

The Expulsion of Foreigners from the CEMAC Area, Between the Preservation of National Interests and the Pursuit of Community Integration

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Abstract : *The expulsion of foreigners is an obvious reality in the CEMAC zone, in the sense that even Community nationals are not spared. In this area, this practice considerably stifles Community integration, which is an ideal to which all Member States have subscribed. Normally carried out with a view to preserving the identity base and the essential values of each Member State, the expulsion of foreigners in the CEMAC countries seems to espouse other objectives that the state actors in the region do not admit to. Moreover, this practice, beyond limiting the Community's freedom of movement enshrined in various key Community texts, truly disrupts bilateral diplomatic relations between member countries. Hence the constant politico-diplomatic tensions recorded here and there between the leaders of this organization. The massive adherence of CEMAC member States to this practice, which is inherent in their respective sovereignties, raises some concerns about respect for the fundamental rights of foreigners during the execution of expulsions, the questioning of Community objectives and, above all, the inadequate supervision of expulsion by Community standards. This is why we call for the CEMAC legislator to address this issue, which is vital to the achievement of the objectives set by the Community.*

Keywords: Expulsion, Foreigner, Integration, Community freedom of movement, disruption of bilateral politico-diplomatic relations, fundamental rights of foreigners, sovereignty

1. Introduction

Today, the right of expulsion is widely recognized and still derives its legitimacy from the principle of State sovereignty¹. Thus, each State in its international relations always acts in such a way that its essential interests are safeguarded. To this end, international instruments enshrine the principle of freedom of movement². However, this principle is not absolute since it is limited by national rules on the entry and residence of aliens and none of these instruments grants aliens a real right not to be expelled. States have recently increased the number of multilateral agreements protecting the rights of aliens, but they do not provide for absolute equality of treatment with nationals. It is true that current international law is tending, in the field of human rights, to grant more and more foreigners equal protection with that of nationals. However, this change of direction is not radical, since a number of exceptions still exist. This is the case with regard to expulsion³.

With a view to preserving their respective national interests, the CEMAC member States have overwhelmingly adhered to the practice of expelling aliens present in their various territories when circumstances so require. To this end, most of the domestic legislation of these States contains specific provisions on the practice of expulsion⁴. It should be

emphasized that expulsion concerns both aliens and nationals to a certain extent⁵. Thus, in the present study, we shall focus solely on the expulsion of aliens in the CEMAC countries, which is still structured with many similarities, while taking into account the fluctuating causes.

In the absence of explicit recognition of expulsion in CEMAC Community law⁶, it is up to the national legislators of the member States, in the vast majority of cases, with a few differences, to clearly define the expulsion regimes in their respective legal systems. In Cameroon, for example, expulsion is governed by article 39 of Law No. 97/012 of 10 January 1997 on the conditions of entry, stay and exit of foreigners in Cameroon. In the Democratic Republic of the Congo, however, it is article 47 of Law No. 29-2017 of 7 August 2017 amending and supplementing certain provisions of Law No. 23-96 of 6 June 1996 on the conditions of entry, stay and exit of aliens in the Republic of the Congo which governs this issue. These legal provisions, the substance of which remains fundamentally similar for

Chapter II of Title III of the 1994 Law on the conditions of entry and stay of foreigners in the Republic of Equatorial Guinea; Chapter III, Title V of Law No. 29-2017 of 7 August 2017 amending and supplementing certain provisions of Law No. 23-96 of 6 June 1996 laying down the conditions of entry, residence and exit of foreigners in the Republic of Congo and Law No. 5/86 of 18 June 1986 laying down the regime for admission and residence in the Gabonese Republic.

⁵The expulsion of nationals is in principle prohibited. Exceptionally, however, this measure may only be taken in the context of political action.

⁶In current CEMAC Community law, one could just presume the prohibition of expulsions in this area through some of its fundamental principles. These include freedom of movement, freedom of establishment and non-discrimination with a view to optimal integration.

¹According to Professor Cornu, sovereignty is the supreme character of a power that is not subject to any other. See **Cornu (Gérard)**, *Vocabulaire Juridique*, Paris, 8^{ème} édition, PUF, 2009, p. 882.

²In particular the movement of persons, goods and capital.

³**Ducroquetz (Anne-Lise)**, *L'expulsion des étrangers en droit international et européen*, thèse en Droit, Université du Droit et de la Santé - Lille II, 2007, p. 40.

⁴Notably Chapter IX of Law No. 97/012 of 10 January 1997 on the conditions of entry, stay and exit of foreigners in Cameroon;

other CEMAC member entities, formally define the conditions for the expulsion of foreigners from their borders.

Moreover, the problem of the expulsion of aliens is also regulated in the broader framework of general international law. Indeed, the question of whether the matter of expulsion falls within the scope of international law or within the exclusive competence of States was discussed fairly early on within the Institute of International Law. In September 1888, at its session in Lausanne, the Institute was led to answer the following question: how and within what limits do States have the power to use their right of expulsion against aliens? The Institute then adopted a "draft international declaration on the right of expulsion of aliens"⁷, in which it implicitly recognized that the question of expulsion could not be left to the sovereign and arbitrary appreciation of governments and should be subject to certain international rules, thus allowing the laws of humanity to be taken into account. Henceforth, the Institute of International Law, without calling into question the principles of State sovereignty and independence, considers that "humanity and justice"⁸ oblige States to exercise the right of admission and expulsion of aliens "only by respecting, to the extent compatible with their own security, the rights and freedom of aliens who wish to enter [their territory] or who are already there"⁹.

If the alien is staying in the country illegally, without having been lawfully admitted, or if he has ceased to meet the conditions¹⁰ under which his admission was suspended, the State authorities may "deport him to the border". When, on the other hand, the alien has been lawfully admitted and continues to meet the statutory conditions for residence, the term "expulsion"¹¹ is used. For Jean Combacu and Serge Sur, the question is then more delicate because, as a foreigner subject to the territorial jurisdiction of the host State, he is entitled to respect for the obligations that customary international law and any conventions between the latter and his national State impose on the former. Hence the submission of expulsion to a mixed regime, half internal, half international¹². Expulsion thus remains relatively vague

and complex in the CEMAC region, owing to its variations from one legal system to another. In any case, however, the domestic legislation of the member States has a common objective in its provisions, which is the preservation of national interests.

The question of the expulsion of aliens in the countries of Central Africa is not new. Indeed, to be convinced of this, one need only look at the various dates of adoption of the national texts establishing the rules governing the admission, stay and exit of aliens in their border areas¹³. Despite the distant legal consecration of expulsion in CEMAC¹⁴ member States, studies on this issue are rare or almost non-existent¹⁵. This lack of interest, if not the prudence of the doctrine on this issue in Central Africa, could be justified by two complementary arguments. On the one hand, there is the political sensitivity of the issue in the bilateral relations of the Member States of the Community, and on the other hand, its incomplete framework by Community law in this area¹⁶. The shortage of doctrinal studies on the expulsion of aliens in the CEMAC zone leaves an opening for an accurate understanding of the foundations and corollaries of this practice in this area. Hence the relevance of a study on the expulsion of aliens in this community space, from the perspective of its influence on subregional integration.

The present reflection thus proposes to analyse precisely the priority place of the national interests of CEMAC member States in relation to the pursuit of community integration, which proves to be a necessity in the service of the general well-being of the peoples of this geographical area in all areas¹⁷. With regard to the expulsion of foreigners from the national areas of CEMAC Member States, one wonders to what extent can it stifle or slow down community integration? More specifically, is the Community interest also taken into account in the legislative provisions of the Member States laying down the rules governing the admission, residence and exit of foreigners? Does the material enforcement of decisions to expel foreigners in the CEMAC zone not hinder sub-regional integration? These questions raise, in the background, the question of the relative compatibility of national and Community requirements.

Such an analysis first requires agreement on the precise understanding of the subject matter of our study. To this end, in its usual sense, the concept of expulsion is defined as "the

⁷Institute of International Law, Lausanne session, 8 September 1888, *Annuaire de l'Institut*, tome X, 1888-1889, pp. 244-246. See also in this volume Rolin-Jaequemyns (G.), Report to the Institute of International Law on this question: how and to what extent may governments exercise the right of expulsion with regard to aliens, pp. 229-237. Cited by Ducroquetz (Anne-Lise), *L'expulsion des étrangers en droit international et européen*, op.cit. p. 18.

⁸The preamble to the draft states that: "The Institute of International Law, considering that both the expulsion and the admission of aliens is a measure of high police force which no State can renounce, (...); considering that it may be useful to formulate in a general way some constant principles which, while leaving governments the means to fulfil their difficult task, guaranteeing both, as far as possible, the security of States and the rights and freedom of individuals; (...), considers that the admission and expulsion of aliens should be subject to certain rules ...".

⁹Institute of International Law, "International Rules on the Admission and Expulsion of Aliens", session de Genève, 9 September 1892, *Annuaire de l'Institut de Droit international*, tome XII, 1892-1894, pp. 218-219.

¹⁰In particular, the time limit.

¹¹Combacu (Jean), Sur (Serge), *Droit international public*, Paris, 5^{ème} édition Monchrestien, 2001, p. 369.

¹²Ibid.

¹³For example, Gabon has had this text since 1986, Cameroon since 1997 and Congo since 1996, amended in 2017.

¹⁴As in the European Community and CEDEAO area.

¹⁵For the time being, the only study dealing with the issue of expulsion of foreigners that has been carried out in the CEMAC region concerns Mvondo (Armel Idriss), *Développement de la subjectivité de l'individu et réalisation d'une situation d'Union en droit communautaire de la CEMAC*, thèse de Doctorat, Université de Yaoundé II-Soa, 2018-2019.

¹⁶Some authors, such as Armel Idriss Mvondo, recognize that "the material execution of expulsion, although already little regulated in international law, is not yet regulated in CEMAC law". See, Mvondo (Armel Idriss), *Développement de la subjectivité de l'individu et réalisation d'une situation d'Union en droit communautaire de la CEMAC*, op.cit., p. 362.

¹⁷Preamble of the treaty establishing CEMAC.

action of removing a person, by virtue of an enforceable title and, if necessary, by force, from a place where he or she finds himself or herself without rights"¹⁸. Otherwise, it is an internal administrative police measure whose purpose is to order an alien to leave the territory where he or she is¹⁹. In international law, expulsion is the act by which the competent authority of a State summons and, if necessary, "compels one or more persons in its territory to leave it [without delay or] at short notice"²⁰. An alien is generally understood to be a natural person who is not a national of the State in which he or she is present. This category includes foreign nationals and stateless persons²¹. The concept of national interest is essentially variable and evolving. It is more shaped by the norms and values that structure the political life of the State in the international sphere. Preservation of the national interest therefore refers to the safeguarding of what is most important to the State, the defence of which is a sovereign function²². Community integration is understood as the process by which two or more countries progressively reduce and eliminate barriers to trade between them and disparities between their economies so as to eventually constitute a homogeneous economic area²³. It is a transfer of state competences from one state to an international organisation with supranational decision-making powers and competences²⁴.

Our study remains important for three reasons. First, the little attention paid by African doctrine to the issue of expulsion of foreigners in the CEMAC space, which is unfortunately becoming frequent in some countries. Second, the framing of this issue, which is placed at the crossroads of the domestic, community and international legal orders²⁵. The third reason consists in verifying or better to test the relevance of the assertion of Mr. Alioune SALL according to which "the law is secondary to the will of States"²⁶ in African integration. For, the States proclaim their faith in integration, set up very ingenious institutions and, unfortunately, do not show, in their daily behaviour, a real willingness to submit to the rule jointly laid down.

Consequently, an analysis of the legal provisions of CEMAC member States, which set the regime for the

expulsion of foreigners within them, using positivist, normativist and sociological methods, suggests that there are clear incompatibilities with the pursuit of community integration. Thus, the material implementation of the expulsion of foreigners, most often marred by irregularities in the CEMAC region, inevitably generates political and diplomatic tensions between member States (I) on the one hand, and on the other hand a considerable slowdown in regional integration (II), especially with regard to freedom of movement, which is an essential framework in the construction of the common market of the Community.

2. The Expulsion of Foreigners as a Source of Politico-Diplomatic Tensions

The power to expel aliens is a component prerogative of State sovereignty. Indeed, the right to expel cannot be contested by a State on its territory²⁷. Thus, in the CEMAC region, this practice is arbitrary and discretionary in nature. Victims of identity crises, some CEMAC Member States are actively seeking to control exclusively a little more of the space within the Community. Hence the basis for the expulsion of foreigners here and there, as well as border crises between these entities. This undoubtedly causes considerable disruption to bilateral diplomatic relations between member countries (A). Moreover, the frequent closure of the borders of these States constitutes a significant obstacle to the Community freedoms recognised as a major factor of integration (B). Moreover, some observers also see in the practice of expulsion of foreigners in the CEMAC zone, the expression of hegemony between member states (C).

a) Disruption of bilateral diplomatic relations between member states

The tense relations between the various CEMAC member States are a result of the irregular enforcement of expulsion of their nationals. The fact is that the climate of tension between States creates mistrust and xenophobia between their different peoples, so that one is reluctant to see the nationals of the other on its territory. Within CEMAC, a historical approach shows us that, if relations between all these CEMAC countries are not always in good shape, the real tensions observed have always involved Equatorial Guinea with one of its neighbours²⁸. This is notably the case of the diplomatic crisis of March 2004 between Cameroon and Equatorial Guinea. This crisis stemmed from a number of factors including the "quasi-inhuman"²⁹ expulsions and the various abuses committed by the Equatorial Guinean security forces against Cameroonian nationals. This led, at the time, to the recall in consultation³⁰ with the Cameroonian

¹⁸ Cornu (Gérard), *Vocabulaire Juridique*, op.cit. p. 393.

¹⁹ Salmon (Jean), (Dir), *Dictionnaire du droit international*, Bruxelles, Bruylant, 2001, p. 488. Voir aussi, Cornu (Gérard), *Vocabulaire Juridique*, op.cit. p. 393.

²⁰ Rousseau (Charles), *Droit international public*, Paris, Sirey, 1977, p. 19. Combacou (Jean), Sur (Serge), *Droit international public*, Paris, Monchrestien, 2001, pp. 368-369.

²¹ International Law Commission, Fifty-eighth session Geneva, 1 May-9 June 2006 and 3 July-11 August 2006, A/CN.4/565, p. 24.

²² Kenhoung (Yanic), *L'intérêt national dans le processus d'intégration régionale en Afrique*, Mémoire de Master en Relations internationales, IRIC, 2013-2014, p. 30.

²³ Biao (Barthélémy), « Intégration régionale en Afrique centrale, Bilan et perspectives », in Ben Hamouda (Hakim), Bekolo-Ebe (Bruno) et Touna (Mama), (Dir), *L'intégration régionale en Afrique centrale, Bilan et perspectives*, Paris, Karthala, 2003, p. 30.

²⁴ Cornu (Gérard), *Vocabulaire Juridique*, op.cit. p. 502.

²⁵ Even as the explicit framing of the expulsion of foreigners is still awaited in CEMAC community law.

²⁶ Sall (Alioune), *Les mutations de l'intégration des Etats de l'Afrique de l'Ouest. Une approche institutionnelle*, Paris, L'Harmattan, 2006, p.187.

²⁷ Expulsion when justified is an absolute right for any sovereign entity.

²⁸ Gatsi Tazo (Eric- Adol), *La condition juridique des étrangers en zone CEMAC. Contribution au diagnostic de l'intégration personnelle en zone CEMAC*, DEA, Université de Dschang, 2009, consulté sur www.Memoireonline.com le 07 avril 2020.

²⁹ Chouala (Yves Alexandre), « La crise diplomatique de mars 2004 entre le Cameroun et la Guinée Equatoriale : fondements, enjeux et perspectives », Polis, *Revue camerounaise de science politique*, vol. 12, numéro spécial 2004 – 2005, p. 1.

³⁰ The Ambassador's reminder in consultation characterizes a tension in relations between two States. It is a spontaneous act by

Ambassador in Malabo by the President of the Republic of Cameroon³¹.

Furthermore, during a party of his political party, the President of the Equato-Guinean Republic warned his compatriots against the invasion of foreigners in the following terms: "*Be careful of foreigners and especially Cameroonians, because they have had oil money before, and their oil deposits are already exhausted, they are trying to invade us*"³². He proposed to his people a radical solution of the "machete": "*Each one of you,*" he advised his people, "*must have a machete, sticks and iron bars to hit the thieves on the head and make them disappear*"³³. This speech by the political leader of Equatorial Guinea reflects the hostility of his country towards foreigners present on its territory. The solution advocated in this case is far removed from the rule of law and the values of humanity and, above all, is contrary to the procedures enshrined in international standards for expulsions. Let us acknowledge that this discourse has only the merit of reflecting the nature and, above all, the state of diplomatic relations between certain CEMAC member countries, which can be summed up in daily mistrust.

The Antoine NTSIMI³⁴ case is eloquent as regards the disruption of bilateral relations between CEMAC Member States resulting from expulsion. Antoine Ntsimi, a Cameroonian national, in his capacity as President of the Commission of the Economic and Monetary Community of Central Africa, was raped and deported from Bangui airport in the Central African Republic. This incident affected relations between Yaoundé and Bangui. Hence the intervention of President Denis Sassou Nguesso "*with a view to resolving the situation thus created, in order to preserve the regional integration dynamic dear to our countries and our peoples*"³⁵. Generally speaking, in Central Africa, bilateral conflicts between CEMAC member countries are resolved by joint commissions. In reality, these commissions

the sending State and should not be confused with a recall following a declaration of *persona non grata* by the receiving State. The recall in consultation is a way of distending, at least temporarily, diplomatic relations with the receiving State when a dispute between the two countries arises. It is a means for the government to be informed orally of the ambassador's analysis of the situation and its possible evolution. It also enables the receiving State to understand, by this gesture, the seriousness with which the matter is regarded by the sending State, as well as its dissatisfaction. See **Pancracio (Jean-Paul)**, *Dictionnaire de la diplomatie*, Paris, Dalloz, 2007, pp. 510-511.

³¹Précisément le 16 mars 2004 et en 2008.

³²**Chouala (Yves Alexandre)**, « La crise diplomatique de mars 2004 entre le Cameroun et la Guinée Equatoriale : fondements, enjeux et perspectives », op.cit. p.7.

³³*Agence France Presse Afrique*, 15 Aout 2000.

³⁴This case pitted the then President of the CEMAC Commission, Antoine Ntsimi, against President François BOZIZE of the Central African Republic. Indeed, President BOZIZE believed that Antoine NTSIMI was blocking the functioning of the community institution. But basically, any observer warns acknowledges that this incident stems rather from the sharing of positions of responsibility within the community organization. The Central African leader argues that the mandate of Mr. Antoine Ntsimi is over and that it is up to his country to occupy this position.

³⁵*Affaire Antoine NTSIMI : Le Cameroun a mal à ses voisins, Mutations*, YAOUNDE - 26 MARS 2012.

are legal and administrative frameworks for evaluating the level of cooperation between these countries.

These various discords that can be observed between the countries of the Community undoubtedly have a more than negative influence on the legislator's desire to assimilate foreigners, even of Community origin, to nationals. The consequence of such situations is that the integration process is put on the back burner by disputes, with the leaders of the countries sacrificing Community freedoms with regard to the nationals of the countries with which they are in dispute³⁶. This creates xenophobia, which leads to various manifestations.

b) Expulsion as an Obstacle to Freedom of Movement Within The Community

The expulsion of foreigners is a discriminatory practice that particularly impedes the free movement of persons and their rights of residence and establishment within CEMAC member countries. Beyond that, there is a constant closure of borders by member countries. Viewed as a linear structure, the border corresponds to a limit of national sovereignty, generally represented symbolically on the map by a continuous line forming the external envelope of the State³⁷. As a zonal reality, the border designates a more or less wide space between two contiguous state territories, strongly subject to border effects; the nature of these effects depends on the type of relations between the two states located on either side of the dividing line³⁸.

Borders also include places of entry into and exit from the territory where the sovereign functions of the State are exercised. These include, in particular, ports, international airports and land borders. Rather than acting as a link for sub-regional integration, borders are for some CEMAC countries, barriers par excellence to filter migration within the community space. These entities display a real obsession with borders. By causing the closure of borders, expulsions paralyse intra-community trade. They further awaken the nationalist spirit of the Member States and thus prevent inter-state communication³⁹. In this context, the expulsion of foreigners becomes for these States a means of building and preserving their national identities. Hence the sacredness of borders in Central Africa⁴⁰.

In some CEMAC countries, notably the Congo, the movement of resident foreigners is in principle free, but subject to conditions. Such is the substance of article 37 of Act No. 29-2017 of 7 August 2017 amending and supplementing certain provisions of Act No. 23-96 of 6 June 1996 laying down conditions for the entry, stay and exit of foreigners in the Republic of the Congo, which provides that "*The movement of foreigners, whether resident or not, on the*

³⁶**GATSI TAZO (Eric- Adol)**, *La condition juridique des étrangers en zone CEMAC. Contribution au diagnostic de l'intégration personnelle en Zone CEMAC*, supra.

³⁷**Loungou (Serge)**, « La libre circulation des personnes au sein de l'espace de la C.E.M.A.C : entre mythes et réalités », *Belgeo*, 3, 2010, p. 6.

³⁸*Ibid.*

³⁹In this case, the free movement of persons.

⁴⁰**Loungou (Serge)**, « La libre circulation des personnes au sein de l'espace de la C.E.M.A.C : entre mythes et réalités », op.cit. p. 7.

territory of the Republic of the Congo is not subject to any restriction. However, within the framework of the rules governing national security or the protection of certain strategic interests. The movement of foreigners may be regulated by a collective or individual measure and residence in certain places may be prohibited⁴¹. The same law specifies that "expulsion automatically entails the withdrawal of the residence card"⁴². In all cases, it is understandable that the enforcement of the decision to expel aliens, whether in accordance with or in breach of the regulations governing this matter, inevitably entails an obstacle to freedom of movement within the community. The Member States introduce intensive and irregular checks at internal borders which have the effect of limiting intra-Community movements of foreign nationals as far as possible.

In reality, expulsion does not consist of a disguised repression of foreigners in a given territory. It is normally a precautionary measure allowing the expulsion of aliens because of the threat it poses to public order⁴³. Also recognized at the international level, the only admissible limit to expulsion in this legal system is the prohibition of collective expulsion provided for in the International Covenant on Civil and Political Rights of 19 July 1966⁴⁴. Unfortunately, however, in the CEMAC zone, both individual and collective expulsions are recorded. All of which then reflects the obvious irregularities in the execution of expulsion practices in this area. Moreover, some political leaders in the subregion use the practice of expelling foreigners in their geographical spheres as a means of expressing hegemony over their other community partners.

c) Expulsion as an Expression of Hegemony Between Member States

Since the breakdown of the Fort-Lamy⁴⁵ consensus, we have witnessed within CEMAC a rise in power of certain member countries, which had difficulty asserting themselves politically, economically and strategically. Indeed, this break reflects a new dynamic in the distribution of power within the organization of the Economic and Monetary Community of Central African States⁴⁶. Following the acquisition of

economic importance in the subregion, some member States do not hesitate to multiply the techniques for conserving their wealth, including the expulsion of foreigners present on their territories. Through the expulsion of foreigners, these States thus intend to express fundamentally hegemonic desires by asserting their new status, but also, realistically, to secure their wealth⁴⁷.

For these States, the presence of foreigners on their respective territories would reduce the gains that would result from the exploitation of some of their resources, particularly black gold. Moreover, these political leaders believe that the expulsion of foreigners remains a means of regulating unemployment among national citizens. Anything that gives more credit to the thinking of Professor Mouelle Kombi Narcisse who emphasizes that CEMAC was conceived and established "as an association of states constituted by a treaty, with a common constitution and organs and a legal personality distinct from that of the member states. The latter intend to remain sovereign subjects freely associated in an inter-state body whose Community status is neither synonymous with union nor the beginnings of a merger"⁴⁸. In fact, "sovereignism" strongly permeates the structuring bases of this association and is therefore reflected in the wars of leadership that the Member States wage on each other.

In this case, the expulsion of foreigners from CEMAC member countries, in most cases, would reflect a malaise of self-assertion, if not of leadership status in the conduct of community integration between the actors. Hence the pervasive colouring of inter-stateism in certain acts of member countries, and especially the weak concession to the idea of supranationality within CEMAC. This undoubtedly constitutes a considerable obstruction to the integration of this space towards the convergence of the construction of a true Common Market.

3. The Expulsion of Foreigners as an Obstacle to Regional Integration

The flashing nature of the borders of some member countries of the Community⁴⁹, combined with certain abusive restrictions on freedom of movement within the Community, do not seem to augur well for the effective integration of the CEMAC in the near future. Indeed, let us recall that "the essential mission of the Community is to promote peace and the harmonious development of the Member States, within the framework of the institution of two unions: an Economic Union and a Monetary Union. In each of these two areas, the Member States intend to move

moment in the history of an institution, the state of mind of a moment.

⁴⁷Batchom (Paul Elvic Jérôme), « La rupture du consensus de Fort-Lamy et le changement du rapport de force dans l'espace CEMAC », *Études internationales*, Volume 43, numéro 2, juin 2012, p. 168.

⁴⁸Mouelle Kombi (Narcisse), « L'intégration régionale en Afrique centrale. Entre intérêtisme et supranationalisme », in Ben Hamouda (Hakim), Bekolo-Ebe (Bruno) et Touna (Mama), (Dir), *L'intégration régionale en Afrique centrale, Bilan et perspectives*, op.cit. pp. 208-209.

⁴⁹Notably Gabon and Equatorial Guinea.

⁴¹Article 37 of Act No. 29-2017 of 7 August 2017 amending and supplementing certain provisions of Act No. 23-96 of 6 June 1996 laying down conditions for the entry, stay and exit of foreigners in the Republic of the Congo.

⁴²Article 47 of the above-mentioned Congolese law and Article 39 paragraph 3 of Law No. 97/012 of 10 January 1997 on the conditions of entry, stay and exit of foreigners in Cameroon.

⁴³Durand (Gwenaëlle), Delebois (Delphine), « L'expulsion de l'étranger et le droit à mener une vie familiale normale », In: *Revue juridique de l'Ouest*, 1999-4. p. 465.

⁴⁴Articles 12 and 13 of the International Covenant on Civil and Political Rights of 19 July 1966.

⁴⁵Adopted in 1975, the Fort-Lamy Consensus (from the former name of the capital of Chad, N'Djamena) is an unwritten conventional agreement of the order of custom, broken at the Bangui summit in 2010.

⁴⁶At the beginning of the distribution of power among member states was the Fort-Lamy consensus. According to Professor Paul Elvic J. BATCHOM, like most agreements of this kind, the Fort-Lamy consensus is a reflection of the balance of power at a specific

from a situation of cooperation, which already exists between them, to a situation of Union capable of completing the process of economic and monetary integration⁵⁰. A combined reading of the substance of Articles 4, 13 and 27 of the UEAC Convention shows that freedom of movement occupies an essential place in the integration of this Community. It is limited only in cases of necessity, in particular for reasons of public policy, public health, public morality and the protection of the environment and certain essential assets. But in the practice of the Member States, the reality is quite different. By expelling foreigners, even Community nationals, the Member States drastically limit the freedom of movement which is the ideal pattern of Community integration⁵¹. To this end, the structural values of the Community are being violated (A), in particular Community solidarity is being called into question (B) and sometimes the Member States simply fail to fulfil certain obligations under Community legislation (C).

a) Infringement of the Structural Values of the Community

The founding values of CEMAC are, in the sense of the preamble of the revised treaty, ideals to which the "founding States"⁵² declare themselves attached. Indeed, they are principles that are similar to the fundamental values of the Community and revolve around the search for the general welfare of the peoples of the Community, the commitment of Member States to respect the principles of democracy, human rights, the rule of law, good governance, social dialogue and gender issues. In addition to these vital values, the promotion of peace is considered by Article 2 of the revised treaty as an "essential mission" of CEMAC. Of all these values, we will only refer to peace and the protection of human dignity, which in the first place are called into question by the phenomenon of expulsion of foreigners.

Generally speaking, peace corresponds to the situation of a State which is not at war with any other State or which is not at war with another specific State⁵³. In reality, peace characterizes a non-conflictual situation or an absence of dispute. However, the expulsion of foreigners in Central Africa sometimes seems to obey no legality and even less so, the taking into account of certain constitutional values of CEMAC. In any case, even if it is lawful, the expulsion of aliens could give rise to disputes as to the grounds for State decisions and, above all, as to whether the fundamental rights of aliens are taken into account during the actual implementation of the expulsion. In the context of CEMAC, expulsions are at the root of inter-State tensions that are reflected in the rise of nationalism or at least national preference. The recurrence of acts of xenophobia and the violent speeches of certain political leaders of the Community, inviting their compatriots to adopt inhospitable behaviour towards immigrants, are not conducive to guaranteeing community peace. Sometimes involving violence, the expulsion of foreigners also raises the question

of human dignity, which should normally be guaranteed whatever the circumstances.

Human dignity is a moral imperative of an absolute nature in the CEMAC legal order. However, the expulsion of foreigners as discriminatory and stigmatizing practices in this space constitutes a flagrant transgression of this value. For it is clear that the guarantee of minimum requirements contributing to the improvement of the human condition of life hardly exists in this context. The expulsion of aliens in CEMAC is part of the degradation of persons and, in most cases, consists of inhuman and cruel treatment and leads to physical or moral harm⁵⁴. This is notably the case of the death of a Cameroonian fisherman, killed in 2008 by Equatorial Guinean forces off the coast of Campo, or of Martine Angèle Ze Ngongang, a 25 year old Cameroonian girl, who lost her life in Equatorial Guinea, killed by soldiers of the local army, during a routine check-up some 100 kilometres from Cameroon. At the same time, Balbine Esther Ebela, was seriously injured and had her left leg amputated and her right leg operated on⁵⁵. In any case, this would inevitably undermine community solidarity.

b) The Calling Into Question Of Community Solidarity

Solidarity between peoples is an essential tool for community integration. To this end, the Community recommends that it be strengthened while respecting their respective national identities. Unfortunately, the deportations experienced here and there within the Member States by foreigners would, on the contrary, contribute to tarnishing the value of Community solidarity. Moreover, the expulsion of foreigners is carried out in an aggressive manner. However, the Pact on Non-Aggression, Solidarity and Mutual Assistance among CEMAC⁵⁶ Member States obliges these States to refrain from any act of aggression against one of the States Parties⁵⁷.

Beyond the expulsion of foreigners, community solidarity suffers from other acts of member countries which normally "accept that any external aggression against a State Party is considered as aggression against all the other States Parties"⁵⁸. How, then, can we understand the attitude of Equatorial Guinea which seems to give facilities to Nigeria rather than Cameroon in the border conflict on the Bakassi peninsula? Indeed, Equatorial Guinea has spared no effort to choose its camp during the bilateral crisis between Cameroon and Nigeria. Very early in 1994, it became involved in the conflict, unlike the other CEMAC states, not in favour of its neighbour in the community but alongside Nigeria. We note the strengthening of military contacts between Equatorial Guinea and Nigeria, through the audience granted by the President of Equatorial Guinea to the Chief of Staff of the Nigerian Navy⁵⁹ on the one hand,

⁵⁴Sobze (Serges-François), *La dignité humaine dans l'ordre juridique africain*, thèse de Doctorat, Université de Yaoundé II-Soa, 2013, p. 19.

⁵⁵Mutations YAOUNDE - 26 Mars 2012.

⁵⁶« PACTE-CEMAC »

⁵⁷ Article 4 (a) of the PACT-CEMAC.

⁵⁸ Article 4 (b) of the PACT-CEMAC.

⁵⁹Sali (Aliyou), *L'attitude des états de la CEMAC face au conflit de Bakassi et ses effets sur l'institution*, DEA, Université de Dschang 2008, www.Memoireonline.com.

⁵⁰Article 2 of the revised CEMAC Treaty.

⁵¹Mouelle Kombi (Narcisse), « L'intégration régionale en Afrique centrale. Entre interétatisme et supranationalisme », op.cit. p. 208.

⁵²Kamtoh (Pierre), *Introduction au système institutionnel de la CEMAC*, Yaoundé, Afrédit, 20014, p. 30.

⁵³Cornu (Gérard), *Vocabulaire juridique*, op.cit. p. 653.

and on the other hand, the intervention of Equatorial Guinea before the ICJ in favour of Nigeria. Equatorial Guinea's stance clearly shows that solidarity within the CEMAC Community is not appropriate. Consequently, the execution of the obligations arising from the essential texts is also acutely necessary.

c) The unequivocal fulfilment of the obligations arising from the ecmac texts

Freedom of movement, residence and establishment and the prohibition of discrimination are normally principles of public policy within the Community. Derogations from these principles are clearly defined and regulated in the Community. The principle is that the expulsion decision must be justified by a legitimate ground. The State should not exercise its power of expulsion arbitrarily. Usually, the concern to preserve public policy and national security or to put an end to the illegal situation of an alien are the reasons invoked to justify the expulsion decision⁶⁰. These grounds are generally provided for in the rules of domestic law⁶¹. Moreover, the question of public health⁶² remains a major concern for States and could be the basis for an expulsion order against an alien.

However, an objective analysis of the expulsion of foreigners in Central Africa shows that it is coloured by discrimination and above all by subjective restrictions on freedom of movement. The striking fact in the CEMAC zone is that freedom of movement was consecrated late in some member states, particularly Gabon and Equatorial Guinea. All this reflects a disparity in the application of the Community standard by Member States and leads to the illegal maintenance of measures restricting Community freedoms in part of this area. This formally constitutes a violation of the objective prescription of the essential texts of the Community.

From all of the above, it is recognized that the expulsion of foreigners, even if carried out in accordance with the regulations, inevitably impinges on the progress of Community integration in the subregion. For, in any case, it would undermine the founding values of the Community. All acts or omissions by Member States with a view to obstructing the attainment of the objectives of the Treaty or circumventing certain Community obligations constitute a breach which could engage the responsibility of the State.

⁶⁰Ducroquetz (Anne-Lise), *L'expulsion des étrangers en droit international et européen*, op.cit. p.43. See also, Mvondo (Armell Idriess), *Développement de la subjectivité de l'individu et réalisation d'une situation d'Union en Droit communautaire de la CEMAC*, thèse de Doctorat, Université de Yaoundé II- Soa, 2019, p. 348.

⁶¹In particular, through the standards that regulate immigration, entry and residence, as well as asylum in a State. The internal rules, which apply to foreigners, implicitly remind us that foreigners are hardly treated in the same way as nationals and that they are subject to a "status of exception". States therefore legislate on immigration and the status of foreigners by systematically providing for restrictions on the rights and freedoms granted to them.

⁶²Apart from expulsions which may be justified on public health grounds, it is therefore open to the Member States to take such measures on account of the conduct of the Community national.

4. Conclusion

In short, the power of expulsion is internationally recognized in principle. In the CEMAC zone, it is on the grounds that supra-state control remains necessary. Although expulsions are largely discretionary⁶³, they are always carried out against the manifest will of the persons concerned. Hence the need for the Community to include this issue clearly in its basic texts with a view to better supervision and control of expulsion operations in conjunction with the Member States. For the considerations of "public policy" which, according to the domestic law of each Member State, determine the power of expulsion should normally leave room for Community censorship of its possible misuse⁶⁴, in order to guarantee the pursuit of the ideal of Community integration. This would limit the number of actions directed against the national State of the persons concerned, "disguised repatriations" which have become frequent in this area, and avoid the confiscation of the property of expelled foreigners as lived in Central Africa. The wide margin of appreciation of the grounds for the expulsion of foreigners left to state entities does not seem to objectively favour the pursuit of community integration. By invoking, especially in cases of emergency, expulsion would serve as a basis for a presumption of misuse of power, which is certainly discretionary, but unfortunately also arbitrary, in the CEMAC zone. Hence the rapid, brutal and vexatious nature of the expulsion of foreigners in some CEMAC countries. Considering the violation of the fundamental rights of aliens during expulsion operations in the subregion, together with the possibility of a claim by their national State and depending on the variation in the grounds for their expulsion in this area, would it not be necessary to examine the exact motives for these police measures?

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⁶³Combacru (Jean), Sur (Serge), *Droit international public*, op.cit. p. 369.

⁶⁴When it is used for purposes unrelated to its function.

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