STATEHOOD AND THE LAW-MAKING PROCESS IN CAMEROON: FROM BIFURCATION TO UNIFICATION

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1 Introduction

Recently many African countries celebrated their fifty years of independence from colonial rule and thus also their accession to statehood. Cameroon is one of them. Cameroon’s experience of colonisation dates from 14 July 1884 when the Germans annexed it. For thirty years the territory was under German rule, ending in 1916 during the First World War when a combined French and English force defeated Germany in Cameroon. France and England then proceeded to partition Cameroon, the French taking five-sixths and the English, one-sixth of the territory. The arrangements that the French and English made for their newly acquired territories were confirmed by the League of Nations Council on 20 July 1922. This was the basis of English and French rule in Cameroon until 1 January 1960 when the French-administered part acceded to statehood and 1 October 1961 when the English-administered part gained independence by joining the formerly French-administered part of Cameroon in a process which will be termed “reunification”. The process of achieving statehood thus started in 1960 and ended in 1961.

1 Many of these celebrations were held in 2010, 2011 and 2012. In fact, many African countries, especially Francophone ones, obtained independence around 1960.
2 The capitulation of the German garrison at Mora in Feb 1916 marked the end of the Cameroon campaign and of the German Kamerun Protectorate. See TM Eyongetah, R Brain & R Palmer A History of the Cameroon (Essex, 1994) at 78.
3 Idem at 79.

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States are territorially defined political units that exercise ultimate internal authority and recognise no legitimate external authority over themselves. From this definition we can infer that sovereignty is an important characteristic of a state. The law lays down the criteria for statehood. The state is a type of legal person recognised by international law. In fact, article 1 of the Montevideo Convention on the Rights and Duties of States provides that the state as a person in international law should possess a permanent population, a defined territory, a government and the capacity to enter into relations with other states. Cameroon met all these qualifications in 1961.

The recognition ritual of a state may differ depending on whether the declaratory theory or the constitutive theory is employed. According to the declaratory theory recognition is a mere declaration or acknowledgement of an existing state of law and fact, the legal personality having been conferred previously by the operation of law and fact. In this case the legal effects of recognition are limited. Hall, in an attempt to explain this theory, indicates that “States being the persons governed by international law, communities are subjected to law … from the moment and from the moment only, at which they acquire the marks of a State”. The declaratory theory of recognition runs counter to the constitutive theory. According to the latter, the political act of recognition is a pre-condition for the existence of legal rights: in its extreme form, the very personality of a state depends on the political decisions of other states.

The act of recognition of Cameroon’s accession to statehood may be explained in terms of both the declaratory and the constitutive theories. Once legal personality was acquired on 1 October 1961 as a result of the plebiscite that the United Nations organised in Southern Cameroon on 11 February 1961, the State of Cameroon was declared and was recognised as such. It is therefore on the basis of the declaratory theory that it had the right to go ahead and organise itself. Putting aside the criticisms levelled at the constitutive theory, the United Nations’ political and legal recognition of Cameroon as a state made things easier for it to operate as such.

However, whether based on the declaratory or the constitutive theory, statehood confers sovereignty over a country. There is perhaps no concept whose meaning is more controversial than that of sovereignty; indisputably from the moment it was introduced into political science until the present day there has never been universal agreement on its meaning. The concept of sovereignty may be viewed from a legal or political perspective, and may be internal or external. A legal sovereign is that person or body of persons having the power to make law. Legally, the sovereign is not subject to any restrictions except those provided in the relevant constitution. Within its constitutional authority, there is no

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5 JT Rourke & AB Boyer World Politics: International Politics on the World Stage: Brief (Guilford CN, 1998) at 135.
6 Ibid.
7 Signed on 26 Dec 1933.
8 I Brownlie The Principles of Public International Law (New York, 2003) at 87.
9 WE Hall International Law (Oxford, 1924) at 19, cited in Brownlie (n 8) at 87.
10 Brownlie (n 8) at 87-88.
11 L Oppenheim International Law (London, 1928) at 66.
12 A Appadorai The Substance of Politics (Madras, 1975) at 50.
higher power that can restrain the sovereign. On accession to statehood, legal sovereignty in Cameroon was exercised at the federal level by the President of the Federal Republic and the Federal National Assembly, and at the state level, by the institutions set up for that purpose. In 1972, when the country changed from a federal to a unitary state, only the President of the United Republic of Cameroon and the National Assembly exercised sovereignty. In 1996 when the 1972 Constitution was revised, the Senate (still to see the light of day) was created to play a part in the law-making process of Cameroon. Cameroon then had a parliament consisting of two houses: the National Assembly and the Senate.

The political sovereign is that body of persons in the state (the electorate) whose will ultimately prevails because the legal sovereign in making the law is bound to act according to its will.

Internally, the sovereign is supreme over all citizens, aliens, associations and organisations. Its law is final and binding. Consequently all have to obey, failing which penalties are incurred. Externally, the sovereign is free, independent, and equal to other sovereigns. It decides on peace and war, posts and receives diplomatic agents, enters into contracts and treaties and participates in international conferences on an equal footing with other states irrespective of its size, population or power. In fact, it is independent of foreign control.

Once a country accedes to statehood as Cameroon did on 1 October 1961, it has to take all necessary measures to ensure peace, order and the development of its people. This is generally done by installing the rule of law and making sure that it is applied in the country. Installing the rule of law implies putting in place a mechanism for law-making. Emerging nations (like Cameroon) have seldom lived under the rule of law and it is uncertain how it will fare in their midst. However, as observed by one author, these countries have little choice in this matter. Social control is established principally through the legislative function of the state. This function, which is essential in a state, is the mechanism by means of which the rules that will govern the process of adjudication are determined. Normally the process of law-making in a state requires at least a legislative organ, whose procedure has been laid down. It is important to recall that Cameroon whether as a colony, a mandated territory or a trusteeship territory had never possessed a national legislative organ and consequently had to draw heavily on foreign laws for the corpus of rules that applied in the country. The aim of this article is to examine the techniques of law-making adopted by Cameroon as a nascent state that unusually had two different systems of law operating in its territory. In order better to understand these techniques, it will be necessary to revisit the systems and sources of

13 See arts 4, 5, 6, 16, 23 and 31 of the Constitution of the Federal Republic of Cameroon of 1 Sep 1961.
15 Appadorai (n 12) at 50.
16 BH Siegan Drafting a Constitution for a Nation or Republic Emerging into Freedom (Fairfax VA, 1994) at 3.
law that applied in British and French Cameroon before independence and reunification on 1 October 1961. This will enable us to understand why there was a bifurcation of the corpus of law applicable in Cameroon at that point. We shall examine the strategy that this nascent state adopted in order to arrive at a convergence (unification) of the laws applicable in its entire territory. The conclusion to this article will analyse the situation today in order to determine the level of success achieved in this regard.

2 The corpus of law applicable in Cameroon before accession to statehood: The outcome of a process of bifurcation

The word “bifurcate” is defined by WT McLeod\(^\text{17}\) as “to fork or divide into two branches”. In Cameroon, we use this word to describe the legislative situation that applied in the territory after the French and English defeated the Germans in Cameroon in the First World War and subsequently partitioned the country between themselves. These two countries have two very distinct and different systems of law. Civil law is the law of France and common law that of England. In the part of the country under English rule, English-derived laws were introduced and applied, while in the French-administered area French laws were introduced and applied. The genesis of this bifurcation of the laws in Cameroon could be traced to the two regimes of international administration – the League of Nations Mandate (hereafter Mandate Agreement) and the United Nations Trusteeship (hereafter Trusteeship Agreement). These two legal arrangements have been described as ad hoc ones having the responsibility of protecting and guiding weak and uncivilised peoples and ensuring that they progressed and eventually gained self-government or independence. Once the mission of ensuring the well-being and development of people not yet capable of self-government had been fulfilled, this system of administration would cease because there would be no reason to maintain it.\(^\text{18}\) The Mandate and the Trusteeship Agreements were the legal instruments that authorised the importation of foreign laws into Cameroon.\(^\text{19}\)

The Mandate Agreement drawn up for Cameroon by Britain and France was approved by the League of Nations in 1922. Article 2 of the Agreement bestowed on the mandatory the responsibility for peace, order and good government of the territory and for the promotion of the material and moral well-being and social progress of its inhabitants. This would seem to imply that the League of Nations conferred responsibility on the mandatory for every aspect of the life of the inhabitants of the territory. Article 9 of the Mandate Agreement empowered Britain and France to carry on the above mentioned responsibility. This article provided inter alia that:

The Mandatory shall have full powers of administration and legislation in the area subject to the Mandate. The area shall be administered in accordance with the laws of the Mandatory as an integral part of his territory and subject to the above principles. The

\(^{17}\) The New Collins Dictionary and Thesaurus in One Volume (Glasgow, 1992) at 92.

\(^{18}\) See C Anyangwe The Cameroonian Judicial System (Yaounde, 1987) at 63.

\(^{19}\) Idem at 63.
Mandatory shall therefore be at liberty to apply his laws to the territory under the mandate subject to the modifications required by local conditions.

This provision allowed both Britain and France to introduce their laws and legal systems into Cameroon.

After the Second World War the United Nations was established in the place of the former League of Nations. The United Nations then established an international trusteeship system to replace the mandate system that had been created by its predecessor. The trusteeship system was established “for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreement”.  

The basic objectives of the system were to:

• further international peace and security;
• promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the people concerned and as may be provided by the terms of each trusteeship agreement;
• encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the interdependence of the peoples of the world; and
• ensure equal treatment in social, economic and commercial matters for all members of the U.N. and their nationals, and also equal treatment for the latter in the administration of justice.

In order to achieve the above objectives, in conformity with the Trusteeship Agreement, Britain and France engaged fully in the supervision of administration and legislation in their respective areas in Cameroon. The British Trusteeship Agreement for the Cameroons indeed provided that the administering authority would have full powers of legislation, administration and jurisdiction in the territory and had to administer it in accordance with the authority’s own laws as an integral part of its territory with such modification as might be required by local conditions.

With this legal backing Britain and France proceeded, each in its own sphere of control in Cameroon, to establish mechanisms that would determine which legal rules would be applicable there. These mechanisms differed and an examination of them will demonstrate that at that time Britain and France were on different law-making paths in the Cameroons.

\[20\] See art 75 of the United Nations Charter.

\[21\] Idem art 76.

\[22\] See art 5 of the British Trusteeship Agreement; see, also, art 4 of the French Trusteeship Agreement for the Cameroon. On 6 Dec 1946 a sub-committee of the United Nations approved the Trusteeship Agreement for British and French Cameroons and the General Assembly finally approved it by a vote of 41 – 6 on 11 Dec 1946.
2 1 Mechanisms for the determination of the legal rules applicable in British Cameroon

Even before the League of Nations Mandate, the British had given themselves the right to apply their laws to those of their overseas territories that were merely protectorates under the Foreign Jurisdiction Acts (1843-1890). Article 1 of the 1890 Act provided that it would be lawful for Her Majesty to exercise jurisdiction within any country or place out of Her Majesty’s dominions in the same and as ample a manner as if Her Majesty had acquired such jurisdiction by cession or conquest of territory. The quintessence of this Act is that it justified the application and observance of English law in the British part of Cameroon. In terms of this statute, the British authorities could without any qualms decide how and where their law would apply in the British Cameroons.

Under Article 9 of the mandate, Britain was permitted to administer the Cameroons as an integral part of a British territory and to constitute it into a custom, fiscal, and administrative federation with its adjacent territories. Britain implemented this provision by enacting the British Cameroons Order-in-Council 1621 of 26 June 1923, in terms of which its own part of Cameroon was to be administered as if it formed part of the British Protectorate of Nigeria. Subsequently, the 1924 British Cameroons Administration Ordinance\(^{23}\) split the British Cameroons into two areas, namely the Northern and Southern Cameroons and provided that the units were to be administered as though the one formed part of Northern Nigeria and the other of Southern Nigeria. This accounts for the legacy of Nigerian legislation in Cameroon, some of which is still in force today.

When in 1954 the British Cameroons became an autonomous region of Nigeria with the name Southern Cameroons, the Southern Cameroons High Court Law of 1955 and the Southern Cameroons Magistrates Court Law of the same year were enacted to stipulate which English law would henceforth be applied in the territory. Section 11 of the Southern Cameroons High Court Law of 1955 states that:

Subject to the provisions of any written law and in particular of this Section and of Sections 10, 15, and 22 of this Law …
- the common law;
- the doctrines of Equity, and
- the statutes of general application which were in force in England on the 1st day of January 1900, shall in so far as they relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws, be in force within the jurisdiction of the court.\(^{24}\)

This section therefore permits the application in Southern Cameroons of English common law, the doctrines of equity and statutes of general application in force before 1 January 1900. The limitation date applies only to statutes of general application\(^{25}\) which

\(^{23}\) As amended in 1925, 1927, 1928 and 1929.

\(^{24}\) This was a re-enactment of s 14 of the Nigerian Supreme Court Ordinance 6 of 1914. This section directed the Nigerian Supreme Court to apply the common law, the doctrines of equity and the statutes of general application that were in force in England on 1 Jan 1900.

\(^{25}\) Any public, general act is a statute of general application. EN Ngwafor Family Law in Anglophone Cameroon (Saskatchewan, 1993) at 5-6 indicates the test for determining whether a statute is one of
were in force in England as of that date. Consequently, any such statute that was in force in England as of 1 January 1900 also applied in Southern Cameroon. It has been a controversial issue whether or not the limitation date contained in section 11 also applies to common law and the doctrines of equity.26

Section 15 of the Act likewise allows for the application of English law in the former West Cameroon. This section states:

The jurisdiction of the High Court in probate, divorce, and matrimonial causes and proceedings may, subject to the provisions of this law and in particular of S. 27 and to rules of Court, be exercised by the court in conformity with the Law and practice for the time being in force in England.

A reading of the above gives one good reason to assert that in probate, divorce, and matrimonial causes, the law in Southern Cameroon (former West Cameroon) changes with that of England.27

The relevant provision of this Act as far as practice and procedure are concerned is section 10. This section empowers the courts, in the absence of local legislation, to follow the practice and procedure of the English High Court of Justice. In this light it provides:

The jurisdiction vested in the High Court shall, so far as practice and procedure are concerned, be exercised in the manner provided by this law or any other written law, or by such rules and orders of court as may be made pursuant to this law or any other written law, and in the absence thereof in substantial conformity with the practice and procedure for the time being of Her Majesty’s High Court of Justice in England.

Besides these laws, there are also the customs and usages that applied in different parts of Southern Cameroons. Judicial recognition of customary law in this region is found in section 27 of the Act. This section empowers the High Court to observe and enforce the observance of every native law and custom which is not repugnant to natural justice, equity and good conscience, nor incompatible with any law for the time being in force, and it also provides that nothing in the law must deprive any person of the benefit of any such native law or custom.

The purpose of these provisions was to regulate the functioning of society at a time when the legislature of Southern Cameroons was neither sufficiently developed nor experienced enough to grapple with the delicate mission of law-making. The provisions determined which rules would apply where Southern or former West Cameroon had not passed relevant legislation. Once this was done it would be the local law that would take pride of place.

general application or not.

26 Some writers have argued forcefully that the limitation date applies to the English statutes of general application only, and that it does not concern common law and the doctrines of equity. Proponents of this view are AEW Park The Sources of Nigeria Law (London, 1963) at 20-22; OO Akinfunde The Nigerian Legal System (London, 1979) at 71; and Anyangwe (n 18) at 222-223. Prominent among the writers who consider that the limitation date of 1900 applies to common law, equity and statutes of general application is Antony Allott: see his New Essays in African Law (London, 1970) at 9-69.

27 Ngwafor (n 25) at 6-7.
Mechanisms for the determination of the legal rules applicable in French Cameroon

As indicated, after France had obtained a part of Cameroon in 1916, it allowed the German laws and regulations then in force in the territory to continue to apply until 29 September 1923 when the mandate system became effectively operative. This was because France saw itself as the military occupier of the enemy’s territory, and did not believe that it had the right to substitute its own laws for the laws then applying there.\(^\text{28}\)

This perception was not to continue indefinitely, given that the Mandate Agreement of 1922 and the Trusteeship Agreement of 1945 unequivocally gave the administering authority full powers of administration and legislation in the territory and empowered it to administer it in accordance with the authority’s own laws as an integral part of its territory. The administering authority was thus at liberty to apply its laws to the territory, subject to the modifications required by local conditions.

In applying the Mandate Agreement for the Cameroons, France issued two decrees, one on 16 April 1924 and the other on 22 May 1924, enabling it to introduce French and French derived laws into its own part of Cameroon.

The Decree of 16 April 1924 provided as follows:

The Commissioner of the Republic shall promulgate statutes, decrees, orders and regulations made by the Government of the Mandatory State, as well as orders and regulations made by Government of the mandated territory.

Statutes, decrees and regulations in force in France shall not be rendered executory in Cameroon except by decree (of the French Head of State).\(^\text{29}\)

As mentioned by Anyangwe,\(^\text{30}\) because the above Decree was vague and ambiguous, another Decree was issued on 22 May 1924 rendering executory in Cameroon all statutes and decrees promulgated in French Equatorial Africa before 1 January 1924. This Decree provided:

1. Statutes and decrees promulgated in French Equatorial Africa before the 1\(^\text{st}\) day of January 1924 are hereby rendered executory in the territory of Cameroon placed under French Mandate. The powers conferred on the Governor-General and on Lieutenant-Governors by those instruments shall devolve on the Commissioner of the Republic.

2. However, the provisions of the above-mentioned instruments that shall apply are those that are not contrary to decrees specifically passed for Cameroon and to the French Mandate of 20\(^\text{th}\) July 1922 for Cameroon.\(^\text{31}\)

\(^{28}\) For more on this, see Anyangwe (n 18) at 225.

\(^{29}\) Translation as per \textit{idem} at 226.

\(^{30}\) \textit{Ibid.}

\(^{31}\) Translation as per \textit{ibid.}
Which statutes and decrees were promulgated in French Equatorial Africa before 1 January 1924? A French decree of 28 September 1897 and another of 17 March 1903 specified that all French legislation that had been extended to the Colony of Senegal, should also apply in French Equatorial Africa. This meant that any law in force in France and which prior to 17 March 1903 had been exported to the Colony of Senegal, also applied in French Equatorial Africa. So, all French laws that were in force in the Colony of Senegal on 17 March 1903 applied in French Equatorial Africa and, by virtue of the Decree of 22 May 1924, in French Cameroon as well.

The content of the received French law in Francophone Cameroon therefore consists of:

- all French laws in force in the Colony of Senegal as of 17 March 1903. This includes any amendments made thereto in the Colony of Senegal prior to 17 March 1903, in French Equatorial Africa up to January 1924, and in the French Cameroon since January 1924;
- all statutes and decrees promulgated in French Equatorial Africa before 1 January 1924;
- all statutes, decrees, orders and regulations passed by the French Government after 1 January 1924 and promulgated in French Cameroon by the local Commissioner of the Republic;
- any statute, decree and regulation in force in France and directly exported to French Cameroon by decree of the French Head of State. French laws therefore did not automatically apply in French Cameroon. They had to be specifically extended to it for them to apply.

As in the English-administered part of Cameroon, in addition to the above mentioned laws, customary law also applied provided it was not contrary to the principles of civilisation, public order and good morals or any written law. It is clear at this juncture that extra-national laws formed the bulk of the applicable law in both British and French Cameroon at that time. The reason is to be sought in the country’s colonial past. On 1 January 1960, French Cameroon obtained its independence from France and became known as the Republic of Cameroon. On 11 February 1961 Southern Cameroons would in a plebiscite opt to join the Republic of Cameroon and so gain her independence. On 1 October 1961 what would be termed the “reunification of Cameroon” took place, with federalism chosen as the form of government the nascent state would adopt. Thus, on 1 October 1961, the Federal Republic of Cameroon was formed, consisting of the Republic of Cameroon as the Federated State of East Cameroon and the Southern Cameroons as the Federated State of West Cameroon. The Constitution

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32 Eg, the French Contract of Insurance Law of 13 Jul 1930 was rendered applicable in French Cameroon by a Decree of 19 Mar 1937.
33 Anyangwe (n 18) at 227.
34 See Judgment no 8 of 10 Feb 1928 of the Tribunal de races of Yaounde.
35 See Cour suprême arrêt no 65 of 19 May 1964; Bulletin des arrêts de la cour suprême no 10 at 804-805.
that was to govern this union was adopted on 1 September 1961 and came into force on 1 October that same year.

As in all nascent states, the draftsmen of the 1961 Constitution had to determine the mechanism of the law-making process. Law making at the state level was entrusted to the State Legislative Assembly, and at the federal level, to the Federal National Assembly. Given the immediate need for a body of rules to regulate state affairs and maintain harmony in the country, the lack of law-making expertise there at that time, and the complication that the emerging states were applying two distinct legal systems, the draftsmen decided to provide that the legal rules then in force in the Federated states would apply in so far as rules of general application had not been made. Thus article 46 of the 1961 Federal Constitution states: “Previous legislation of the Federated States shall remain in force in so far as it does not conflict with the provisions of this Constitution.”

The provisions of this article would later be incorporated in article 38 of the Constitution of 2 June 1972 and subsequently in article 68 of Law 96/06 of 18 January 1996 that revised the 1972 Constitution.

Despite the attendant difficulties, the state immediately after reunification embarked on a policy of unification of the dual legal system bequeathed to it by the colonial masters, Britain and France. This involved a determined effort to create a body of rules that would apply in the entire country.

3 The search for convergence in a common body of rules of general application in the entire country (unification of the dual system)

After the political unification of Anglophone and Francophone Cameroon in 1961, it was clear that, although legal unity could not be achieved at the same time as political unity, there would in the future be a need for one national system of law. However, the two legal systems had to coexist at least for some time, prior to the reform and unification of what each inherited from the colonial masters.

Since independence and re-unification of the two Cameroons, the official goal has been the unification and codification of all the laws in force in the country, the aim clearly being that of the unification of norms rather than harmonisation. Unification focuses on combining two or more legal systems and substituting them with a single system, while harmonisation seeks to co-ordinate different legal systems by eliminating major

37 See, eg, arts 5, 6, 16, 17 and 23 of the 1961 Constitution relating to the law-making powers of the Federal National Assembly.
38 This article provides: “The legislation resulting from the laws and regulation applicable in the Federal State of Cameroon and in the Federated States as of the date of entry into force of this Constitution shall remain in force in all their provisions which are not contrary to the provisions of this Constitution, for as long as it is not amended by legislative or regulatory process.”
39 This article states: “The legislation applicable in the Federal State of Cameroon and in the Federated States on the date of entry into force of this Constitution shall remain in force insofar as it is not repugnant to this Constitution and as long as it is not amended by subsequent laws and regulations.”
differences and creating minimum requirements or standards. However, harmonisation could be a torchbearer for unification in the sense that in seeking to establish norms of general application, the legislator harnesses the best from the two systems. Commissions with specific terms of reference have attempted to implement this policy at the national level, and at the international level there has been implementation of relevant treaties.

3.1 Unification of legal rules at the national level

In an attempt to implement the policy of unification of the laws of Cameroon by 1964, barely two and-a-half years after reunification, two federal law reform commissions had to be set up. These were the Federal Commission for Penal Legislation and the Federal Commission for Civil and Customary Legislation. The former was charged with drawing up a penal and criminal procedure code – this arrangement resulted in the unification of the substantive criminal law with the promulgation of the Cameroon Criminal Code; while the latter had to draft a civil code, a code of civil and commercial obligations, and a civil procedure code. Subsequently, the following areas of law were unified: the judicial system, land tenure, some aspects of family law, labour law and certain issues of nationality.

After the 1964 Federal Law Reform Commissions had outlived their usefulness, three other commissions were appointed in 1973, 1976 and 1994 respectively to implement law reform in the country, but none of them realised their objectives. A milestone in the unification of the law was reached in the year 2000 with the signing of Decree 2000/322 on 7 November, which related to the composition of judicial law-reform commissions. That Decree instituted two law reform commissions: the Criminal Law Commission and the Civil Law Commission. The former was responsible for preparing preliminary

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40 These two Commissions were set up by Decree 64/DF/84 of 29 Feb 1964.
42 The initiative began with Ord 72/4 of 26 Aug 1972.
44 Parliament first attempted to unify family law in 1968 when Law 68/LF/2 of 11 Jun 1968 organising civil status registration was passed. This Law was repealed and its provisions consolidated in the Civil Status Registration Ordinance 81/02 of 29 Jun 1981). The State is presently working on a Unified Family Code for Cameroon.
45 Shortly after re-unification a Labour Code of general application was enacted in Cameroon. This was contained in Law 67/LF/6 of 12 Jun 1967, which was amended by Law 74/14 of 27 Nov 1974 and further amended by Law 92/007 of 14 Aug 1992.
46 This was done in Law 68/LF/3 of 11 Jun 1968, which established the Cameroon Nationality Code and Decree 68/DF/478 of 16 Dec 1968 which established rules of procedure under the Cameroon Nationality Code.
48 See Decree 76/68 of 19 Feb 1976.
draft legislation on the Criminal Procedure Code while the latter was charged with the preparation of preliminary draft legislation on the Civil Code and the Civil Procedure Code.

As a result of the work of the Criminal Law Commission, a unified Criminal Procedure Code for Cameroon was promulgated on 27 July 2005.\(^{50}\) It is worth recalling that before this Code two different laws governed criminal procedure in Cameroon.\(^{51}\)

The unification of criminal procedure in Cameroon clearly demonstrates the state’s unshakable resolve to give its citizens a uniform legal system that reflects their aspirations. This entails harnessing the best from both the common-law and civil-law systems in order to build what is essentially Cameroonian. In fact, the criminal procedure that operated in former East Cameroon was inquisitorial while that in former West Cameroon was accusatorial. The draftsmen of the new Criminal Procedure Code have succeeded in putting in place a code peculiar to Cameroon, a code which is a blend of the inquisitorial and accusatorial systems. This successful unification of criminal procedure in Cameroon has proved the feasibility of its programme of unification of its laws.

3.2 The initiative of unification of legal rules at the international level

Another strategy that has also been used by the state to unify its laws is to turn to international conventions or treaties. These are based on the concept of international personality, which is the capacity to be the bearer of rights and duties under international law. The state as an entity recognised by international law is capable of possessing rights and duties and bringing international claims, and is therefore a legal person. The first Waldock Report prepared for the International Law Commission on the Law of Treaties\(^ {52}\) recognised the capacity of international organisations to become parties to international agreements, which reflected the existing practice between organisations and also between states and organisations. A treaty is an agreement under international law entered into by actors in international law, namely sovereign states and international organisations. A treaty may also be known as an international agreement, protocol, covenant, convention or exchange of letters.\(^ {53}\)

The concepts of dualism and monism in international law are very useful in the assessment of the relationship between municipal and international law.\(^ {54}\) Dualist doctrine points to the essential difference between international law and municipal law, consisting primarily in the fact that the two systems regulate different subject matters.

\(^{50}\) Law 2005/007 of 27 Jul 2005; initially it was scheduled to enter into force on 1 Aug 2006 but the date was changed to 1 Jan 2007 by Law 2006/008 of 14 Jul 2006 amending art 747 of Law 2005/007.

\(^{51}\) The law governing criminal procedure in former West Cameroon was the Criminal Procedure Ordinance ch 43 of the 1958 Revised Laws of the Federation of Nigeria; while in former East Cameroon, it was the 1808 French Code d’instruction criminelle, rendered applicable in former East Cameroon by French Ord of 18 Feb 1838.

\(^{52}\) See (1962) Yearbook of International Law Commission ii, 31, 32, 35, 37 cited by Brownlie (n 8) in n 5 at 57.

\(^{53}\) Regardless of the terminology, all these agreements under international law are treaties and the rules applicable to them are the same.

\(^{54}\) For more on these concepts see Brownlie (n 8) at 31-32.
International law is the law that applies between sovereign states while municipal law applies within a state and regulates the relations of citizens with each other and with the executive. According to this view, neither legal order has the power to create or alter the other’s rules. In case of a conflict between international law and municipal law, the dualist would assume that a municipal court would apply municipal law. By contrast, monism is an assertion of the supremacy of international law even within the municipal sphere. Today article 45 of the 1996 revised Constitution of Cameroon demonstrates an unequivocal preference for monism by clearly stating that “duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement”.

The 1961 Constitution of Cameroon conferred on the President of the Republic the power to negotiate agreements and treaties. However, it indicated that, before ratification, treaties relating to matters within the sphere of federal law as defined in article 24 of the Constitution had to be submitted for approval in legislative form by the Federal Assembly. This provision has been adopted by later constitutions of Cameroon. The effect of a properly ratified treaty in Cameroon is that, as far as the hierarchy of norms is concerned, it ranks immediately below the Constitution and has pride of place over other municipal laws.

On 17 October 1993 at Port-Louis on the Island of Mauritius something of great significance happened, which would impact on Cameroon’s quest for laws that would be uniformly applied in its territory. On that day, Cameroon signed the treaty creating OHADA, the French acronym for the “Organisation pour l’Harmonisation en Afrique du Droit des Affaires” whose mission it is to encourage and protect investments within the Franc Zone. Unlike other regional groupings that are concerned with issues such as the harmonisation of the economic, trade or monetary policies of its members, the membership of OHADA is concerned with the harmonisation of business laws in its region in the form of uniform acts. A single, modern legal framework for their economic activities would improve legal security, which in turn would help to promote trade and investment. OHADA is mandated to pursue the harmonisation process by passing uniform acts on specified subjects for application within the

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55 See, eg, arts 43, 44 and 45 of Law 96/06 of 18 Jan 1996 revising the Constitution of Cameroon of 2 Jun 1972.

56 In fact, art 45 of Law 96/06 of 18 Jan 1996 that revised the 1972 Constitution of Cameroon clearly spells out that following their publication, duly approved or ratified treaties and international agreements override national laws, provided the other party implements the said treaty or agreement.

57 In English it is the Organisation for the Harmonisation of Business Law in Africa (hereafter OHBLA) for purposes of this essay, however, the French acronym will be used. This treaty was signed by fourteen African States, namely Benin, Burkina Faso, Cameroon, Central African Republic, the Comoros, the Republic of Congo, Côte D’Ivoire, Gabon, Equatorial Guinea, Mali, Niger, Senegal, Chad and Togo. Two other countries signed subsequently: Guinea Conakry and Guinea Bissau making a total of sixteen today.

Once these uniform acts are passed, they apply in the entire territory of Cameroon even though they may be in conflict with existing or subsequent municipal laws. So far nine uniform acts have been adopted and are in force. They include:

- the Uniform Act Regulating Securities adopted on 17 April 1997, that came into operation on 1 January 1998;
- the Uniform Act Relating to General Commercial Law adopted on 17 April 1997, that came into operation on 1 January 1998;
- the Uniform Act Relating to Commercial Companies and Economic Interest Groups adopted on 17 April 1997, that came into operation on 1 January 1998;
- the Uniform Act Organising Simplified Recovery Procedures and Measures of Execution adopted on 10 April 1998, that came into operation on 10 July 1998;
- the Uniform Act Organising Collective Proceedings for Wiping Off Debts adopted on 10 April 1998, that came into operation on 1 January 1999;
- the Uniform Act Regulating Arbitration adopted on 11 March 1999, that came into operation on 11 June 1999;
- the Uniform Act on Accounting adopted on 24 March 2000, that came into operation on 1 January 2001 for Enterprise Accounts and on 1 January 2002 for Combined Accounts;
- the Uniform Act Regulating Goods Transported by Land adopted on 22 April 2003, that came into operation on 1 January 2004;
- the Uniform Act Organising Cooperative Societies adopted on 15 December 2011 that came into operation on 15 May 2012.

Other legislation still being prepared includes the Uniform Act Regulating Contracts, the Uniform Act on Labour Relations, and the Uniform Act on Evidence.

Though article 2 of the Port-Louis Treaty defines the aspects of business law over which OHADA is empowered to enact “uniform acts”, this list is not exhaustive since the treaty gives the Council of Ministers the power to legislate on any other matter that they deem fall within the ambit of business law, provided they arrive at a unanimous decision.

The Treaty of Port-Louis was ratified in Cameroon by Decree 96/177 of 5 September 1996 pursuant to Law 94/04 of 4 August 1994 authorising the President of the Republic to do so. The constitutional implication of this is simple: This Treaty and its by-products (the OHADA uniform acts) rank above national laws and are of general application over the national territory.

Initially, there was some reticence, especially within Anglophone Cameroon, on the application of the OHADA uniform acts. The reticence was based on three concerns.

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59 See art 2 of the Treaty of Port-Louis of 17 Oct 1993. This article envisages legislation on, *inter alia*, company law and the legal status of businessmen; debt recovery; securities and the enforcement of judgments; bankruptcy law; arbitration law; labour law; accounting law; law on the sale of goods and transportation.

60 This is one of the institutions of OHADA comprising Ministers of Finance and Justice of the contracting states and it plays a cardinal rule in the legislative process of the Organisation.
First, the Treaty of Port-Louis laid down the French Language as the working language of OHADA at a time when the Constitution of Cameroon recognised both English and French as its official languages. Secondly, the fact that the uniform acts are not drawn up and adopted by national parliaments but by a supranational body, entails a transfer of sovereignty that was not envisaged at the time of accession to statehood. Thirdly it was felt, rightly or wrongly, that the uniform acts were founded predominantly on civil-law concepts and that Anglophone Cameroon with its basically common-law legal approach would find them strange and difficult to use.

Between 1993 and the time of writing this article, many things have happened to allay the concerns of the Anglophone community in Cameroon over the OHADA laws. Firstly, on 17 October 2008 in Quebec (Canada), the membership of OHADA decided to revise the 1993 Treaty of Port Louis that created OHADA in order to make it more acceptable and attractive to other countries. That revision proposes that the working languages of OHADA be French, English, Spanish and Portuguese.

Secondly, it is becoming clear that the principles found in the uniform acts are not fundamentally different from common-law principles and that some are even borrowed from common law.

Thirdly, it is increasingly accepted that for regional legislation to be successful, there must be a transfer of sovereignty to a supranational body in order to reduce costs and to avoid discrepancies. For the above reasons, the courts in Anglophone Cameroon are applying the OHADA uniform acts just as the courts in Francophone Cameroon are. So, in respect of those branches of law to which uniform acts have become applicable through international efforts, the law in Cameroon has been “unified”.

Another sphere of law that has been unified in Cameroon as a result of international initiatives is the insurance industry. On 10 July 1992, in Yaounde, Cameroon signed and subsequently ratified the Treaty setting up the Conference Interafricaine des Marches d’Assurances (CIMA) and agreed to be bound by the insurance legislation (the CIMA Code) that forms an annexure to the Treaty. The Code itself came into operation in February 1995. Since then, the insurance industry in Cameroon has been regulated by the CIMA Code that applies throughout the national territory.

In 1964 Cameroon became a member of the Customs and Economic Union of Central Africa (Union Douanière et Économique de l’Afrique Centrale – UDEAC) established to promote regional economic cooperation in Central Africa. UDEAC subsequently became the Economic and Monetary Community of Central Africa (Communauté Économique et Monétaire de l’Afrique Centrale (CEMAC)). This was by virtue of a treaty signed on 16 March 1994 in N’djamena-Chad. CEMAC has a mission to promote

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61 The Quebec Treaty can enter into force only sixty days after the date of deposit of the eighth ratification instrument. The ratification instruments are deposited with the Government of Senegal which is the depository Government. The National Assembly of Cameroon through Law 2010/006 of 29 Jul 2010 authorised the President of the Republic of Cameroon to ratify the Quebec Treaty.

62 The revised article indicates, however, that before translation into the other languages, the OHADA documents already published in French will remain in force. In the case of divergence between the different translations, the French version is authentic.

63 The Treaty was ratified in Cameroon by Decree 93/303 of 22 Oct 1993.

64 UDEAC was established on 8 Dec 1964 by a treaty signed in Brazzaville.
economic integration among countries that share a common currency, the CFA franc. Since Cameroon is party to the different treaties and agreements that established UDEAC and subsequently CEMAC, all directives of these organs are applicable within the entire country. This is therefore another source of unification of the Cameroonian law at the international level.

The state has also ratified other treaties and conventions concerning many other topics not mentioned in this article.

4 Conclusion

When in October 1961 Anglophone and Francophone Cameroon were re-unified to form the Federal Republic of Cameroon, the nascent state set itself the task of unifying its laws. The initial process was slow. As Mbu observed:

For over twenty years (these commentaries were made in 1986) the policy has been wait and see, and only to tread on grounds that are absolutely safe and even here with a lot of caution. The problem here has been obvious. If we had hurried into legislation, certainly one side would have swallowed the other without realising the likely consequences and the impending danger. After all, law reflects to a large degree the civilisation of those that live under it. Its progress and development are mirrors, not merely of material prosperity but of the method of thought and of the outlook of the age. The thought and outlook in the two former federated states was culturally different. Consequently, it will not be an over statement to say that the act of unification was in fact unity in diversity, nevertheless, a worthwhile unity. The wait and see period was therefore to give a conscious appreciation of the two legal systems reflected to our background and then to come out with something truly Cameroonian, uninfluenced by the vestiges of France or England.

The above analysis of the attitude of the state to the process of unification of the laws in Cameroon is a graphic description and explanation of how this exercise has been unfolding. The process may not have been fast enough in the eyes of many but this could be explained in terms of the prudent approach the state has taken. Constructing uniform norms for application in a country hitherto operating a dual legal system can be an uphill task, entailing merging common- and civil-law rules and, at times, customary-law rules. This is what the state is doing. The pace may be that of a tortoise but is said to be the pace of the wise.

The importance of unification of laws in Cameroon is highlighted in fields where this has not yet taken place. In those fields, in the negotiation of legal relations between parties, rules of private international law may be invoked within Cameroon, in order to ascertain which rule of law will be applicable. As an illustration, in some of the OHADA uniform acts, certain provisions refer parties to the ordinary rules of contract law. Thus article 105 of the Uniform Act relating to Commercial Companies and Economic Interest Groups indicates that:

Between the date on which a company is formed and that on which it is entered in the
Trade and Personal Property Register, relations among the partners shall be governed by
the partnership deed and by general rules of law in matters of contract and obligations.
Cameroon is at present applying two different sets of contract law, namely the common-
law rules applicable in the former West Cameroon and the civil-law rules applicable in the
former East Cameroon. This means that if a Cameroonian enters into a transaction with
another Cameroonian or a foreigner in a situation where rules of ordinary contract law
are to govern the transaction, a choice of law must be made. To avoid this complication,
it is important that steps should be taken to accelerate the process of unification of the
law.
In the unification efforts, whether at the national or international level, the state must
avoid taking steps that could cast into doubt the relevance of the process. It should avoid
the embarrassment of taking a step that pleases only one sector and causes alarm in
the other. This is what it did in 1993 when it signed the OHADA Treaty that decreed
that French would be that body’s working language, knowing full well that Cameroon
also had English as another official language. Fortunately, as we have seen, the relevant
article has been amended.
The state cannot adopt the OHADA uniform acts without seeking the opinion of the
contracting states. This is usually expressed by the national OHADA Commissions. Each
time the Cameroon National OHADA Commission is called upon to give an opinion on
a uniform act in the process of adoption, it must take into account the dual legal system
the country operates. This will permit it to make a contribution to laws that will finally
be accepted in Cameroon without rancour.
At the political level Cameroon suffered division as a result of foreign infiltration.
This division engendered different modes of life in the different segments that were
created. Once political unity was achieved the need arose to foster unity in the other areas
of national life that were essential for the survival of the state. One of these areas is law.
We marvel at the technique the Cameroonian State is using to grapple with this problem,
a technique which consists, on the one hand, of continuing to apply the laws received
from the colonial masters where no legal rule of general application has been passed
and, on the other hand, making efforts to create common rules of general application
throughout the country. This technique is pragmatic, so we encourage it and wish the
State of Cameroon a successful outcome in its efforts to unify its law. Unification will
usher in certainty regarding applicable rules and consequently also promote justice.
Abstract
On 1 October 1961, Cameroon completed the process of gaining independence from colonial rule and acceded to statehood. One of the challenges it faced as a nascent state was that of enforcing the rule of law which necessitated the establishment of a mechanism for law-making. The aim of this article is to examine how far Cameroon has progressed in this sphere since independence. At its birth it was in the peculiar situation of having two different legal systems, namely common law that applied in the English-speaking part of the country and civil law that applied in the French-speaking part of the country. On independence, with its new legislative institutions and backed by certain constitutional provisions, the country embarked upon a policy of legal unification, aiming to pass laws of general application to the whole territory. At the national level, this policy is implemented by the adoption and promulgation of laws (at times the product of unification) intended for application in the entire country. This process is facilitated by a provision in the Constitution relating to treaties that have been signed and ratified by Cameroon. The treaty provisions prevail over other municipal laws and are of general application in the country. In this way Cameroon is making an effort to unify its law.