan 1930) were the immediate reasons for activating plans for the creation of the Bank as a permanent forum for central bank cooperation. At the same time, the BIS took over analogous functions with respect to the German External Loan 1924 (the Dawes Loan) and the Austrian Government International Loan 1930 (IBARÖ). While the functions under the Young Plan—owing to the political and economic circumstances of the early thirties—were only performed for a short period, the BIS had to deal with the Young and Dawes Loans after the London Debt Agreement of 1953, when the servicing of these loans was resumed under new terms. It may be recalled in this connection that the interpretation of the multi-currency exchange guarantee clause (which in 1953 replaced the former gold clause) of the Young Loan gave rise to a dispute, which led to an arbitral award in 1980.⁴⁴

New agency functions also marked the Bank's rapid development after the period of very reduced activity during World War II. A function that has now lapsed, but whose influence survives in various forms of monetary cooperation, is that which the BIS fulfilled in the context of the European Payments Union (1950–1958) and its forerunners, the multilateral payments agreements of 1947–1950.⁴⁵ At the end of 1958, after the European currencies had become fully convertible, the European Payments Union was replaced by the European Monetary Agreement (EMA), a multilateral system of settlements, and the Bank assumed responsibility for the execution of all financial operations connected with the EMA until it was terminated in 1972. It then lent its services as agent for the application of the OECD Exchange Guarantee Agreement, which was concluded in place of the EMA and continued in force until the end of 1978. Until recently the BIS also performed the functions of depositary under an Act of Pledge for the secured loans that were issued by the European Coal and Steel Community between 1954 and 1961.⁴⁶

44. On the exchange guarantee of the Young Loan and the related arbitral award of 1980, see *DIE WERTSICHERUNG DER YOUNG-ANLEIHE—DAS URTEIL DES SCHIEDSGERICHTSHOFS FÜR DAS ABKOMMEN ÜBER DEUTSCHE AUSLANDSSCHULDEN VOM 16. MAI (1980)*, (*Studien zum ausländischen und internationalen Privatrecht Nr. 10*) (Behrens ed. 1984), with the text of the award and commentaries by Hahn, Braun, Carreau, Hirschberg, and Horn.

45. See *supra* note 34.

46. Cf. Simons & Radicati, *A Trustee in Continental Europe: The experience of the Bank for International Settlements*, *NETHERLANDS INT'L L. REV.* 330–345 (1983).

At the time most of these tasks were approaching their end, two related and yet separate agency functions were entrusted to the Bank in connection with the European Currency Unit or ECU. Thus, the BIS has acted as agent for the EMCF since its inception in 1973. In this capacity, the Bank carries out various operations associated with the creation, utilization, and remuneration of the official ECU. In addition, in October 1986 the Bank accepted separate agency functions in connection with the operation of the private ECU clearing and settlement system. The two functions performed by the BIS in connection with the ECU are dealt with in more detail below.

IV. The BIS and the ECU

Before giving a brief description of the respective tasks of the BIS relating to the official and private ECU, it is appropriate to outline some of the common features of, and the differences between, the ECU created by and within the EMCF⁴⁷—which has come to be called the “official” ECU—and the “private” ECU circulating elsewhere.

The only link at present between the official ECU and the private ECU is their common definition. The definition of the official ECU as a basket of fixed, but adjustable, currency amounts is laid down in EEC Council Regulations.⁴⁸ Transactions in private ECUs are based on the definition of the official ECU (“open basket approach”), that is, the private ECU would follow any changes in the definition of the official ECU. This link, however, originates from a spontaneous decision by the markets and not, as in the case of a national currency, from legal rules.

In respect of all other characteristics the two types of ECU are quite separate. It should be stressed, in particular, that the conditions under which they are created and circulate are very different. Assets in private ECUs, even if held by official authorities, cannot be turned into holdings of official ECUs.

The official (reserve) ECU is created against gold and dollars through swap operations between EEC central banks and the EMCF. The volume of official ECUs thus fluctuates in accordance with changes in the gold price and the dollar exchange rate on the one hand, and volume movements in EEC central banks’ gold and dollar reserves on the other. In contrast, private ECUs are created against national currencies by commercial banks to satisfy the demand of their customers, and thus independently from the supply of official ECUs.

47. The ECU is the successor of various previous units of account utilized by the European Communities. For an exposé of these different units, cf. Kees, *Les unités de compte dans la Communauté*, UNITÉS ET MONNAIES DE COMPTE 31–56 (1978) (Travaux du colloque international organisé par J.-L. Guglielmi et M. Lavigne); Usher, *The Legal Regulation of the European Currency Unit*, 37 INT’L & COMP. L.Q. 249–67 (1988).

48. Regulation (EEC) No. 3180/78 of 18th December 1978 and Regulation (EEC) No. 2026/84 of 15th September 1984.

Official ECUs can only be held by EEC central banks, or non-EEC central banks and international monetary institutions that have been accorded the status of Other Holder by the Board of Governors of the EMCF. Private ECUs may be held both by official authorities and privately by commercial banks and their customers. The EMCF itself is not involved at all in transactions in private ECUs.

A. THE BIS AND THE OFFICIAL ECU

1. *The Official ECU, Definition, Creation, and Use*

a. Definition of the ECU

In March 1979 the EC established the EMS to stabilize EMS exchange rates and create a zone of monetary stability in Europe. The exchange rate mechanism of the EMS provides for intervention in the foreign exchange markets to maintain the bilateral rates of the member currencies within a band of agreed-upon central rates.

The ECU was set at the center of this system. It is defined as a basket containing a fixed amount of each member's currency. The ECU basket includes the currencies of all the EC members (the currencies of the two newest members, Spain and Portugal, are included as from September 1989). The weight of each currency in the basket—which is subject to periodic change—is determined on the basis of criteria reflecting the relative economic weight of the various member currencies. The EC has changed the composition of the ECU twice, in September 1984 and September 1989, at the time of the prescribed five-year reviews.

b. Creation of the Official ECU

As previously indicated, official ECUs are created by the EMCF in exchange for three-month swaps by the EMS central banks of 20 percent of their gold and dollar reserves. The amounts of these swaps change every three months, in line with changes in the quantity and value of the central banks' gold and dollar reserves. The value of the official ECU is defined to equal the value of the basket of component currencies. Thus, the stock of official ECUs held by central banks fluctuates with changes in the ECU values of their dollar and gold reserves.

c. Use of the Official ECU

The official ECU, created by the EMCF and operating within the EMS, serves different purposes.⁴⁹ It functions as the "numeraire" in expressing the central rates for members' currencies and as the reference point for the EMS "divergence indicator," which acts as a signal of the presumptive need for corrective

49. For a description of the "official" ECU functions, cf. VAN YPERSELE, *LE SYSTÈME MONÉTAIRE EUROPÉEN* 61–65 (2d ed. 1984).

policy action by a participant. The ECU also functions as the unit of value in which EMS intervention credits and other credit facilities of the EC are denominated. It is also the unit of account of EC institutions. As the common unit for the European Communities and the EMS, the ECU is intended to reflect the values of (and in the view of some could ultimately replace, under a new definition) European national currencies.

Since July 1, 1985, ECUs may also be used for limited periods by members of the EMS as collateral, in the form of swaps, to acquire currency for intervention purposes.

The measures adopted in 1985 to strengthen the ECU's attractiveness and usability also provide, among other things, that central banks of non-EEC countries with particularly close economic and financial links with the EEC and certain international monetary institutions—such as the BIS—may now hold official ECUs.

2. *The BIS as Agent for the European Monetary Cooperation Fund*

The Bank has been performing the functions of agent for the EMCF since the creation of this Community institution in 1973 by the Member States of the EEC. The EMCF was originally set up to administer the Community exchange rate, or "snake," arrangement introduced in April 1972 and the reciprocal credit facilities already in existence or established in connection with the "snake." These activities were extended with the conclusion, in March and April 1976, of the first Community loan operations, the administration of which was entrusted to the Fund, and, in particular, with the introduction of the EMS, which superseded the "snake" mechanism on March 13, 1979.

As the Fund's agent, the Bank performs two main sets of functions: on the one hand, those connected with the operation of the EMS; and, on the other, those relating to the execution of financial operations in connection with Community borrowing and lending for the purpose of balance-of-payments support for EEC member countries.

- (1) In the first case, the Bank's role consists principally of the following:
 - (a) It records in ECUs in the Fund's books:
 - the debts and claims vis-à-vis the Fund of the EEC central banks participating in the EMS exchange rate mechanism that arise from interventions carried out by those central banks in other member countries' currencies and reported to the agent;
 - the settlement of these very short-term debts and claims.
 - (b) The Bank carries out operations associated with the creation, utilization, and remuneration of ECUs, namely:
 - concluding, in the name and for the account of the Fund, swap operations with each of the EEC central banks involving the transfer of ECUs to the institutions in question against the transfer to the Fund of 20 percent of

their gold holdings and 20 percent of their U.S. dollars reserves. These swap operations are renewed every three months, when the necessary adjustments are made, firstly, to ensure that each central bank's transfer to the Fund continues to represent at least 20 percent of its gold and U.S. dollar reserve holdings at the end of the month preceding the renewal date, and secondly, in order to take account of changes in the price of gold and in dollar rates vis-à-vis the ECU. At March 31, 1989, the Fund had issued in this way a total of ECU 52.7 billion, corresponding to approximately U.S. \$58 billion at the rate of exchange prevailing at that date;

- in the name of the Fund, entrusting the respective central banks with the management of the gold and U.S. dollar assets they have transferred to the Fund;
- effecting transfers of ECUs between the central banks' "ECU reserves" accounts, in particular in respect of the settlement of debts and claims arising from interventions under the EMS exchange rate mechanism, of voluntary transactions between the central banks participating in the EMS, and of the payment of interest calculated on these central banks' net positions in ECUs. During the 1987/88 financial year the gross amount of such transfers totalled nearly ECU 6.1 billion (whereas during the 1988/89 financial year, such transfers totalled ECU 0.6 billion).

(c) The Bank enters in the Fund's books the operations carried out in the context of the short-term monetary support arrangements set up in February 1970. This facility has, however, not been activated since 1974, when it was used by the Bank of Italy.

(2) In its functions as agent of the Fund for the administration of borrowing and lending operations concluded by the Community in accordance with the Regulations adopted by the Council of the EEC in February 1975 and March 1981, the Bank is responsible principally for the following tasks:

- carrying out payments connected with these borrowing and lending operations through the accounts that the Fund has opened in its name at the Bank; the accounts in question are, however, merely transit accounts, as the sums received by the Fund under borrowing arrangements entered into by the Community are transferred on the same value date to the final recipients of the payments;
- recording these financial operations in the Fund's books;
- keeping a check on the due dates laid down in the borrowing and lending contracts for the payment of interest and repayment of principal;
- informing the Commission of the European Communities of the operations carried out for the account of the EEC.

B. THE BIS AND THE PRIVATE ECU

Certain problems arise from the private use of composite units such as the ECU and the SDR that do not occur when denominating contracts in national

currencies.⁵⁰ These problems include the need to incorporate provisions in contracts to cover the risk that the composition of the basket of component currencies might be changed, that one of the component currencies might not be available, or that a given component currency's value cannot be determined. Another crucial problem is the need to develop ways to make payments in the composite units themselves.

With the rapid growth in the use of the private ECU and the resulting increase in the number of ECU payments between financial institutions, a multilateral ECU clearing and settlement system became necessary. In October 1986 a system was in place. The functions of agent for the purpose of running this new system were entrusted to the BIS.⁵¹ Prior to the introduction of the new system, a small group of banks in Belgium, England, France, Italy, and Luxembourg (known as the MESA banks, i.e., Mutual ECU Settlement Account) had been operating a scheme whereby they settled ECU balance between themselves.

The private ECU has become a popular vehicle in international markets, both among borrowers and among investors. According to the statistics of September 1988, ECU claims of banks are in the region of U.S. \$115 billion equivalent, while the outstanding Eurobond market amounted to some U.S. \$40 billion. The ECU is also used by some companies and institutions for commercial purposes.⁵² Nevertheless, the possibilities for making settlements in ECUs under the MESA scheme were rather cumbersome and limited. In order to facilitate settlements the banks concerned asked the BIS to accept the role of settlement bank for a daily clearing to be operated through the SWIFT network. After extensive discussions with the banks and the ECU Banking Association (EBA), which they had set up, and with the full agreement of the EEC central banks, the BIS agreed to undertake this task.

The BIS decision to support the private sector's initiative, which was seen by many monetary officials to contribute to the strengthening of European financial integration, was not unusual considering the other agency functions of the Bank in the field of European monetary cooperation. Furthermore, the fact that the BIS also operates as a market institution and that it has the professional experience of the technical complexities associated with international settlements involving both the private and the public sector meant that it could usefully contribute to devising a workable clearing mechanism for the private ECU.

In March 1986 the BIS signed an agreement with the EBA under which it assumed the function of agent for the private ECU clearing and settlement system set up by the Association. Once the major technical details were worked out, the

50. Cf. Lefort, *Problèmes juridiques soulevés par l'utilisation privée des monnaies composites*, CLUNET 369-412 (1988).

51. Cf. 56 BIS ANN. REP. 172-73 (1986) (2. *Clearing system for the private ECU*).

52. Cf. 55 BIS ANN. REP. 127-33 (1985) (*The Role of the ECU in international banking activity*); Lelart, *L'utilisation du DTS et de l'ECU par le secteur privé*, 433 BANQUE 1239-48, 1381-92 (1983).

clearing system went into operation on October 1, 1986, for a trial period of twelve months. The experience gained during the initial months of the trial period led the Bank and the EBA, as had been foreseen from the outset, to amend and supplement certain provisions relating to the technical operation of the clearing system. These amendments, aimed chiefly at facilitating the daily execution of the clearing operations, appear in a revised agreement that replaced, with effect from April 30, 1987, the agreement of March 21, 1986.

In addition, the clearing system gradually opened up to new clearing banks, the number of participants increasing by stages in the light of the technical possibilities and according to the procedures approved by the competent bodies of the EBA. On July 1, 1989, the number of clearing banks participating in the system totalled thirty-six, and the average turnover of ECU payments effected through the system is in the range of 12 to 14 billion ECU per day.

The structure and operation of the clearing system are based on three institutions:

- The EBA⁵³ was set up with the broad aim of facilitating operations in private ECUs and the particular purpose of implementing an ECU clearing and settlement system. Membership of the EBA is open to banks that have their office or a branch in one of the EEC countries and that demonstrate sufficient interest in the development of ECU transactions. Member banks that meet certain criteria may be designated as clearing banks.
- A netting center, SWIFT, is used to operate the clearing at the technical level. In practice, each clearing bank is linked directly to a central clearing computer.
- The BIS, as agent of the individual clearing banks as well as of the EBA, acts as clearing and settlement bank. It receives deposits in ECUs from the clearing banks, and the final clearing balances are settled over these accounts. The BIS ECU accounts can only be used for settlement operations; they may never show a debit balance and do not bear interest.

The system is designed in such a way that the BIS does not fulfil the function of lender of last resort. The rules that the BIS and the EBA have agreed upon, and that are to be respected during the actual clearing and settlement process, are also based on this principle. As in the case of any other clearing system, a strict time schedule is adhered to so as to allow the daily settlement to take place smoothly.

In practice, the system functions as follows:⁵⁴

- the BIS, as agent of the clearing banks, opens and operates clearing accounts in their names;
- each clearing bank also opens an ECU sight account in the books of the BIS;

53. Cf. Guimbretière, *L'Association bancaire pour l'ECU*, EURÉPARGNE No. 85.11 (1985).

54. Cf. "The ECU Clearing System" (Press release), ECU NEWSLETTER (Torino: Istituto Bancario San Paolo di Torino, April 1986).

- every working day the clearing banks are able to send each other payment orders in ECUs through the netting center; as it is a closed system, i.e. total credit operations must equal debit operations, clearing banks in a debtor position are able to obtain ECU funds from creditor banks;
- to square the residual balances, the BIS, having established that all debtor clearing balances are covered by credit balances on the respective banks' ECU sight accounts, carries out the settlement operations.

Should any clearing bank have insufficient funds on its ECU sight account to cover its debtor clearing balance, the BIS must immediately inform the EBA and the netting center. If no solution were found, the entire clearing for that day would be cancelled. All payments to and by the debtor bank in question would be withdrawn from the day's clearing transactions and new balances would be calculated and added to the clearing for the following settlement day.

V. Conclusions

The agency functions recently entrusted to the BIS in connection with both the official and the private ECU are but two illustrations of the Bank's capacity to adapt to a continually changing international monetary environment while, at the same time, remaining true to its origins and to its founders' intention of making it a focal point for cooperation among central banks. Other examples of the Bank's flexibility and readiness to respond quickly to the needs of central banks abound, the most visible being the important role played by the BIS since the beginning of the 1980s in providing bridging financing to a number of central banks.

In the upheavals in the international monetary order that have occurred during the period of nearly sixty years since its foundation, the BIS has thus demonstrated a unique ability to adapt to—or even anticipate—the needs of central banks, and more generally, of the international financial community. The flexibility, the pragmatic character, and the responsiveness of the BIS enable it to play a very specific and useful role in international monetary cooperation that is complementary to that played by the Bretton Woods institutions.