

Legal analysis of German colonisation based on non-compliance with the German- Cameroon pre-treaty

Calvin Patrick Bandah Panga

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Abstract: *The pre-treaty signed between the Cameroons' chiefs and the representative of the German government, Emil Schulze, is often omitted from legal analyses of the treaties of 12 July 1884. It was the main element that created legal obligations for the German party, which was the only signatory to the pre-treaty at the request of the local chiefs. The precedence of this text concerning the treaties and the clauses it contains is essential for its legal classification. This is particularly true given the influence it had on the wording of the treaties themselves. By adopting a diachronic approach, based on a variety of published sources, the aim of this chapter is to highlight the legal nature of this pre-treaty and to analyse the legality of German colonisation in the Cameroons on the basis of its administrative practices with reference to the requirements of the pre-treaty.*

1 Introduction

According to Kum'a Ndumbe III, 'around 95 treaties'¹ were signed by the Germans over the whole territory that in 1901 became Cameroon. Of these, the two treaties signed on 12 July 1884 remain famous. After all, they were the most negotiated but, above all, because they placed almost the entire mouth of the Wouri (historically known as 'Cameroons', before it took the name Duala in 1901), the gateway to German colonisation, in German hands. While the treaty signed the previous day with Jim Ekwalla was limited to his territory, those signed with King Bell, King Deido and King Akwa encompassed the territories under the authority of all the monarchs. However, before signing these treaties, the Kings of the Cameroons imposed preconditions under which relations between Cameroonians and Germans should evolve: 'C'est une fois ces vœux des camerounais garantis par la signature du consul allemand que les rois Bell et Akwa vont signer les traités de transfert de souveraineté.'² The case of Cameroon is unique in the history of Africa in that the treaties of 12 July 1884 were preceded by the signing of a pre-treaty, a prior commitment by the representative of the German government to the chiefs of the coast. This can be explained by the context of that time. For a long time, Germany had shown no interest in the colonial question. Bismarck himself was 'fundamentally hostile to colonisation'.³ Therefore, he entered the colonial field at a time when almost all of Africa's coasts were under European influence, except for a few territories. Moreover, as Rudin points out, the German Imperial Constitution contained no provision for a colonial system.⁴ Many members of the German *Reichstag*, as a matter of principle, were opposed to any form of imperialistic enterprise.⁵ It was not until December 1883 that this situation changed. Several reasons led Bismarck to reconsider his position: 'He came under pressure of the

1 A Kum'a Ndumbe III 'Les traités Camerouno-germaniques: 1887-1907' in A Kum'a Ndumbe III (ed) *Africa and Germany from the colonisation to cooperation, 1884-1916* (1986) 47.

2 A Kum'a Ndumbe III *L' Afrique s'annonce au rendez-vous la tête haute!* (2012) 146.

3 A Owona *La naissance du Cameroun 1884-1914* (1996) 24.

4 The German Constitution of 1871 even prohibited all colonial activity. Art 3(1) expressly states that colonisation and emigration to countries outside Germany are not subject to the legislation and supervision of the empire, <https://mjp.univ-perp.fr/constit/de1871.htm> (accessed 6 June 2026).

5 HR Rudin *Germans in the Cameroons 1884-1914: A case study in modern imperialism* (1938) 29.

nationalist movements within parliament, the trading companies lobby, and internal social problems.’⁶ It should also be remembered that the German traders in the Cameroons were particularly wary of the British

Anxiety about English policies might have been increased as a result of Germany’s experience with England in the Fiji Islands, where British decrees in 1875 invalidated very real rights of Germans in claims on natives for land and debts.⁷

As a result of lobbying by these merchants and others, the decision was taken to establish colonies along the African coast.

In Cameroon, this imperative need to have zones of influence led the Germans to quickly accept the difficult conditions imposed by the Duala Kings, King Bell and Akwa, as their primary concern was that the treaties be signed. By 12 July 1884, the mouth of the Wouri River had become an area of intense commercial activity, where German interests had gained considerable importance. However, the Duala communities always showed their willingness to place themselves under the protection of Great Britain, as demonstrated by the various letters written to Her Majesty Queen Elizabeth (King Akwa on 7 August 1879; King Bell on 8 March 1881; and both on 6 November 1881). It is important to note that in their various letters, none of the Duala chiefs wanted either assimilation or colonisation, but a transfer of sovereignty:

At the end of the 19th century ... the British were extolling the virtues of their country to the Cameroonian kings, the princes of Cameroons who had spent time in Great Britain were praising the merits of the industrial revolution to their parents, all of which made the Cameroonian kings see the advantage of a transfer of sovereignty to Great Britain.⁸

At the same time, the Germans, who were already present thanks to the establishment of their trading companies and, above all, the development of their commercial activities as a result of the system of pre-financing supplies, which put the various chiefs on the coast into debt, were aware of the desire of Cameroonian Kings to open up their territories to industrialisation and modern administration. German covetousness aroused the British and gave rise to a kind of competition between these two countries for the annexation of Cameroon’s coast. Informed

6 H Stoecker *Kamerun unter Deutscher kolonialherrschaft* II (1968) 176.

7 Rudin (n 5) 33.

8 Kum’a Ndumbe III (n 2) 135.

of the German desire to sign treaties with the Duala and despite their reservations expressed to the chiefs on the coast, the British arrived too late. Aware of this rivalry and to reduce the pressure exerted on them because of the loans they had taken out with German traders, on the one hand, and wary of the latter's willingness to sign treaties immediately, on the other, even though for years the British had shown little enthusiasm for signing such an agreement with the Cameroon's chiefs despite their various letters, the Duala chiefs demanded a written document signed by the *Reich's* representative. Through this document, the aim of the leaders of the coast is to guarantee the German's future commitment to respect the stipulated conditions, or rather the exceptions to future treaties.

The Cameroonian Kings demanded that the authority representing the German state first sign a document guaranteeing compliance with Cameroonian conditions, before signing any treaty. The Germans agreed, and the German Consul in Gabon, Emil Schulze, who arrived in Cameroon on 9 July, signed a document on 12 July 1884.⁹

Kum'a Ndumbe III described this text as a 'pre-treaty'.¹⁰ However, from the start of the German administration, the clauses contained in this document were systematically violated. While the legal literature on the issue of the documents signed between the Germans and Cameroonians on 12 July 1884 is generally concerned with the question of treaties in terms of their legality and legitimacy under international law,¹¹ this chapter focuses on the legal nature of the pre-treaty. Based on the Germans' failure to comply with the pre-treaty signed by Consul Emil Schulze, the *Reich* plenipotentiary, this chapter analyses the illegality of German administrative practices in the Cameroons under the protectorate. To this end, it is structured around a tripartite plan, the first of which sets out the context of the signing and presents the content of the pre-treaty; the second analyses its legal nature; and the last highlights some cases of clear violation of the clauses of this agreement by the German side after its installation in the Cameroons.

9 Kum'a Ndumbe III (n 2) 144.

10 As above.

11 P Etonde *La portée juridique des traités germano-duala* (2022); A Ndam Njoya *Le Cameroun dans les Relations Internationales* (1976).

2 What is meant by the pre-treaty?

Before really attempting to explain what is meant by a pre-treaty and to present its content, we believe it is important to shed light on the sequence of historical events by emphasising the legal importance of this prior agreement because it predates the treaties.

2.1 Course of events and attempted definition

If it is true that the pre-treaty was signed on the same day as the treaties of the Bell and Akwa Kings on 12 July 1884, there is every reason to believe that the drafting and signing of this preliminary agreement preceded that of the treaties signed by Cameroonian chiefs. In the sequence of historical facts, during the drafting of the treaties of 12 July 1884, the chiefs of the coast submitted to the representative of the German government, Emil Schulze, a document that reserved certain areas of exclusive jurisdiction for them in their future relationship with Germany. Actually, this was a kind of guarantee of autonomy, a refusal to assimilate or subjugate the Duala chiefs by their future German partners. According to Albert Pascal Temgoua:

On the morning of 12 July, the Douala chiefs sent Emil Schulze a text that became known as *Wünsche der Kamerun Leute* (the wishes of the people of Cameroon) and insisted that it be included in the German-Douala treaty, a draft of which was being prepared. In this document, the Douala chiefs asserted their exclusive property rights on the Wouri estuary and their absolute commercial monopoly in the hinterland.¹²

This is also the view of Linden, who states that '[t]he first document was a declaration made by native rulers on 12 July 1884, which expressed their agreement to German presence on their territory if several conditions were met';¹³ agreement also shared by Rudin, who gives the same precision: '[t]wo important documents accepted by the Germans were to determine relations with the natives. The first dated 12 July 1884, was an expression of the wishes of the natives.'¹⁴

12 AP Temgoua *Le Cameroun à l'époque des Allemands 1884-1916* (2014) 19.

13 M van der Linden *The acquisition of Africa (1870-1914): The nature of international law* (2017) 194.

14 Rudin (n 5) 40.

The drafting of this pre-treaty can also be explained by the nature of relations between the Duala and the British, but above all by the pressure felt by King Bell and King Akwa following their meeting on 11 July 1884, the day before the signing of the treaties, with Captain Moore of the English navy. Having learned of the Germans' arrival in the Cameroons, Captain Moore came to meet the Duala chiefs and '[informed] the native kings Bell and Akwa, that Consul Hewett would come shortly with a friendly message from Queen Victoria, and to ask the kings to make no treaty with any other government until Hewett's arrival'.¹⁵ This situation embarrassed the coastal chiefs, who had already given their agreement in principle to the German traders. This embarrassment was all the more evident in that the chiefs had accepted the gifts offered to them by the German merchants to sign the treaties. 'King Bell obtained a voucher worth 1120 Kroo from the agent Schmidt representing the firm Woermann ... King Akwa [also] obtained a voucher worth 1120 Kroo from Voss representing the firm Jantzen & Thormählen'.¹⁶ At the time, the Kroo was the currency used for trade between Germans and Duala; one Kroo had a value of 20 Marks. Faced with this reality, and given Moore's insistence and to preserve their relations with the English, who still had their preference, 'Bell said he wanted the English Consul to come soon, within one week, because ... he might have made a conditional promise to the Germans'.¹⁷ From this point of view, the pre-treaty can also be considered, beyond the legal reservations that it imposes on the treaties of 12 July 1884 that followed, as a guarantee by the Duala Kings towards the English. Ultimately, the term 'pre-treaty' can be understood as the conditions imposed by Cameroonian chiefs and accepted by Emil Schulze, representative of the German government, for the signing of the Germano-Cameroonian treaties between the Duala chiefs and German traders on 12 July 1884. In other words, the pre-treaty is an agreement that brings together the preliminary requirements under which the Duala chiefs agreed to sign treaties with the Germans. From that point onwards, it became a legally binding text for all parties involved.

15 Rudin (n 5) 28.

16 H Stoecker *Kamerun unter Deutscher Kolonialherrschaft* I (1960) 68.

17 Rudin (n 5) 29.

2.2 Content of the pre-treaty

This part presents the contents of the pre-treaty between the Duala chiefs and Emil Schulze.

Cameroons Rivers, 12 July 1884

Our wish is that white men should not go up and trade with Bushmen, nothing to do with our markets; they must stay here in [the] river and then gave us trust so that we will trade with our bushmen.

We need no protection, we should like our country to annex with the government of any European power.

We need no alteration of our marriages, we shall marry as we are doing now.

Our cultivated ground must not be taken from us, for we are not able to buy and sell as other countries.

We need no duty or customs here in our country.

We shall keep bulldogs, pigs, goats, fowls as it is now and also no duty on them.

No man shall take another man's wife by force, or else a heavy fine.

We need no fighting and beating without fault and no imprisonment on paying the trusts without notice and no man shall be put to iron for the trust.

We are the chiefs of Cameroons.

The imperial German Consul

Emil Schulz¹⁸

According to Rudin, the following text derives from the original pre-treaty: 'This document has been signed by the Consul as proof of his consent.'¹⁹ Therefore, more than his signature on this agreement, the wording of this sentence of consent clearly shows the commitment made to respect the demands of Cameroons' chiefs by one of the legal representatives of the future German administration. But above all, it shows his awareness of the implications this would have for the future German administration's installation on the coast, insofar as the pre-treaty creates obligations for it and automatically grants rights to the local chiefs. It was therefore a document with legal implications.

Basically, the aim of the pre-treaty was to confine German traders to the coast and to preserve the Duala's role as intermediaries with the populations of the interior. It is precisely this role of fuse that has enriched the various chieftaincies on the coast, which justifies their desire to preserve this monopoly. Indeed, 'a product acquired inland,

18 Kum'a Ndumbe III (n 2) 145.

19 Rudin (n 5) 423.

when it reached the coast, saw its price rise considerably'.²⁰ According to Zintgraff, 'between Yabassi, a town 80 kilometres away, and Cameroon, the difference in the price of foodstuffs, including palm oil, Cameroons' main export, was around 500 to 600 per cent'.²¹ The purpose of the exploratory trips made by the first Germans to the interior, therefore, was to confirm the information on the economic potential already known about the interior. The desire to exploit this potential was even the basis of the German businessmen's annexation drive. In 1883, they revealed their true intentions to the Cameroons:

The interior of Central Africa, with its dense population of potential consumers and its large markets described by travellers, offers particularly interesting outlets for European industrial products, for the reason that not only the products of the country, but also all the services are always paid for ... the development of this market for the benefit of German industry, which precisely needs exports, is therefore of the greatest importance; but it is made as difficult as in the foreign colonies, because of the independent Negro tribes who inhabit the coast. The blacks of the Cameroons, for example, do not allow any white people to penetrate into the interior beyond the mouth. In order to develop sales of European goods, Europeans would have to come into direct contact with the blacks inland. This contact will only be possible if the coast is in the possession of a European power. It will be the power occupying this coast that will take a large share of this trade.²²

It was therefore clear that German colonisation had exclusively commercial aims. However, according to the text of the pre-treaty, Consul Emil Schulze committed the German government to respecting the monopoly exercised by the Duala chiefs. Other exceptions to the forthcoming treaty had to do with certain aspects of the Duala's social organisation, in particular their practices and customs. The other exclusive right recognised to Cameroons' communities under the pre-treaty is the exclusive management of their land assets. According to this document, Emil Schulze commits the German government to recognising and respecting the rights of indigenous peoples to their ancestral lands. It is therefore clear from this pre-treaty that the Germans

20 ED Eloundou *Le Sud-Kamerun face à l'hégémonie allemande 1884-1916* (2016) 137.

21 E Zintgraff *Nord-Kamerun: Schilderungen der im Auftrage des Auswärtigen Amtes zur Erschließung des nörlichen Hinterlandes von Kamerun während der Jahre 1886-1892 unternommenen Reisen* (1895) 9.

22 M Thierno Bah, L Harding & M Mveng Ayi *L'Histoire du Cameroun par les sources* (2021) 172.

were excluded from any possibility of land ownership on the coast and beyond, contrary to the wishes of the businessmen. Despite this clearly stated ambition of the German businessmen, the pre-treaty was accepted and signed unconditionally by the German side, without demanding any compensation from Cameroonian chiefs. The legal regime of this text, therefore, applied exclusively to the German side.

3 The legal status of the pre-treaty

The legal status of the pre-treaty containing the reservations in the legal sense of article 2(d) of the 1969 Vienna Convention on the Law of Treaties, issued by the Duala chiefs before the signing of the German-Cameroon treaties, depends on a combination of factors, including the legitimacy of the various protagonists and the impact of the pre-treaty on the treaties themselves.

3.1 The legality of the players involved

On the one hand, there are the coastal chieftaincy authorities. They referred to themselves in the pre-treaty as '[w]e are the chiefs of Cameroons'. With regard to the principal signatories of the treaties of 12 July 1884, not their sub-chiefs who signed as witnesses for each of these treaties, we can affirm that King Akwa and King Bell are the chiefs concerned here. At that time, they were the greatest potentates on the coast. This idea is further reinforced by the recommendations and information that German traders provided to their government on the situation in the Cameroons, and in particular on the main chiefs on the coast with whom to make contact for the signing of treaties.

It was felt that one should be made with Kings Akwa and Bell, since these two rulers were the leading ones in the district of the river, and since peaceful relations between them were especially necessary for successful trade. The two other Kings near Duala, Lock Priso in Hickory town and Dido of Dido Town, were less important, being more or less dependent upon the first two.²³

On the other hand, it is important to remember that the day before, on 11 July 1884, a treaty was signed with King Dido. During

23 Rudin (n 5) 35.

the process of signing this treaty, no document similar to the pre-treaty was envisaged. In both cases, it is clear that the Germans recognised the legitimacy of the 'great' chiefs of the coast as their interlocutors. The recognition of the latter as such is attested to by the need for German officials, via their traders operating in the Cameroons, to make contact and sign agreements with the Bell and Akwa chiefs. They therefore enjoyed external empowerment, a legitimacy that enabled them to act beyond the local legal order. This is why, in their capacity as legitimate representatives and legatees of each of their respective communities, they could act individually and collectively on behalf of these communities.

From a strictly legal point of view, the legality enjoyed by the German Consul, who was the official representative and agent of his government in the Cameroons, automatically radiated out to the Kings of the coast thanks to his initialling of the pre-treaty. At that time, international law was strongly Eurocentric and did not include non-European actors, or only to a very limited extent. International recognition was therefore granted through the European powers, which defined its framework. Consequently, by negotiating with the Duala chiefs and accepting their preconditions, Emil Schulze made them 'subjects of international law with contractual capacity'.²⁴ This is all the more relevant given that the treaties signed with German firms were authenticated by Emil Schulze before being transferred to the *Reich*. These treaties later formed the basis of Germany's claims to the Cameroons at the Berlin Conference. In other words, the actions taken by Emil Schulze were covered by the seal of international legality. From that point onwards, the difficulty that international law had in classifying non-European communities, in this case the Duala, in its nomenclature of international actors did not exclude them. In fact, by signing this pre-treaty, the German Consul incorporated the Duala chiefs 'by co-option'²⁵ into an international legal system that, at the time, was strictly Eurocentric, insofar as the latter were its addressees.²⁶ Clearly, by signing this agreement, Emil Schulze, one

24 P Etonde *La portée juridique des traités germano-duala* (2022).

25 I Rademacher 'Droit international, eurocentrisme et colonialisme: De la hiérarchisation des civilisations et des peuples à travers des exemples de la théorie juridique allemande' (2023) 55 *Revue d'Allemagne et des pays de langue allemande* 25.

26 The article by Rademacher referenced above analyses the Roman, ie Eurocentric, foundations of the emergence of international law and its evolution in the nineteenth century.

of the *Reich's* two official representatives in the Cameroons on 12 July 1884, recognised the legitimacy of these potentates, thus allowing the unconventional Duala chiefs to burst into the international legal arena. This is all the more true since 'their agreement has produced legal effects beyond the national framework, and they deserve to be qualified as subjects of international law and, better still, as subjects of international law endowed with the contractual capacity.'²⁷ The recognition of this legitimacy to act was later enshrined in international law, insofar as the legal repercussions of acts committed during the colonial era were recognised by international institutions. Despite systematic non-compliance by the Germans, the pre-treaty terms were relatively effective. This effectiveness automatically confers it legal value because it produces effects. Kings Bell and Akwa, who demanded its signature, became the legal alter egos of the German Consul, who by this act binds his government to the terms of the pre-treaty signed with these chiefs of the coast. 'Although it did not have the form of a treaty, there is no doubt that the Germans accepted the paper and bound themselves to observe the wishes expressed on it.'²⁸ 'Consul Schulze signed the document to express Germany's commitment to the ruler's claim.'²⁹ For this reason, the pre-treaty became legally binding on the German side. As a result, the Akwa and Bell chiefs, referred to as '[w]e are the chiefs of Cameroons', obtain legal recognition, which automatically makes the treaty legal.

From a different perspective, there was Emil Schulze, the representative of the German government and the only signatory of the pre-treaty. In fact, 'only the German Consul Emil Schulze had signed this text to commit his country to respecting the wishes of the Cameroonians. This text does not bear the signature of any Cameroonian party.'³⁰ His presence at these discussions is not insignificant. Before Nachtigal arrived in the region, he was responsible for legalising or ratifying any agreements or treaties with local chiefs on behalf of the German government. 'The German Consul in Gabon [Emile Schulze] had already received instructions from home

27 R Ngandjo Sandjè 'Le traité germano-duala du 12 juillet 1884: étude contemporaine sur la formation des contrats dans l'ordre juridique intemporel' (2016) 29 *Revue québécoise du droit international* 138.

28 Rudin (n 5) 40.

29 Van der Linden (n 13) 194.

30 Kum'a Ndume III (n 2) 146.

to ratify treaties made by German traders and natives.³¹ He even took part in discussions between German traders and the Duala chiefs. The fact is, 'the Woermann agent and the German Consul of Gabon began working in ... early July 1884 to make their treaties with the kings of the Cameroons'.³² As the *Reich's* representative with a ratification mission, his presence was a guarantee at the various stages leading up to the final treaties, from their negotiation to the solemn proclamation of the act of transfer of sovereignty on 14 July. From this point of view, he was no longer unfamiliar to the Duala leaders, whose confidence was strengthened by his presence as a sign of Germany's support. As the *Reich's* plenipotentiary in the Cameroons, he was the only person who could directly commit the German government to the initiatives or decisions he took on its behalf. This is also the reason why the Duala chiefs demanded that this pre-treaty be signed exclusively by him. By signing, he accepts these preconditions as a contract between the Duala leaders and the German government, which he commits *de facto* to respecting the clauses stipulated in the pre-treaty, which automatically becomes a document of international law. This legal commitment on the part of the *Reich* became international insofar as it was signed for an authority outside German territory. In this context, the pre-treaty, therefore, becomes part of the treaties signed by the Germans, to which it is consubstantial. It became even more so because the Germans' claim to possess the Cameroons was based on the presentation of the treaties of 12 July, which themselves followed on from the pre-treaty, which conditioned their signature and influenced their content. The doctrinal separation that would have us refer only to the treaties without taking the pre-treaty into account, therefore, becomes irrelevant in view of the influence of the pre-treaty on the clauses of the treaties themselves.

Clearly, two protagonists are concerned by the signing of the pre-treaty. On the one hand, there were the great chiefs of the Cameroons, representing their communities, who were in fact the initiators of the document and who were guaranteed certain rights. On the other side was the German Consul Emil Schulze, who accepted the terms of the pre-treaty and was the sole signatory on behalf of the German government, which he represented.

31 Rudin (n 5) 38.

32 Kum'a Ndumbe III (n 2) 39.

3.2 The influence of the pre-treaty on the treaties

This study does not discuss the legality of the treaties signed between the Duala chiefs and the German trade representatives in the Cameroons, as relevant works on the subject already exist. However, it should be kept in mind that not everyone agrees that the treaties had international legal force, as some people felt that the Duala at the time were not legally qualified to act in the international arena. Whatever the case, it is undeniable that the contracts signed with the German businessmen influenced the international legal order of the time by prompting the signing of agreements in the Bay of Biafra between the Germans and the British and between the Germans and the French. This impact on the course of international affairs means that the treaties of 12 July 1884 do not have doctrinal legal force or legal force in principle, but *de facto* international legal force.

Following this digression, the point here is to demonstrate how the pre-treaty conditioned the drafting of the treaties. By accepting the terms of this pre-treaty, Consul Emil Schulze invited the German representatives who did not have a mandate in Cameroons, that is, the representatives of the trading companies, to respect the terms of the commitment he had made to the Duala chiefs. From then on, it became obvious that they would be taken into account in the drafting of treaty clauses. There are a number of ways in which this can be verified. In semantic terms, for example, an analysis of the lexical fields, that is, all expressions that refer to the same reality shows the influence of the pre-treaty on the treaties. In the contract signed by Emil Schulze, the protection of the interests or rights of the Duala chiefs in their future relationship with the Germans is reflected in the recurrence of the expression '[w]e need no ...'. This expression specifies each time the areas of competence exclusively reserved for the chiefs of the coast. This is why the Germans have a treaty obligation to respect this commitment. This can be seen in the use of the expression '[s]hall be ...'. In English grammar, 'shall' is a modal that expresses an obligation. Samodra and Bram are also of the opinion that the usage of the modal verb 'shall' 'was mainly to deliver futurity and command, especially in legal or biblical texts'.³³ Its

33 MC Samodra & B Bram 'Modal verb *shall* in contemporary American English: A corpus-based study' (2022) 68 *Respectus Philologicus* 41-46.

use refers to an acquired right. In other words, this expression refers to areas excluded from German jurisdiction in Cameroon.

In addition, following Chancellor Bismarck's instructions, the treaties signed between the Duala chiefs and the representatives of the commercial firms were transferred to the imperial administration once they had been ratified by Emil Schulze. It should be pointed out that this transfer did not involve any change of the original format. In other words, the transfer of sovereign rights recognised the exceptions contained in the pre-treaty text and explicitly acknowledged by Imperial Commissioner Gustav Nachtigal. Karl Brackmann gives the following account of the transfer procedure:

Having established that the transfer of sovereignty had been concluded in accordance with the law, the Imperial Commissioner, by virtue of the powers conferred on him, declared that the contractual acquisitions of the firms Woermann and Jantzen & Thormählen are under the protection of the Reich, which now assumes sovereignty over Cameroons, except for the reservations formulated in the contract and subject to the rights of third parties.³⁴

The term 'contract' here is not insignificant. It is important to note that the treaties signed between the Duala chiefs and the German merchants are described by both parties as contracts (*Schutzvertrag*, which means 'protection contract'). This legal qualification is not insignificant. Once this document exists, the relationship between the two parties should be governed by the rules set out in this agreement, and recognised and accepted as such by both parties. This is the meaning of the reservation set out by Gustav Nachtigal in the previous quotation. As we can see, the pre-treaty was present throughout the procedures for the installation of the Germans in the Cameroons. This is all the more true since the reservations of the pre-treaty were transcribed as follows in the content of the treaties:

Protectorate treaty 12 July 1884 between Germany and the Cameroons (*Schutzvertrag vom 12.7.1884*)

We, the undersigned independent kings and chiefs of the country called Cameroons situated on the Cameroons River, between the River Bimbia on the north side, the River Qua-Qua on the south side and up to 40 10' North lat, have in a meeting held today in the German Factory on King Aqua's Beach, voluntarily concluded as follows:

34 K Brackmann *Fünfzig Jahre deutscher Afrikaschifffahrt. Die Geschichte der Woermann-Linie und der Deutschen Ostafrika-Linie* (1935) 9.

We give this day our rights of sovereignty, the legislation and management of this our country entirely to M Eduard Schmidt acting for Woermann and Mr Johaness Voss acting for Mr Jantzen and Thormählen, both in Hamburg, and for many years trading in the river.

We have conveyed our rights of sovereignty, the legislation and management of this our country to the firms mentioned under the following reservations:

- (1) Under reservation of rights of third persons;
- (2) Reserving that all friendship and commercial treaties made before with other foreign governments shall have full power;
- (3) That the land cultivated by us and the places, the towns are built on shall be the property of the present owners and their successors;
- (4) That the Coumie shall be paid annually as it has been paid to the kings and chiefs before;
- (5) That during the first time of establishing and administration here, our country fashions will be respected.³⁵

We have chosen not to mention the names of the signatories of the treaties of 12 July, as they are not essential to our demonstration. It is therefore this text of the treaties presented above that served as the legal basis for the German claims to the Cameroons coast, treaties that were themselves consecutive and framed by the pre-treaty that conditioned their signature.

Under the terms of the pre-treaty, the Kings of the Cameroons, while transferring their rights to the Germans via the Woermann and Jantzen & Thormählen trading companies, imposed limits on this transfer. In the text of the treaties above, we can see that there were indeed a number of exceptions, areas where German domination could not be exercised. We mentioned above the German desire to trade with the peoples of the interior, but the text of the treaty makes no mention of such a right in accordance with the pre-treaty. In his report to the German Parliament on the signing of the treaties in Togo and Cameroon, Gustav Nachtigal confirmed five reservations from the Cameroon's pre-treaty. According to Rudin, he wrote that he made with the chieftains of Cameroons a treaty with the following reservations:

- (1) Reservation of the rights of third parties.
- (2) Former treaties of Friendship and Commerce to remain in force.
- (3) The land of the towns and villages to remain the private property of the natives.
- (4) The Chiefs to continue to levy their dues as formerly.

35 Kum'a Ndumbe III (n 2) 147.

- (5) The natives to retain for the present their customs and usages.³⁶

Among the reservations, the treaty guaranteed the local chiefs payment of their customs duties as before 12 July 1884. This customs duty was called *Coumie* in the Duala language, as mentioned in the pre-treaty. If the German businessmen agreed to pay the *Coumie*, this meant that they agreed to confine themselves to the beach to continue their commercial activities with their Duala partners, which were now formally governed by the treaty. In other words, if the treaties are anything to go by, trade with the interior remains in the exclusive hands of the Duala chiefs. *Coumie* is the name given to the docking tax levied by German traders on the coast. From all these examples, it is clear that the pre-treaty influenced the drafting of the treaties themselves, contrary to Etonde's view that 'the final agreement omitted the clauses of the preliminary treaty, clauses by which the kings and chiefs safeguarded their commercial monopoly'.³⁷

In addition, the solemn reading, in the presence of the Duala chiefs and German businessmen on 14 July, of the act proclaiming the protectorate by the Consul General, the *Reich's* second plenipotentiary in the Cameroons, was a reminder of the exceptions to the sovereignty transferred to the Germans. This reading is an act of reciprocal acceptance and recognition of the terms of the treaties. As such, compliance with the exceptions contained in the treaties becomes a legal obligation for the German side. As can be seen, the treaties of 12 July 1884 are therefore inseparable from the pre-treaty which governs their areas of competence, because the exceptions contained in the latter 'trouvent leur fondement dans le pré-traité'. They are the transcription of the commitment made to the Duala chiefs on behalf of the German government by the Consul Emil Schulze, who was responsible for ratifying the treaties between the local chiefs and the German traders operating in the Cameroons. These exceptions are binding on the German side.

Moreover, the exceptions imposed by the Duala leaders are above all a measure of economic protection, if we take as a reference Etonde's position on the treaties. She explains that 'it was not a transfer of sovereignty, but a trade agreement'.³⁸ Now, as we have already mentioned, the German desire to settle on the banks of the Wouri was an exclusively

36 Rudin (n 5) 425.

37 Etonde (n 11).

38 Etonde (n 11).

economic undertaking, the aim of which was to exploit the area's potential. In this context, it could not have accommodated the terms of the pre-treaty or the reservations contained in the treaty. This is why the effectiveness of colonisation led to systematic non-compliance with this legal commitment by the *Reich* to consider exceptions to the treaties of 12 July 1884. It did not take long for the German side to voluntarily violate, one after the other, all the commitments made by Consul Emil Schulze to the Duala chiefs and included in the texts of the treaties of 12 July 1884.

4 Cases of arbitrary violation of the terms of the pre-treaty by the German colonial administration in Cameroon

In this part, examples are given to demonstrate the deliberate intention of the German administration not to respect the terms of the pre-treaty. The method used here consists of looking back on the commitments made on behalf of Germany by Consul Emil Schulze in the pre-treaty, then recalling their transcription in the treaties, and comparing them with certain perennial practices experienced throughout the German colonial administration in Cameroons and beyond.

In the text of the pre-treaty, the Duala chiefs clearly expressed their refusal of any German penetration into the interior: 'Our wish is that white men should not go up and trade with Bushmen, nothing to do with our markets; they must stay here in [the] river and then gave us trust so that we will trade with our bushmen.' This wish is granted to them in the treaties by the clause which states that 'the *coumie* shall be paid annually as it has been paid to the kings and chiefs before'. As explained earlier, the *coumie* was a docking tax levied by the chiefs of the coast on German merchants to enable them conduct their business. In a way, it was a tax on immobility, requiring traders to trade exclusively on the coast. However, once the Germans took up residence under the treaties of 12 July 1884, it was not long before this clause was breached. In fact, 'the *coumi* was paid for the last time to the chiefs by European traders on 1 April 1887'.³⁹ This situation arose as a result of the German traders' desire to enter into direct contact with the populations of the interior to obtain supplies. The Duala, afraid of losing their monopoly

39 Etonde (n 11).

as trade intermediaries, vetoed the Germans' crossing of their territory and refused them any assistance. It was this disagreement that led to the launch of the first inland shipments from Kribi in 1887, as the Germans' refusal to cooperate made it impossible for them to envisage any penetration of the hinterland from the Cameroons. The epilogue to this German attempt to undermine the Duala's commercial monopoly in the Cameroons came in 1895. Governor von Puttkamer issued an order prohibiting the Duala from engaging in any commercial activity in the interior to definitively break their role as intermediaries in trade between the interior and the coast:

Article 1: It is forbidden for any indigenous Duala to set up and trade in the Sanaga region as far as Kwakwa.

Article 2: A subsequent decision will set the deadlines for the liquidation and closure of existing commercial establishments.

Article 3: Failure to comply with this order will be punished by a fine of up to 1 000 Mark or by an equivalent prison sentence.⁴⁰

Through this order, Governor von Puttkamer put an end to the commercial activities of the Duala. His unconditional support for traders and planters facilitated 'the expansion and establishment of German domination [which] continued systematically'.⁴¹

Another aspect that was independent of German influence was the desire of the Duala chiefs to preserve all their habits and customs, particularly concerning marriage. On this subject, the pre-treaty states that 'we need no alteration about our marriages, we shall marry as we are doing now'.⁴² This exception is repeated in the text of the treaties as follows: '[D]uring the first time of establishing and administration here, our country's fashions will be respected'.⁴³ However, economic necessity led the Germans to tax polygamy among the Duala, and later to extend this taxation throughout the protectorate, contrary to their commitment. In order to bear the financial burdens associated with the establishment of the German administration, revenue had to be generated by any means necessary. This is why, instead of banning polygamy as the clergy wished,

40 J Ruppel *Die Landesgesetzgebung für das Schutzgebiet Kamerun* (1912) 1019.

41 S Utermark 'Schwarzer Untertan Zwischen Schwarzer: Bruder Bernahrd Dernburgs Reformen in den Kolonien Deutsch-Ostafrika, Deutsch-Südwestafrika, Togo und Kamerun' PhD thesis, Universität Kassel, 2012 35.

42 Kum'A Ndumbe III (n 2) 145.

43 (n 2) 147.

the authorities introduced a capitation tax. This tax was first introduced in Duala, where 'polygamists were subjected to a capitation tax of 2 marks for each subsequent wife'.⁴⁴ With this decision, the administration violated another area reserved for local communities. At the same time, contrary to the pre-treaty, which prohibited the levying of taxes or duties on Duala homes, 'we need no duty or custom house in our country, on 1 April 1908, a housing tax replaced the capitation tax. This house tax also extended to the Johann-Albrechtshöhe'.⁴⁵

The most famous case of violation of the terms of the pre-treaty and the treaties of 12 July 1884 undoubtedly is the expropriation of the Duala. The two documents, signed with *Reich* representative Emile Schulze, and then with the German traders, state that the Duala cannot give up their land. 'Our cultivated ground must not be taken from us, for we are not able to buy and sell as other countries' is the phrase used in the pre-treaty. This clause is repeated in the treaty texts as follows: '[T]he land cultivated by us now and the places, the towns are built on shall be the property of present owners and their successors.' Expropriating the Bells from the Joss Plateau was done in defiance of German regulations in the Cameroons.⁴⁶ The land on the Joss Plateau occupied by the Duala of the Bell clan is part of what the Germans call '*Eingeborenenland* comprised of land possessed and controlled by natives'.⁴⁷ This category of land refers to areas on which local peoples have settled and with which they have a direct affective link, subordinated by *de facto* ownership, without any other community or people being able to claim it. The German legislator, therefore, recognises the exclusive ownership of the Duala over the land they occupy. As can be seen, the areas occupied by the natives remained their property under the 1896 decree on land management in the colonies. In other words, since the pre-treaty, the land actually occupied by the natives was inalienable. The first argument against any form of

⁴⁴ Thierno Bah and others (n 22) 202.

⁴⁵ As above.

⁴⁶ In an imperial decree signed on 15 June 1896, Emperor Wilhelm II prohibited the expropriation of indigenous peoples from their lands; he went even further by setting conditions for the exploitation of lands adjacent to indigenous settlements. Art 3 stipulates that when taking possession of crown lands in the vicinity of indigenous settlements, land must be reserved for cultivation or exploitation to ensure the subsistence of the indigenous people, taking into account future population growth.

⁴⁷ Van der Linden (n 13) 189.

expropriation was therefore legal. However, immediately after their installation, 'the Germans created private land ownership ... the speed and brutality of these measures were bound to create misunderstandings with the Duala',⁴⁸ whom they eventually expelled from their ancestral lands in 1911, in triple violation of the pre-treaty, the treaty and the above-mentioned decree. Prior to this epilogue, complaints had already been made to the German Parliament by the Duala to protest against the system of expropriation put in place by the colonial administration. In their complaint of 19 May 1905, the chiefs of the Akwa clan had already complained of being the victims of 'expropriation when roads were laid out in their neighbourhood'.⁴⁹

Furthermore, the exaggerated use of whip against the colonised population gave Cameroon a very sad reputation on the whole West African coast; Cameroon was christened the colony of 25 strokes (*fünfundzwantigerland*) ... during the first years of German colonial domination, there was a permanent rape of the colonised person, whoever he was.⁵⁰

On the subject of the systematic use of the whip, Cameroon stands out among the German colonial territories in Africa because of the beatings suffered by the natives. The expression *fünfundzwanzig* refers to the standard number of lashes administered to Cameroonians. However, the refusal of any unjustified corporal punishment was one of the exceptions recognised in the pre-treaty: 'We need no fighting and beating without fault and no imprisonment.' In the complaint against the German administration in Cameroon by the Akwa chiefs mentioned above, the latter also mentioned the use of the whip among the excesses they suffered. This means that the whip was part of the brutality resulting from German arbitrariness.

The examples above, like many others, illustrate the German colonial administration's willful failure to respect the commitments made by the *Reich* under the pre-treaty. The inhabitants of Cameroon, in

48 J Abengmoni Essomba 'L'expropriation des terres coutumières duala au Cameroun de la colonisation allemande au mandat français (1884-1946)' Master's dissertation, Université de Yaoundé II, 2016 13.

49 J Gomsu 'Colonisation et organisation sociale: Les chefs traditionnels du Sud-Cameroun pendant la période coloniale allemande 1884-1914' doctoral thesis, Universität des Saarlandes, 1982 283.

50 Gomsu (n 49) 257.

particular, faced with this violation, reacted in several ways. Alongside civil disobedience, the Duala Kings adopted petitioning to express their discontent and condemn the abuses of the colonial system. The first petition was addressed to the colonial department on 23 September 1888, by King Bell. On 29 October 1892, it was the turn of 19 Douala chiefs to sign a petition addressed to Governor Zimmerer. On 19 May 1905, it was the turn of several chiefs of the Akwa clan. The method used by the colonial administration for these various violations was the publication of legal norms that did not take into account the reservations of the pre-treaty. It is therefore not incongruous to think that German colonisation in Cameroon is a case of flagrant violation of the pre-treaty signed with the Duala populations.

5 Conclusion

Having completed our work, which focused on the legality of the pre-treaty and its failure to be taken into account by the German colonial administration after the signing of the treaties of 12 July 1884, it emerges that it is not a residual document. Indeed, it is a document legally binding on the German side. However, the doctrinaire reflex often tends to ignore the pre-treaty when analysing the documents signed between Germans and Cameroonians on 12 July 1884. By focusing exclusively on the legal scope of the treaties, scholars overlook the legality of the pre-treaties. This is why, *de facto*, a problem arises of separation, of disjunction between these two documents, which are in reality linked. From this perspective, the analyses must be reconsidered, taking into account the fact that the commitments made by the German Consul Emil Schulze created obligations for the Germans towards the Duala. This is all the more true since these reservations, according to Nachtigal himself, were intended to constitute limits to colonial power. The 1969 Geneva Convention on International Treaties, in its first paragraph of article 3, specifies to this effect that

[t]he fact that this Convention does not apply to international agreements concluded between states and other subjects of international law or between such other subjects of international law, nor to international agreements not concluded in writing, does not affect the legal value of such agreements.⁵¹

51 Vienna Convention on the Law of Treaties, 1969.

By establishing the legal validity of treaties and other agreements concluded before it entered into force, the 1969 Vienna Convention primarily addresses their effects. In the context of the pre-treaty signed by Consul Emil Schulze, it is clear that the latter had an impact on the nature of relations between the Cameroonian communities and the German administration. As demonstrated in this work, its influence was immediately felt in the drafting of the treaties that followed. From this point of view, it can therefore be considered an instrument of international law binding on the various parties involved in its drafting and implementation. Thus, the pre-treaty is a legal document that binds the German party, the sole signatory. This is why it reinforces the legality of treaties. Unfortunately, German administrative effectiveness in Cameroon and beyond has consisted of a systematic violation of this commitment. It must be remembered that one of the main reservations imposed by the Duala chiefs, being of a commercial nature, the Germans, from the moment they took control of the coast, implemented initiatives aimed at reducing, then prohibiting the Duala from carrying out any commercial activity, per their colonial objectives. This, therefore, resulted in systematic cases of violation of the terms of the pre-treaty by the colonial administration under the guise of exclusive legalism. Consequently, the German Empire operated in defiance of the terms of the pre-treaty, which it undertook to respect as a condition for its establishment on the Cameroonian coast.

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