



COMMENTS ON THE ART AND RESEARCH PROJECT 'THE DIVISION OF THE EARTH – TABLEAUX ON THE LEGAL SYNOPSES OF THE BERLIN AFRICA CONFERENCE'

Dierk Schmidt, Malte Jaguttis

Abstract:

Is pictorial language able to convey a juridical abstraction? This co-authored text addresses that question in the context of the geo-political division of Africa after the Berlin Africa Conference (Congo Conference), as a means to conceptualise colonial rule in 1884/85 – and its manifold grave consequences – as a historical by-product of Europe's political and aesthetic modernity. Is there any value in representing the image of genocide, (while acknowledging the 'impossibility' of its representation)? With these issues in mind, lawyer Malte Jaguttis and artist Dierk Schmidt offer a commentary based on their project, 'The division of the earth – Tableaux on the legal synopses of the Berlin Africa Conference'.

Keywords: Berlin Africa Conference, Congo Conference, South West Africa, Germany, Herero People's Reparations Corporation, division of the earth, post-colonialism, abstraction

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Biographical notes

Dierk Schmidt (born 1965) is a Berlin-based artist and author. He is guest advisor and conducts workshops at various universities, among others the Leuphana University of Lüneburg, the Royal Danish Academy of Fine Arts Schools and the Berlin Weißensee School of Art. His solo exhibitions have included: *Ich weiß was ... was du nicht weißt ... – When opinion becomes an occasion for calculation*, Kunstraum objectif [...], Antwerpen, 2003; *SIEV-X – On a Case of Intensified Refugee Politics, or Géricault and the Question Concerning the Construction of History*, Städel Museum, Frankfurt/Main, 2009; and *IMAGE LEAKS – On the Image Politics of Resources*, Frankfurt Kunstverein, Frankfurt/Main, 2011. Among his group exhibitions are: *Violence is at the Margin of All Things*, Generali Foundation, Vienna, 2002; *Com volem ser governats?*, Macba, Barcelona, 2004; *Trienal du Luand, Luanda*, 2007; *documenta 12*, Kassel, 2007; and *Animism*, at the Haus der Kulturen der Welt, Berlin, 2012. His most recent publication is: *The Division of the Earth – Tableaux on the Legal Synopses of the Berlin Africa Conference* (co-edited by Lotte Arndt, Clemens Krümmel, Dierk Schmidt, Hemma Schmutz, Diethelm Stoller, Ulf Wuggenig), Verlag der Buchhandlung Walther König, Cologne 2010.

Malte Jaguttis studied law and history and holds a doctorate degree in law from the University of Hamburg, Germany. Between 2003 and 2007, he was a research assistant at the Institute for International Affairs in Hamburg. Jaguttis has published in the fields of Public International Law and German Constitutional Law, with research interests that span legal theory and history, fundamental rights and urban governance. He has been admitted as a lawyer in Germany since 2009, where he specialises in Public, European and International Law.

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Dierk Schmidt, Malte Jaguttis

I

The project 'The division of the earth' began eight years ago with research on the Berlin Africa Conference held in 1884/85, often called 'Congo Conference'. This historical event served as a starting point to deepen the artistic-critical approach already pursued in earlier research-based works examining historical and present-day processes of political representation. The Berlin Africa Conference is until now barely present in the collective memory of its host country. It was, however, a pivotal moment in the history of modern colonialism. That opened the opportunity to tread new paths of reflection by connecting aesthetic and political issues. In face of the epochal ruthlessness with which an entire continent was made the object of the territorial ambitions of the participating European States and the USA, 'The division of the earth' was initiated to trigger debates beyond the fields of art and politics, setting both in relation to each other. If, with the legal framework of the Berlin Africa Conference, colonial rule was enforced via the normative abstraction, should not abstraction in painting be the logical genre of such an examination? And could its use mark an attempt to represent the structural violence involved?

From this perspective, it would be insufficient to treat the Berlin Africa Conference and its aftermath as a completed, historically and geopolitically relatively remote set of problems. 'The division of the earth' argues that many of these problems can be related to the political situation in our own context. Germans have for a long time been virtually ignoring or marginalising their colonial history as discussions on the more recent crimes of the mid-20th century were prevailing. Only in the recent years and in particular under the auspices of the claims for reparation voiced by former Herero and Nama populations in Namibia, this specific history has recently become tangible again.

After decades of silence on the crimes committed under German colonial rule over 'South-West

Africa', Germany officially responded to the affected communities in 2004. Under the pressure of a claim for reparations that had been filed at a U.S. court by the Herero People's Reparations Corporation (HPRC) in 2001, the German Minister for Economic Cooperation and Development apologised for what would *today* be regarded as genocide. However, in her speech, Minister Heidemarie Wiecezorek-Zeul carefully avoided laying a foundation for reparation payments. Germany's political response was clearly a decision with a European dimension, since a legally relevant statement about colonialism could also set a precedent for other former European colonial powers.

With a focus on the discussion about possible parallels between abstraction in painting and international law, the project pursued several questions: Which socio-political abstractions did colonialism in German South-West Africa apply for its normative concept of an appropriation of land, later defended against an 'uprising' population by means of a genocidal war? How do these abstractions continue to have an impact? Through which forms of abstraction can an artistic examination of this highly complex historical configuration serve more than just a re-tracing or even an affirmative function? What relevance can the criticism of past decades inspired by postcolonial studies have for contemporary artistic practices? Can all this be depicted by means of any aesthetic method? If so, who does it benefit? Which processes, which situations evade depiction altogether?

When approaching this set of questions, one of the first choices was to try to give such abstract problems a palpable, physical materialisation. Not interested in easy analogies and formalisms, the existing accessibility of the artistic genre of history painting was to be used as a vehicle for present research questions. Painting was not to become a representative of those oft-disavowed claims of objectivity held by history painting in the past – the outpour of this attitude fills the museums and, moreover, has become associated with the representative interests behind it. 'The division of the earth' was interested in the legacy of painterly abstraction and the expressive *and* differentiating possibilities it may still offer in a contemporary discussion about abstraction and representation. Its ability to convey complex meaning seemed to be a valuable aesthetic bridge to address the other type of abstraction at work: The laws that were developed at the Berlin Africa Conference and then acted out over decades of colonial rule in Africa. A set of abstract rules was created and tentatively based on these legal rules of abstraction and on the language of political cartography – until these rules, being deliberately

combined and layered, demonstrated their inherent tendency to create, legitimise and enact violence.

In addition to specific colour codes, perspectives, dimensions and symbolisms that were derived from a close reading of the Acts of the Conference, juridical definitions were also translated into an abstract symbolism. For example, the key colonial legal concept of 'terra nullius', i.e. the claim that the appropriated lands were to be regarded as 'no man's land' and therefore 'available to occupation' for colonial use was applied as a specific template covering the surface of each painting, in which certain picture areas were layered 'from above' with a relief-like mass of silicone. 'Regulations materialised' in the true sense of the word resulted in the utilised mass of silicone on the picture surface. This led to brittleness and damages in the resulting silicone figures that increased with the number of layers – and thus also the layers of different juridical definitions.

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'The division of the earth' is arguing on both a pictorial and textual level. In addition to a picture series, the project includes the communication of university seminars, contributions by several researchers and a collection of source material to address aesthetic, political, art-historical and current legal aspects of postcolonial debates. Within these perspectives, the potentials of the politics of remembrance, reparation, and correction, which in the postcolonial present raise objections against the continuing effects of historical violence, are of pivotal importance.

Competing interpretations of international law reveal that the legal frame for a discussion about colonialism is closely connected to a postcolonial international order of States which itself derived from colonial thought and practice. Legal response to the action filed by the Herero is therefore manifold: It ranges from writers declaring that a judicial response to the genocide would be impossible, to interpretations that acknowledge the relevance of historical breaches or ambivalences of law in today's legal order. Is there a way to discuss the Eurocentric foundation and imperial origin of international law not merely as a historical or political but also as a legal question?

'The division' project in particular exposes itself to the limits of different perspectives. Proceedings for reparation have to deal with the inherent contradiction that they fall back on precisely that law that was meant to legitimise the colonial strategy of a deprivation of rights. By focusing on the aspects of legal discourse and reconciliation, it asks if international law – due to an 'enabling violation' by colonial atrocities (Spivak,

2007, p.176) – is able to reflect and discuss its own colonial impetus or if it is rather still legitimising a colonial strategy of deprivation as a 'perfect crime' (Lyotard, 2002, p.8). The series of tableaux refers to the legal categories of the Berlin Africa Conference, e.g., the assertions of 'terra nullius' and 'occupation' and the definition of 'statehood' by the participating States. On the level of international law, this is where we encounter the translation of racist thought into linguistic terms by selecting who speaks as a legal subject (and conference participant) and who is spoken about as a mere object of law.

In this context, the search for ways to question a self-descriptive colonial order appears to be a touchstone for the possibility (or impossibility) to reflect colonial history together with the (colonial) history of international law.

3

The picture series of 'The division of the earth' consists of fourteen tableaux.¹ The following choice of three of them may illustrate the artistic language developed in the course of 'The division' project.

(a) Tableau 5, Article 34+35

'Chapter VI, Declaration relative to the essential conditions to be observed in order that new occupations on the coasts of the African continent may be held to be effective.

Article 34: Any Power which henceforth takes possession of a tract of land on the coasts of the African continent outside of its present possessions, or which, being hitherto without such possessions, shall acquire them, as well as the Power which assumes a Protectorate there, shall accompany the respective act with a notification thereof, addressed to the other Signatory Powers of the present Act, in order to enable them, if need be, to make good any claims of their own.

Article 35: The Signatory Powers of the present Act recognize the obligation to insure the establishment of authority in the regions occupied by them on the coasts of the African continent sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon.'

(General Act, 1973, pp.288ff.)

¹ All images in this article: Copyright VG Bild-Kunst, Bonn, Courtesy the artist and Gallery Walbröl, photo Andreas Pletz.

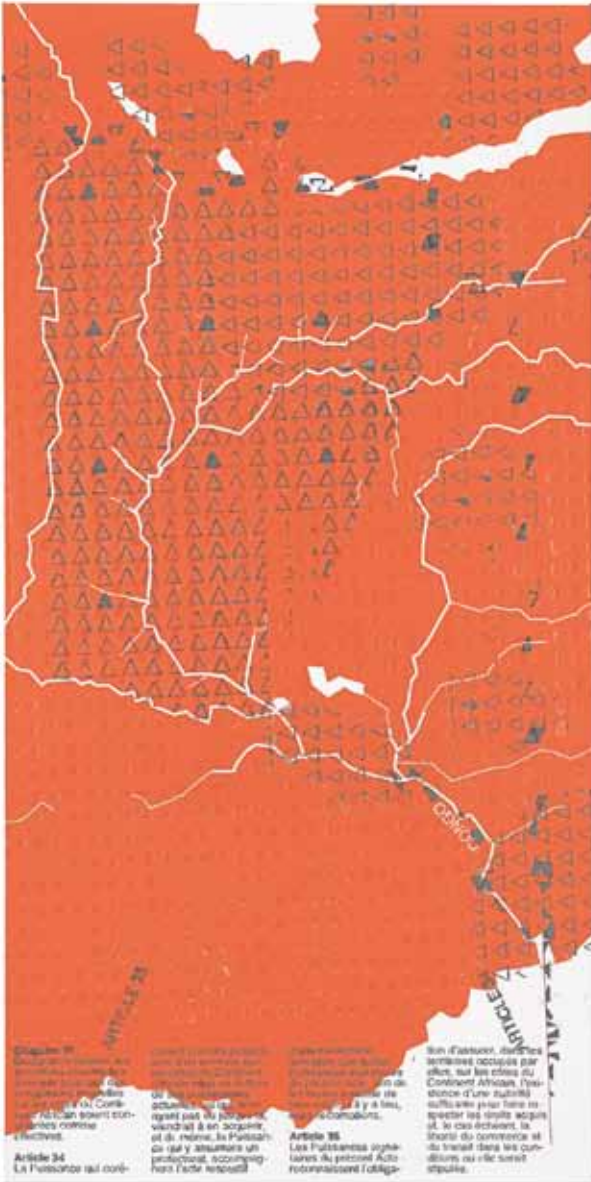


Figure 2.1.1: Tableau 5, ARTICLE 34 + 35

- Chapter VI, Article 34 of the General Act of the Berlin Africa Conference, the 'notification obligation', is shown on the right above the diagonal in the form of a territorial border formation. The cross-section of Article 34 and 35 corresponds with the 'ideal taking possession' according to the General Act. Article 34 determines the future borders in agreement with the signatory States (the related filled triangles are forming a line) of the conference, but, however, not with representatives of the indigenous populations.
- Chapter VI, Article 35, 'effective occupation', is displayed on the left above the diagonal: it lies as a

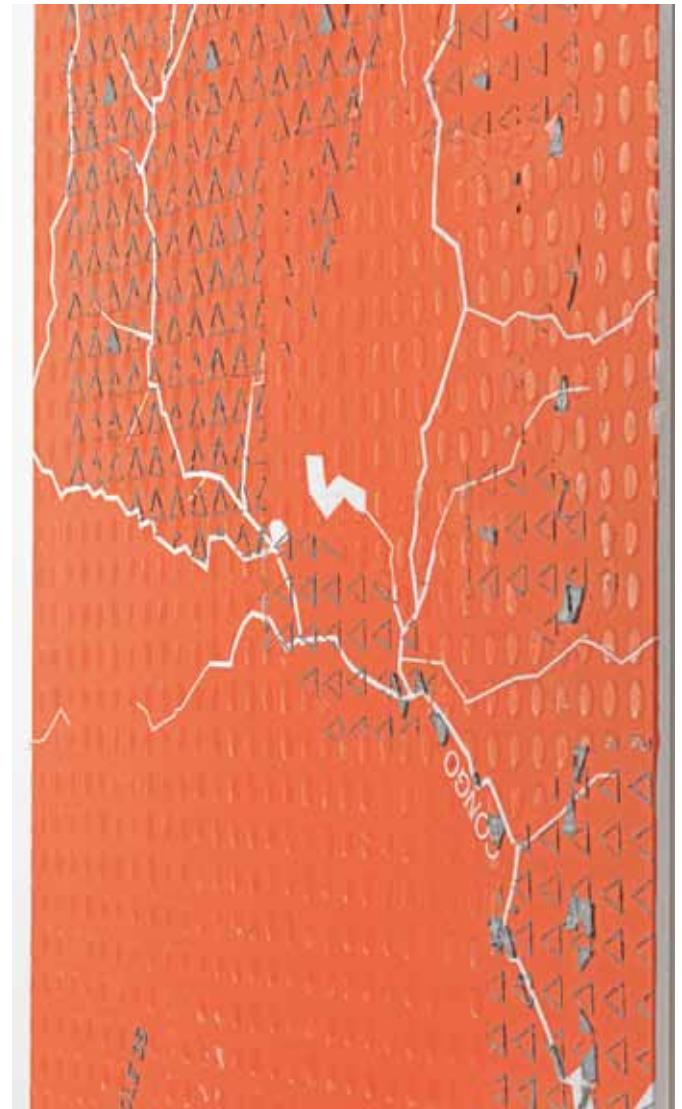


Figure 2.1.2: Tableau 5, detail of 2.1.1

grey formation on the surface of terra nullius as a transparent layer of oval forms. The claim to power abstractly formulated in Article 35 materialises in the silicone mass.

The economic principle behind the legal assertion of 'effective occupation' ensures maximal spatial expansion (contoured/empty form) by using a minimum of State efforts only (filled forms). Article 34 and 35 are shown on the Congo Basin, the only territory 'distributed' at the Berlin Africa Conference itself and not acquired by means of 'effective occupation' in subsequent State practice.

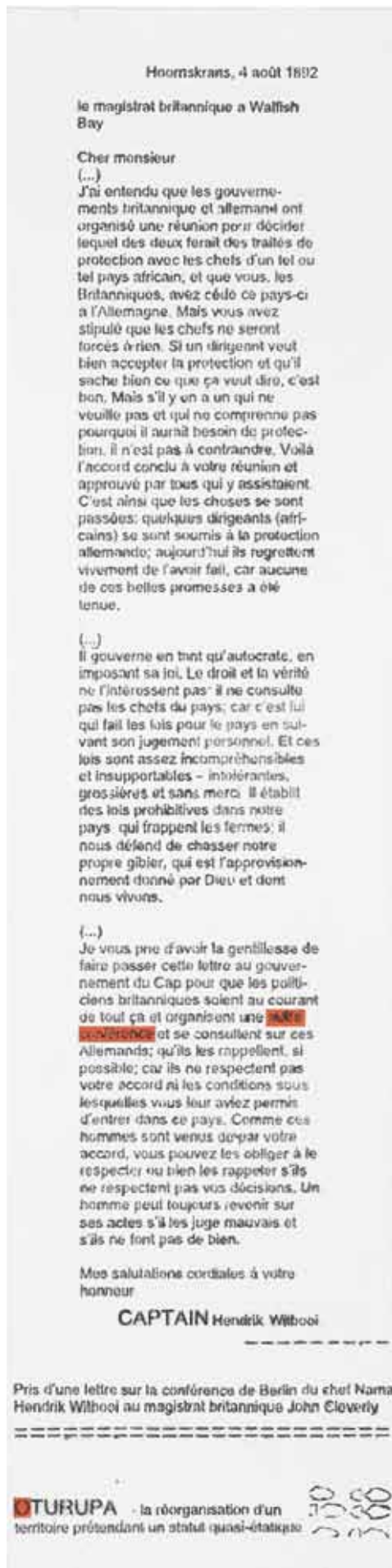


Figure 2.1.3: Tableau 9, 'CHER MONSIEUR ...' (LETTRE DE WITBOOI)

(b) Tableau 9, "Cher Monsieur..." (Lettre de Witbooi)

'Hoornkrans, 4 August 1892, The British Magistrate in Walvis Bay

Dear Sir,

[...]

I have heard that the British and the German Governments held a large meeting to decide who should make Protection treaties with the chiefs of which country in Africa; and that you the British let the Germans have this land. But you stipulated at the meeting that no chief shall be forced. If a leader is willing, and understands what it means to accept Protection, well and good; but if another is not willing to, and does not understand why he should need Protection, he cannot be coerced. That was the agreement reached at your meeting, which was endorsed by all those present. And so it happened: some (African) rulers surrendered to German Protection and are today bitterly sorry for they have not seen any of the beautiful promises kept. [...] He rules autocratically, enforcing his government laws. Right and truth do not interest him; he does not consult the country's chiefs; for he himself makes the laws for our country, following only his own judgment. And these laws are quite insupportable, incomprehensible, and unbearable—intolerant, pitiless, uncouth. He establishes prohibiting laws in our country and on our farms; he forbids us to hunt our own game, which is the Godgiven supply from which we live.

[...]

*I beg you kindly to be so good and forward this letter to the Cape Government, so British politicians may hear about this, and hold **another conference** and deliberate about these Germans, to recall them if possible, from our country; for they do not abide by the Agreement and conditions under which you allowed them to enter this country. A man can always change what he has made if it is not good in his eyes, and if it does no good.*

*With cordial greeting to Your Honour
CAPTAIN Hendrik Witbooi'*

From a letter concerning the Berlin Africa Conference, written by the Nama chief Hendrik Witbooi to the British Magistrate John Cleverly (The Hendrik Witbooi Papers, 1995, pp.97ff).

- In his letter, Witbooi describes the results of the Berlin-Africa-Conference and objects to the

infringement of protection treaties by Germany. Referring to the Berlin Conference, he requests an 'autre conférence' in order to discuss the consequences.

- The footsteps (see the bottom of the Tableaux) stand for a gesture of resistance, of a 'non-State' or a violently disenfranchised position – they may be seen as if they were 'vote with the feet'. The footstep figure sequences are introduced in the tableaux by using the colour white instead of orange – the latter indicates 'ruled' space. As opposed to the triangles, which simultaneously lie on the orange pictures without specific direction, the footstep sequence has a successive and targeted direction. The figure of the step sequence is derived from the *oturupa* ('Truppenspielerbewegung'), an annual meeting of the Herero in Okahandja/Namibia. In this context, the movement of the *oturupa* becomes an expression of 'sovereignty', an autonomous organisational form that positions itself vis-à-vis genocidal extermination.

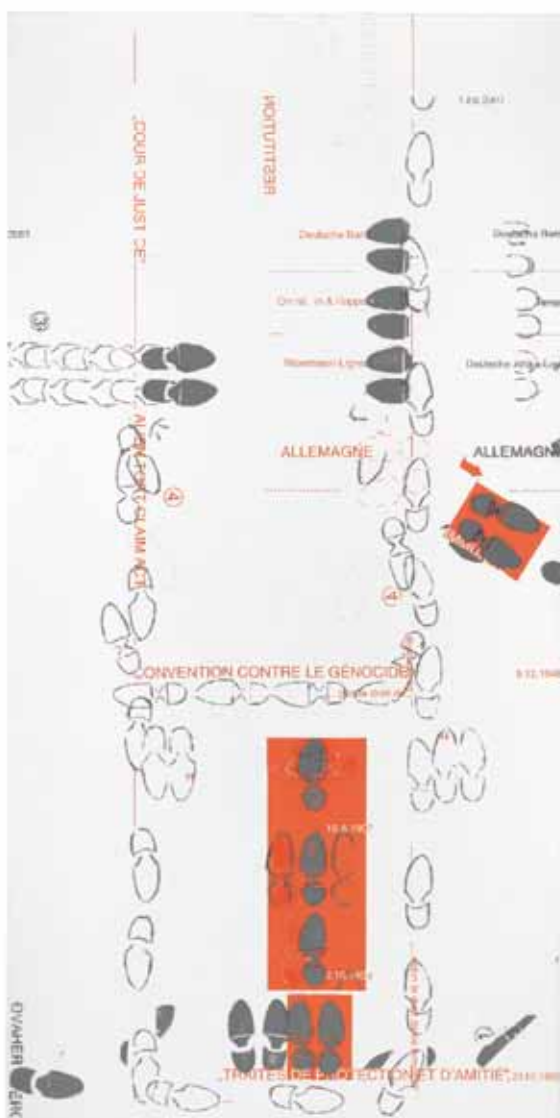


Figure 2.1.4: Tableau 12, PLAINTE DE LA HPRC

(c) Tableau 12, Plainte de la HPRC

- Horizontal reading direction, starting from the left: It let's us think of an *oturupa*. While stepping into the Court (from the left), the footprints of the Claimants (the HPRC – Herero People's Reparations Corporation) become filled with silicone and, if only for a moment, their action re-establishes the legal personality of the Herero in international relations. In this act the Defendants with their colonial names, placed on the right get reconstructed, meanwhile there are shown in the attempt to remain outside the space of the legal action, at least with their heels.

The international character of the action produces a broad public space. The Federal Republic of Germany rejects service of the writ, referring to its 'State immunity' under international law on the right side.

- 10/02/1904: Disenfranchisement and von Trotha's extermination order (the 'German' foot makes the 'Herero' foot transparent) – Afterwards: Expropriation of land (one foot steps on another foot) – 08/18/1907: forced labour (one foot controls a number of disenfranchised feet). Below that: equality of sovereigns in the 'Schutz- und Freundschaftsvertrag', dated 10/21/1895.

In his contribution to the Division project, 'Reasons to claim for Reparations from Germany in front of a U.S. Court', the Namibian researcher Cons Karamata concludes:

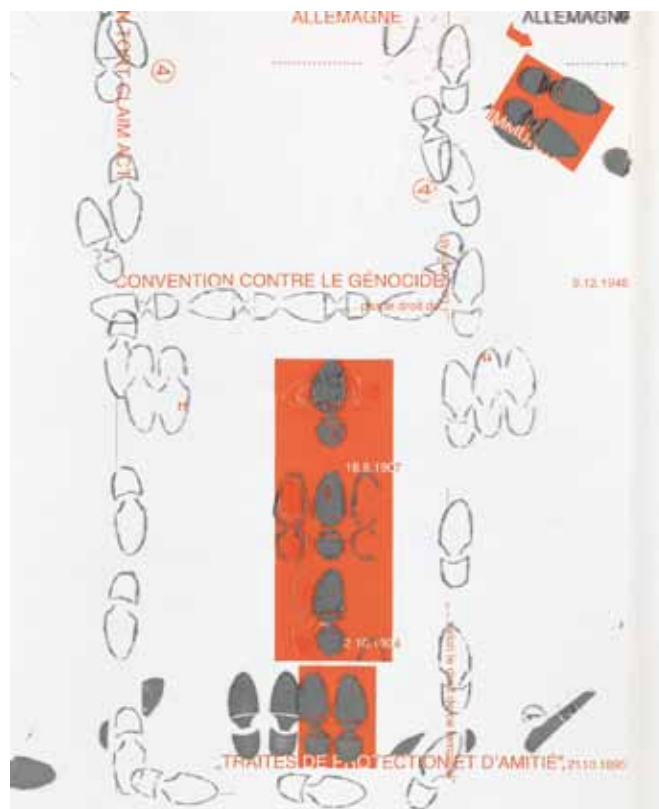


Figure 2.1.5: (detail of 2.1.4).

'The genocide committed by the German Empire against the Herero people destroyed the group's social fibre. It reduced the Herero numerically from 80,000 to only 18,000 persons. The Germans confiscated our cattle, the backbone of our economy and took over our land, our means of production. The genocide reduced us from a self-sufficient, independent people to mere labourers and refugees.'

(Karamata in Schmidt, 2010, p.50)

-The tableaux were exhibited for the first time 13 June 2007, on the same day there was a (inconclusive) hearing in the Deutsche Bundestag on reparations for colonial crimes.

'The division of the earth' has been shown and discussed in various stages at Kunstverein Salzburg, 2005; documenta 12, 2007; Kunstraum of the University of Luneburg, 2007/08; the recent comprehensive book publication: Dierk Schmidt, *The Division of the Earth*, EAN 9783865608024.

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- 5 Spivak, G. C. (2007) 'Feminism and human rights' in N. Shaikh (ed.) *The Present as History: Critical Perspectives on Global Power*, New York, Columbia University Press, pp.172-201.