Multimodal Transportation of Goods under Ethiopian Law

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Introduction

Commercial transportation of goods is no doubt the backbone of every economy, for without it no economy can thrive to the expected level. Accordingly, goods may be transported on the back of individuals or animals, on trucks, rails, by air, or on board sea going vessels A look at the history of transportation from the technological point of view shows that it has advanced quite rapidly in time so as to accommodate the necessities of commerce at the local as well as international levels. Accordingly, means of transportation have become fast in speed and large in size as a result of which it is now possible to transport large quantities of items from one corner of the world to another within a short time either by one form of transport alone or a combination of these at a speed and efficiency which was unthinkable some decades ago.

Commercial transportation of goods involves many parties. These are mainly the consignor/ shipper, the consignee, and the carrier. It may also involve freight forwarders, warehousemen/ port operators, stevedores, etc. Thus, any transportation law has to regulate the relationship between these parties. It also goes without saying that such a law needs to balance the interests of all parties involved and keep pace with every technological advances. Currently, the most widely used means or modes of transportation of goods are trucks, rails, airplanes and sea going vessels. These modes of transport are governed by separate laws and each branch of law has developed in its own direction.

Goods may be transported in different forms of packages or in bulk. Accordingly, it is now common to consolidate cargoes in pallets or containers. Of all the technological advances that called for the restructuring of means of transport in design as well as capacity, the container holds the first tier. As a result of this technological achievement, trucks, rail way cars and ships are now designed and built to accommodate heavy cargoes consolidated in containers. Given the volume of cargoes consolidated in containers, there arose the need to transport goods without any need of opening their containers at transit ports except for the port/place of destination, i.e. hinterland point. This last demand for the transport of containerized cargoes again called for the readjustment of the legal regime as a result of which, the common form of unimodal transportation of goods under different documents is replaced by multimodal transport in which cargoes can move under one document only, though the modes of transport can be more than one. Thus, the different transport laws that developed in their own directions have to give way to or accommodate the new development.

Ethiopia enacted the first transport law in 1960. Accordingly, the Commercial Code of

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the Empire of Ethiopia[1]governs carriage of goods by land and air[2], and the Maritime Code of the Empire of Ethiopia[3] governs carriage of goods by sea. Given the technological and legal advances made in transportation, the country felt that it has to align its laws along this line of development and recently enacted a number of laws[4]. Of all these legislations, the proclamation that amended the law of carriage of goods by land and the multimodal transport proclamation have introduced fundamental changes and thus the reason for writing this article[5].

This article is divided into five parts. The first part attempts to shed light on the technological developments in transportation, with special emphasis on the container revolution. The second and the third parts deal with major features of unimodal and multimodal transportation laws and the legal regime that governs transportation in Ethiopia, with special emphasis on the recently enacted legislation, respectively. The fourth part attempts to shed light on the major provisions of the newly enacted multimodal transportation law and the fifth part briefly touches on the practice. The article closes with conclusions.

1. The Evolution of Transport Technology

It is not the main thrust of this article to discuss at length all the routes through which transportation technology has passed. However, it appears proper to shed light on this, *albeit* briefly just for the purpose of building a bridge between the law and the practice. To begin with, one can easily note the fact that transportation has passed through different phases and we have now reached at a stage where we find multiple modes of transport that cater for our needs of movement. So we have individuals as well as animals that carry goods on their backs as well as fast and large trucks, rail cars, air planes and ships that serve the same purpose. Though rockets are not currently in use for the transportation of commercial goods, they are, however, the most advanced means of transport.

The volume of goods that need to be transported is growing through time. This in turn has necessitated the invention of large and fast means of transport. However, apart from

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[1] Negarit Gazeta, Extraordinary Issue NO. 3 of 1960

[2] Note – per Art. 563 of the Commercial Code, carriage by land includes the transportation of persons, baggage, or goods by inland waterways, such as rivers, canals or lakes.

[3] The Maritime Code Proclamation, 1960, Proclamation NO. 164 of 1960, Negarit Gazeta, Extraordinary Issue NO. 1 of 1960.

[4] These legislation are: the Dry Port Administration Enterprise Establishment Council of Ministers Regulation No. 136/2007; A Proclamation to Amend Carriage of Goods by Land Proclamation No.547/2007; Multimodal Transport of Goods. Proclamation No.548/2007 [hereafter the proclamation; Maritime Sector Administration Proclamation No.549/2007 and Proclamation Defining the Liability of the Dry Port to the Consignee, Proclamation No. 588/2008.

[5] Note – Given the fact that carriage of goods by land is a vast area that demands an independent treatment, this article will deal with quite a few provisions of this law which have some relevance with the subject at hand, i.e. multimodal transportation, only.

the advances made in transport technology, the consolidation of cargo in packages has also brought about a profound change through time. Accordingly, of all the innovations, the container has brought about fundamental changes in carriers' technology, port operations, etc. Containers are in short, large metal boxes in which cargoes can be stuffed and transported. Given the strength of the materials from which they are made, they protect cargoes from pilferage and physical damages. The business and legal developments necessitated by the container revolution are aptly described by two writers as follows:

> Before the container revolution, cargo moved leisurely from truck or train to ship's tackle, across the oceans, and then onto rail car to truck. A carrier would inspect every item for damage, sign a receipt, and issue its own bill of lading, setting forth the terms of its carriage and the limits of its liability. If problems arose, the shipper would know where to turn… [Sic]This separation [of distinct services by different carriers] was changed, however, by the container revolution, by the integration of sea and land carriage that followed…Carriers now offer door-to-door service under a single bill of lading. Vehicles are driven directly onto RO-RO ships, barges full of cargo are lifted onto oceangoing LASH vessels and nearly everywhere in the world, [and] individual cartons can be stuffed into containers that are not opened again until arrival at final destination.[6]

It is interesting to note that containers are not new inventions. Research conducted in this area indicates that "the concept of a container for the transportation of goods was first articulated by Dr. James Anderson in England in 1801... [sic] and the [inventor was] granted a patent in Great Britain in 1845 for a plan involving the transfer of containers from road to narrow-gauge rail cars and from horse drawn vehicles to railcars"[7]. The use of containers in the US goes back to 1911 in the form of personal – or household – effects van; while modern usage of containers for ocean transportation started in the early 1940's.[8] The extensive use of containers then demanded the restructuring of rail cars, trucks as well as ships as a result of which all means of transport are now capable of transporting containers of every size and large ships can transport barges, which are in short very large containers. It should be noted here that the container revolution has affected not only the design and structure of means of transport but also port operators, for ports were required to build warehouses as well as other facilities to cater for containers. This has again given rise to the building of intermodal container transfer facilities (ICTFs) in close proximity to ports[9].

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[6]Jack G. Knebel and Denise Savoie Blocker, United States Statutory Regulation of Multimodalism, , *Tulane Law Review*, Vol. 64, Nos.2 &3, December 1989, 544

[7] Richard W. Palmer and Frank P. DeGuilio, (hereinafter, Palmer and DeGuiloi, Terminal Operations and Multimodal Carriage: History and Prognosis, *Tulane Law Review*, Vol. 64, Nos.2 &3, December 1989, p.285

[8] Ibid, p.286.

[9] Id.p.300.

The container revolution not only helped the safe transportation of goods but also their speedy dispatch and receipt , by decreasing the time taken in loading and unloading cargoes at ports, as illustrated in the following table.[10]

	1950s Break-bulk liner	**1970s Containership**
Tons handled per working day	1 000	19 000
Days - loading and discharging	28	6
Tons carried	11 000	57 000

2. The Law's Journey from Unimodalism to Multimodalism

Depending on the type/s of contract of carriage to be concluded between a consignor and a carrier, goods may be transported by a single carrier or series of carriers of one type only or different modes. The classical or traditional form of such contract is the unimodal form of transport contract wherein a single carrier carries goods from one point of dispatch to the point of destination. If the carrier is a ship, these two points are naturally two different ports. If the carriers are, however, trucks, railcars or airplanes, the points are hinterland locations or sea or air ports. Given the fact that each mode of transport is governed by its own law, i.e. contract of carriage by land – trucks or rail – air or sea, the bases of liability, limits of liability, defenses and time limits are governed by each law separately. It has been noted above that each law has developed in its own way and these issues are regulated differently in each law. Thus, when goods are damaged or lost, a consignor or consignee in a unimodal transport contract needs to prove safe delivery of the cargo to the carrier at the point of dispatch and loss or damage upon receipt of the goods at the point of destination, and it is up to the carrier to claim exoneration depending on the list of defenses provided under the relevant law or contract, in the absence of which, it will be liable to the extent provided under the law or the agreement.

Multimodalism, has, however, changed all these and made it easier for all parties involved in a transport contract to deal with their businesses in a simple manner wherein all transactions will be centralized in a single document and a single party will take liability for whatever may happen to cargoes. Thus:

> From the operational stand point, multimodalism is the product of the widespread use of containers for the carriage of cargo and of technological advances that permit their integrated use of various modes of transportation….Multimodalism is characterized by the integration and coordination of various modes of transportation, commonly by means of a

[10] Clulow, Jeb Anthony, *Multimodal Transport in South Africa,* LLM dissertation, University of Cape Town, posted on website on 20 July, 1998, accessed on March 24,2009. Though the author has mentioned that the statistics in the table was prepared by Graham and Hughes, the source material is not shown anywhere. Moreover, the dissertation has no page number.

> metal shipping container, providing point of origin to point of destination transportation under a single set of shipping documents and based on a single through – freight rate charged to the shipper, regardless of how many modes of transportation are employed or how many carriers are involved. In the true multimodal movement, the shipper need only deal with one party to arrange for the entire shipment.[11]

The legal issues to be raised in cases of unimodal transport are simple compared to what may arise if the contract is for multimodal transport. In the latter case, goods are carried by at least two or more means of transport, say for example, trucks and ships, cars and ships or air planes, etc. Depending on circumstances, a given cargo can be transported by all modes of transport. Such types of contracts are facilitated through freight forwarders, carriers or multimodal operators. A freight forwarder may then act as the agent of the shipper and enter into series of contracts of carriage with each carrier which are subject to their respective legal regimes. Under such types of contracts, goods will be transported at the cargo owner's risk, i.e. without any personal liability on the freight forwarder. An alternative contract can be for a carrier to enter into a contract of carriage for that leg of transport and act as an agent of the shipper for the rest of the journey. In such a case each carrier's liability will be determined under the respective relevant law.[12] Thus:

> The third possibility is for a combined transport[13] operator to negotiate a single contract for multimodal transport on a door-to-door basis. Under such a scheme, the combined transport operator would remain solely responsible to the cargo owner for the safety of the goods during transit, having negotiated separate contracts for the different legs with individual unimodal carriers. The essence of such an arrangement is that the cargo owner would not be in contractual relations with individual 'actual carriers' and his rights and liabilities would depend solely on the terms of the combined transport contract.[14]

Since different laws-local as well as international - prescribe different mandatory limits of liability, any attempt to unify them has failed so far. As a result of this, the UNCTAD Convention on Multimodal Transport that was adopted in May, 1980 has not

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[11] Palmer and DeGuiloi , Supra Note 7, PP. 283 -285.

[12] Wilson, John F, *Carriage of Goods by Sea*, Longman Pearson Education, Fourth Edition (2001) p. 241.

[13] The expression "multimodal transport" was introduced prior to the UNCTAD Multimodal Convention of 1980, mainly for political reasons…the term "multimodal transport is basically the same as "combined transport" which is the terminology of the ECE resolution. During the preparatory work within the framework of UNCTAD, the previous term " combined transport " was changed into " multimodal transport" to draw distinction between the former work within organizations that were considered to be dominated by industrialized countries and the achievements of UNCTAD, See, Herber, Rolf, The European Legal Experience with Multimodalism, Tulane Law Review, Vol. 64, Nos.2 &3, December 1989, p.616

[14] Wilson, J. F, Supra Note 12, p.241.

yet gained recognition among the major ship owning states. The International Chamber of Commerce (ICC) Rules for a Combined Transport Document (1975) appear to be favored by those states that have found the UNCTAD convention uncomfortable. However, these rules of the ICC are not mandatory.

One of the controversial issues raised in relation with multimodal transportation is limitation of liability. Accordingly, liability may be limited either by taking that leg of journey in which a damage or loss has occurred or fixing the limit irrespective of the type of the place where this occurred. As explained below, the former is known as the "network system" and the latter, the "uniform system":

> As multimodalism has developed, carriers have adopted two approaches to the issuance of multimodal bills of lading. Historically, most ocean carriers have issued bills of lading that provide for liability of carriers based on a "network system" of applicable liability regimes. Under this scheme, the law applicable to each segment of the transportation …governs the liability of each connecting carrier. Also the rights of indemnity and contribution between carriers are governed similarly. Under these circumstances, each carrier limits its liability to the segment that it performs, and the applicable law is said to travel with the cargo[15] …………in some instances, in contrast to the network system of liabilities, multimodal bills of lading may provide that the issuing carrier assumes liability throughout the entire period of transportation.[16] [This is known as the uniform system].

3. The Transportation Laws of Ethiopia: An Overview

3.1 Sources of the laws

The first transportation laws of the country were enacted in 1960, in the Commercial and Maritime codes[17]. Accordingly, Book III, Titles I and II of the Commercial Code – Arts.561 - 603 deal with contracts of carriage by land and Arts. 604 - 653 deal with carriage by air. The Maritime Code, though totally devoted to the shipping business in general, deals with charter party agreements under Arts.126 – 179, contracts of carriage supported by a bill of lading, under Arts. 180 - 209 and carriage of passengers, under Arts.210 -228.

Carriages of goods and passengers on land and air, as indicated above, form part of the Commercial Code. Unlike the other areas of the Code, the drafters of the Code have not sufficiently indicated the sources of these provisions. What is indicated either by way

[15] This system is also known as the chameleon system, because the multimodal transport operator changes colour, as it were, each time the mode of transport by which the contract is performed changes. Clulow, Supra Note 10.

[16] Palmer and DeGuillio, Supra Note 7, pp. 327 -328.

[17] Negarit Gazeta – Extraordinary Issues No.3 of 1960,_Proclamation No.166 and 164 of 1960, respectively.

of sources or general contents of the titles is sketchy. Accordingly, the following can be gathered by way of source from the only material written in this regard:[18]

It appears that originally, the drafter - of the Commercial Code - had no intention of incorporating maritime law in the Code, for it is after the completion of other parts of the code that he expressed that "[his] task has been expressly extended to the maritime law". In this respect, and on the issue of whether the Maritime Code should be enacted as a separate code or form part of the Commercial Code, he opted for the former because of the "particularism" of the maritime law. With regard to the source, though the drafter did not expressly mention it, it seems that he favored the adoption of international conventions, particularly the one signed in Brussels in 1924, but with the necessary care to protect the country's interests[19]. On another occasion, the second drafter mentions that adopting solutions contained in international conventions is advantageous, and "this is the same idea behind the provisions of the Maritime Code…"[20]

With regard to carriage of goods and passengers by land, the second drafter, though not expressly, again indicates that the sources of this part of the law are: the French draft law prepared by the French Commission for the Reform of the Commercial Code, the Swiss Code of Obligations, the Italian Civil Code, the European conventions on carriage by railway- latest drafts (Berne, 1952) - and the Warsaw Convention on Carriage by Air[21].

As far as carriage by air is concerned, the second drafter has expressly mentioned that the source is, the Warsaw Convention of 1929 as revised by the Protocol of The Hague, 1955, which in his words, is reproduced word for word.[22]

3.2. Main features of the transportation laws of Ethiopia[23]

Though it is not the purpose of this article to deal with each feature of transportation law in general or any particular transport law in particular, an attempt will be made hereunder to shed light on the most important provisions of the Ethiopian law on, bases of liability, defense to liability and limitation of liability, for these are issues that have much relevance to the subject at hand. Moreover, these issues are most controversial in the area and more points of difference are manifested on these issues than the rest.

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[18] Winship, Peter, -editor and translator - *Background Documents of the Ethiopian Commercial Code of 1960*, HSIU, Faculty of Law, (1972).

[19] Ibid, pp. 5&8, Preliminary Report on the Preparation o the Commercial Code of Ethiopia, submitted to the Imperial Commission for the Codification of the Ethiopian Law, Jean Escarra, Paris, 18 January 1954.

[20] Ibid, p.84, Jauffret, March, 1958.

[21] Ibid, pp. 82 & 83.

[22] Id. P.84.

[23] Note – All the three forms of transportation cover the transport of passengers as well as goods. Given the scope of the article, however, transport of passengers is not dealt with in this article.

3.2.1. Bases of liability

As regards carriage by land, as noted above, the part of the Commercial Code that dealt with the area is now repealed and replaced by Proclamation No. 547/2007. According to Article 21 this proclamation, a carrier is liable for the total or partial loss of the goods and damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery. Moreover, according to Article 32 a carrier is liable for damage caused by his willful misconduct or that of his agents or servants or other persons whose services he makes use of. Similarly, according to Article 630 of the Commercial Code (herein after the CC) an air carrier is liable for the loss of or damage to goods due to an occurrence having taken place whilst such goods were carried by air.[24] Article 633 of the CC provides an air carrier is also liable for delay.

Though the Maritime Code does not contain an express provision to this effect, the different duties imposed on a carrier show all the same that such a carrier has the duty to exercise due diligence to: make the ship seaworthy, properly man, equip, and supply the ship; make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, before and at the beginning of the voyage; and properly and carefully load, handle stow, carry, keep, care for and discharge the goods carried(see Articles 138 and 196 of the Maritime Code). It thus, goes without saying that a carrier will be liable for loss or damage resulting from want of such a standard of diligence or care. Moreover, Art.180 (3) of the Maritime Code provides that "[provisions regarding…bill of lading] shall apply from the time when the goods are loaded to the time when they are discharged from the ship" and this suggests that the carrier is liable for damage or loss between these times.

3.2.2. Defenses to liability

In the case of carriage by land, a carrier is not liable for loss, damage or delay arising from: the wrongful act or neglect of the claimant, the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, inherent vice of the goods and force majeure (see Art.22, Proclamation No.547/2007).[25] As far as an air carrier is concerned, it will not be liable for loss or damage occasioned due to: irregular, inaccurate or incomplete statements [furnished] by the shipper. It will also avoid liability if proof of the fact that he or his agent has taken all measures necessary for averting the damage or those measures could not be taken, and the

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[24] According to Art. 631, the duration of liability includes, the time within which the goods are in the carrier's custody, whether at the airport or in the air craft or in any other place not being an airport where the air craft may have to land, but does not include carrying by land, sea or river taking place outside an airport.

[25] Note – There seems to be an error in translation here, for according to the authoritative Amharic text, the phrase "…a wrongful act or neglect of the carrier…." reads as "…by the fault of the consignor or consignee…." and it seems that the latter is correct.

existence of an inherent defect of the goods carried can be adduced (see Arts.617 (2) and 629(2), 634 and 641, respectively of the CC).

Compared to any other carrier, a sea carrier is given a wide range of defenses that can exempt it from liability for loss or damage. Accordingly, a sea carrier is exempted from liability for loss or damage resulting from: act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship; fire, unless caused by the actual fault or privity of the carrier; perils , dangers, and accidents of the sea or other navigable waters; act of god; act of public enemies; arrest or restraint of princes, rulers, or people, or seizure under legal process; quarantine restrictions; act or omission of the shipper or owner of the goods, his agent or representative; strikes or lockouts or stoppage or restraint of labour for whatever cause, whether partial or general; riots an civil commotion; saving or attempting to save life or property at sea; wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods; insufficiency of packing; insufficiency or inadequacy of marks; latent defects not discoverable by due diligence; and any other cause arising without the actual fault or privity of the carrier, or without the fault of or neglect of the agents or servants of the carrier- Art.197 of the Maritime Code.

3.2.3. Limitation of liability

Under Proclamation No.547/2007, the liability of the carrier by land in the case of loss or damage is limited to the value of the goods at the place at which they should be delivered [if this is known] and if this is not known, by reference to the value of goods of the same kind and quality. This value or liability cannot however exceed SDR 835 per package or other shipping unit or SDR 2.5 per kg, whichever is the higher[26]. According to Article 27 of the above proclamation, the same applies to goods whose nature and value have been declared and made an integral part of the contract albeit; the SDR limitation does not appear to apply here. Article 29 of the same proclamation shows that in the latter case a claimant can claim a higher compensation where the value of the goods or a special interest in delivery has been declared. It should be noted here that according to Article 32 willful misconduct of the carrier or its agents can take away the carrier's right to limit his liability under the above conditions.

As far as the air carrier's right to limit liability is concerned, in respect of goods, it cannot exceed Birr 40 per kg[27]. When the sender of the goods had, however, expressly specified that he has a special interest in their delivery and paid such surcharges as may be required, the carrier has to pay the agreed compensation unless he can show that

[26] It will be interesting to note that the repealed law, i.e. the Commercial Code, did not provide for a specific limitation of liability. This was rather left to the agreement of the parties with a caveat that it should not be so disproportionate to the value the goods carried as to make the carrier's liability negligible. See Art.594

[27] The current exchange rate of Birr to USD being 1:11, this limit is equivalent to 3.63 USD per kg.

such compensation exceeds the sender's actual interest – (see Arts.637(1 -3) of the Commercial Code). Article 635 of the Commercial Code provides that the court may reduce or waive the carrier's liability where the carrier can show that the damage was caused in whole or in part by the injured party himself.[28] The global statutory limitation of liability under the Maritime Code is, one thousand Ethiopian Dollars per package or basis of unit normally serving for the calculation of the freight(see Art.198 of the Maritime Code).[29]

By way of conclusion, it helps to note that at present, the rate of exchange of SDR to Birr – the Ethiopian currency – is 16.76, buying and 17.07, selling.[30] Given this, the limit of liability for surface transport, per Article 27 (2) of Proclamation No.547/2007 and taking the buying rate only, will be close to 13,994 and 41.9 Birr respectively. The per kilogram rate is a little bit above the limitation in case of air transport and the limitation under the Maritime Code is too low.

4. Main features of the Ethiopian Multimodal Transport Law

To begin with, Ethiopia had no multimodal transport law or a comprehensive law pertaining to multimodal transport of goods till 2007. The legal provisions of the Commercial and Maritime Codes that come close to this type of transportation are Arts. 600 [CC][31] –on carriage by land –652 and 653 [CC][32] on air transport – and Art.

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[28] Note – It is not clear whether this applies to carriage of goods or passengers. Moreover, the court's power to waive liability under such circumstances can be taken as a defense.

[29] For further details on package limitation, see Wada, Tsehai, Package Limitation under International Conventions and Maritime Code of Ethiopia: An Overview, Journal of Ethiopian Law, Vol. XXI, pp. 114-137. Though this article was unilaterally and arbitrarily mutilated right before it went to printing, it somehow gives a fair idea about package limitation and associated legal issues. Note also that this figure is currently, approximately 99 USD. According to the official and authoritative Amharic version o f the code, the limit of liability is 500 Birr, which is approximately 45 USD.

[30] Commercial Bank of Ethiopia, at www.combanketh.com, exchange rate on March 24, 2009.

[31] Art. 600 – Liability of successive carriers.

1- Deals with contract of carriage of persons.
2- In respect of goods or registered baggage, the sender may claim against the first carrier and the addressee may claim against the last carrier. The sender and addressee may in addition, claim against the carrier in charge of that part of the carrying during which the loss, whether total or partial, the damage or the delay occurred.
3- The carriers mentioned in sub-art. 2 shall be jointly and severally liable to the sender and addressee.

[32] Art. 652 – Liability of successive carriers.

1. In cases of carriage by air undertaken by successive carriers, the provisions of this Title shall apply to each carrier who carries passengers, baggage or goods and the carrier shall be deemed to be a party to the contract of carriage where such contract relates to that part of carrying to be effected under that carrier's responsibility.
2. Deals with carriage of passengers.
3. In respect of goods or registered baggage, the sender may claim against the first carrier and the addressee may claim against the last carrier. The sender and the addressee may

204[Maritime Code][33] on carriage by sea. Though, multimodal transport is simply the transportation of goods by at least two or more modes of transport, most of these articles do not provide for such combinations. The commonality between the articles is simply that goods can be carried by successive carriers but not necessarily by two modes of transport. Thus, the successive carriers can be identical modes or otherwise.

However, Art.653 of the Commercial Code stands different, for it specifically deals with "combined transport", which is the other name for multimodal transportation. The article reads as follows:

1. In cases of combined carriage effected partly by air and partly by other means of transport, the provisions of this Title shall apply in the carrying by air only.
2. The parties may make provisions on other means of transport in the provisions of this Title regarding carrying by air.

It should be noted here, that the above quoted article seems to follow the network formula and provides for the liability of the air carrier only and as regards loss or damage that occurs on other modes of transport these are left to the parties' agreement. By way of conclusion, it may be said that the articles cited above, do not cover the different issues that could be raised in multimodal transport. Even the closest article quoted above does not regulate issues such as basis, defenses and limits of liability. For all these reasons, enacting a new legislation is a timely solution to tackle legal issues that may arise in this ever increasing type of transport.

Bearing the above facts in mind, the Ministry of Justice has established a committee to revise the Commercial Code and the work is still in progress to date. This Committee had submitted a draft and collected comments in 2000 and one of the chapters dealt with transport law in general and "combined and successive carriage of goods" in particular, under Title 3, Art.603. It suffices to mention that the positions as well as the contents of the draft are completely different from the current multimodal transport law discussed below. The part of the draft which dealt with land carriage is also different from the recently enacted law on the subject[34].

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in addition claim against the carrier in charge of that part of the carrying during which the loss whether total or partial, the damage or the delay occurred.

4. The carriers mentioned in sub – art. (3) shall be jointly and severally liable to the sender and addressee. [Note that the two articles are verbatim copies of each other].

[33] Art. 204 – Through Bill of Lading

1. A person who issues a through bill of lading shall alone exercise the rights and incur the liabilities arising out of the various stages of transit until the completion of the carriage. He shall be responsible for the acts of the successive carriers whom he has appointed in his place.
2. Each carrier so appointed shall only be liable for the damage during the time that he was responsible for the goods.

[34] D.Ponsot, August 29, 2000, *Title 3 Combined and Successive Carriage of Goods.* Soft copy in file with the writer. Given the differences in the draft legislation of 2000 and the recently enacted law, it appears that there was no any concerted work between the drafters of the

The precursor to the enactment of the current multimodal transport law is presumed to be the agreement signed between the governments of Ethiopia and Djibouti on November 18, 2006. This agreement states ,*inter alia*, that one of the chief motives that necessitated the agreement is, the need to put in place an expeditious and unhindered traffic of cargo so as to avoid unnecessary delays in the movement of cargo in transit as well as congestions in the Port – of Djibouti; the chief objective is to establish a door to door cargo transit service by improving the performance of the Port of Djibouti, thus facilitating trade for the mutual benefit of the contracting parties; and that the parties have the obligation to establish and harmonize a strict regulatory framework as well as procedures for an effective implementation of the multimodal transport system.35 As mentioned in the agreement, it will enter into force when ratified by the respective governments according to their constitutional requirements36. Accordingly, the agreement entered into force on the Ethiopian side by the Ethio – Djibouti Multimodal Transport System Agreement Ratification Proclamation No.520/2007.37 As a follow up to this agreement Ethiopia enacted the Multimodal Transportation of Goods Proclamation No.548/2007 on September 4, 2007.

The new multimodal transport law is by and large a verbatim copy of the Multimodal Convention of 1980. It appears that the law was drafted by the Ministry of Transport and Communication and submitted to the legislature through the Council of Ministers. Though it is not yet known whether all stakeholders, such as the Chambers of Commerce have participated in the process, a document in file with the writer[38], (hereinafter the document), evinces that at least one stakeholder, i.e. the Ethiopian Shipping Lines, has participated in the process and in fact recorded its reservations.

The document details the necessity of having a new law that caters for the ever increasing volume of goods transported by ships and the inefficiency of the cargo handling system through unimodal transport system in which goods are unloaded at ports and left there for a long time. It also emphasizes the fact that the country being a

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Ministry of Justice and Transport and Communication. It is presumed that the future Commercial Code will not deal with transportation law.

[35] Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the Republic of Djibouti on the Implementation of the Multimodal Transport System. Incidentally this agreement also provides that the Government of Djibouti has pledged to allocate loading and unloading area for a cargo transported under a multimodal transport system and to use an electronic data exchange system in order to ensure an efficient communication- See Art. 5(7) of the Agreement.

[36] Art.9 (1) of the Agreement.

[37] The Proclamation was enacted on April 24, 2007.

38 The document is entitled as "An Explanation on the Draft Multimodal Transport Law" and written in Amharic. The following contents of the document are the writer's translation.

Note – the writer has made efforts to locate other materials pertaining to the subject matter but all these were in vain, due to lack of access and cooperation on the part of some individuals who are thought to be intimately involved in the drafting process.

land locked country is forced to incur unnecessary expenses by way of port dues and suggests that enacting a new multimodal transportation law will help solve these problems by enabling operators move cargoes on warehouse to warehouse or door to door basis as opposed to the port to port transportation.

The drafters of the proclamation also noted that the transport laws of the country are incompatible with those conventions that govern the respective modes of transport and that the country is not a party to any one of these conventions. They also reiterated that the existing transport laws should first be amended/ revised before enacting a multimodal transport law. The maritime law of the country that is modeled after the Hague Rules is a case in point as its revision has been shelved for decades. Despite these hurdles, the drafters recommended the enactment of the proclamation based on the UN Convention on Multimodal Transportation, 1980, and that necessary adjustments should be made on some of the Convention's provisions. It is also recommended that the maritime law will / shall be revised based on the Hamburg Rules and this Convention is taken as a model for the proclamation. Though it is not clear, how much it has helped in inspiring any of the proclamation's provisions, the document shows that the drafters have "attempted to look at the multimodal transport law of India".

As pointed out above, Ethiopian Shipping Lines has recorded its reservations on the draft law and the major points raised by the national carrier are *inter alia*: that the cargo interest of the country prevails over the carrier's interest and that the country supports the Hamburg Rules; most of the ships that the enterprise charters / leases have European origin as a result of which they are mainly governed by the Hague / Visby rules and that the enactment of the law will create a situation of conflict of laws; and that the enactment of a revised maritime law should precede any attempt to enact a multimodal transport law. It appears that the drafters hoped that the maritime law would be enacted based on the Hamburg Rules and that till such time done a multimodal transport law compatible with these rules had to be enacted and this is done.

The new proclamation contains 46 articles. Though a detailed discussion of every article is beyond the scope of this article, the following sections, attempt to shed light on the most important provisions only.

4.1. Definitions

The proclamation defines 15 terms and phrases. Some of the most important definitions are the following:

1. International multimodal transport – means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery. The operations of pick-up and delivery of goods carried out in the performance of a unimodal transport contract, as defined in such contract,

shall not be considered as multimodal transport. [Art. 2(1)]

To begin with, this provision as well as most other provisions of the proclamation are verbatim copies of the relevant parts of the United Nations Convention on International Multimodal Transport of Goods (Geneva, 24 May, 1980)[hereinafter referred to as the Convention]. Accordingly, this provision is a verbatim copy of Art.1 (1) of the Convention[39] except for the omission of the condition that "the places of taking in charge and delivery should be in different countries". As the proclamation is a national law that deals with persons within its jurisdiction, limiting the definition to such types of persons and the contracts they make is logical for the law cannot govern contracts made outside its jurisdiction or that have no tie with the country[40]. This being so, however, it is not clear why the term "*international*" is put as a qualifier. In the case of the convention mentioned above, the transport has to be form one country to another. However, it is not clear why the transport should also be *international* under the proclamation too. Whatever the case, it appears that local multimodal transport contracts are outside the purview of the proclamation, because the qualifier term demands that the transport contract should be *international* as opposed to local/domestic. Thus, the definition covers cargoes generated in the country and transported to foreign lands and cargoes imported into the country from foreign locations.

One last puzzling issue with regard to the *international* nature of the transaction is the omission of the term "international" from the last leg of the provision. The Convention provides that "…a unimodal transport contract….shall not be considered as an *internationa*l multimodal transport" [emphasis added] while the proclamation omits the term international, though the phrase defined is "*international* multimodal transport" but not "multimodal transport" in general. This inconsistency is seen in both versions, i.e. the Amharic and the English. It appears to be a slip of the pen than anything else, for nothing can explain the inconsistency. As a local law, the definition should have simply skipped the term "*international*" and made the elements of the definition

[39] Art.1 (1) of the Convention reads as follows: "*Internationa*l multimodal transport" means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal operator to a place designated for delivery situated in a different country. The operations of pick-up and delivery of goods carried out in the performance of a unimodal transport contract, as defined in such contract, shall not be considered as *international* multimodal transport. [Emphasis added].

[40] The parties that are normally involved in such types of contracts are: the multimodal transport operator, the carrier, the consignor and consignee. The jurisdiction clause of the proclamation indicates that the plaintiff can institute actions at the principal place of business or, in the absence thereof, the habitual residence of the defendant; the place where the contract is made, provided that the defendant has there a p lace of business, branch, or agency [agent?] through which the contract was made the place of taking charge or delivery, or any other place designated in the contract – Art. 41. Incidentally, this is a verbatim copy of Art.26 (1) of the convention. Tough, the provision provides for local jurisdiction, it also goes without saying that these places have to be in Ethiopia.

applicable to all types of contracts – international as well as local. Interestingly enough, one of the proclamations enacted on the same day as the Multimodal Transport of Goods Proclamation, i.e. Maritime Sector Administration Proclamation No. 549/2007, defines multimodal transport as "the carriage of goods by at least two different modes of transport, on the basis of multimodal transport contract , from a place at which the goods are taken in charge by the multimodal transport operator to another place designated for delivery, *situated in a different country*" – Art.2(9) – [emphasis added][41]. Given the fact that there is a strong presumption that both laws were drafted by the same group or executive organ, the difference in the elements of the articles intended to define the most important phrase, i.e. multimodal transport, cannot be justified on any ground. Whatever the case, the reason why local multimodal transport is left out from the purview of the law is not clear and it would have been preferable to include this field of business within the scope of the laws, for it is just a matter of time till the business takes root and demands legal cover.[42]

2. Multimodal transport operator [hereunder MTO]– means any person who on his own behalf or through another person acting on his behalf concludes a multimodal transport contract and who acts as a principal , not as an agent participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract- Art.2(2).

3. Multimodal transport contract [hereunder MTC] means a contract whereby an international multimodal transport operator undertakes, against payment of freight, to perform or to effect the performance of a multimodal transport - Art2 (3). The counterpart of this provision in the Convention reads as follows: "Multimodal transport contract means a contract whereby a multimodal transport operator undertakes, against payment of freight, to perform or to procure the performance of international multimodal transport" [Art.1(3)]. At a closer look, there are differences between the elements of the two provisions. According to the Convention, the contract has to be an international multimodal transport contract, while the operator is just an ordinary multimodal operator, but not necessarily an international multimodal operator. Under

[41] The phrase "multimodal transport" is used twice in the proclamation, once to indicate that one of the objectives of the Authority is to "seek ways and means for the promotion and development of multimodal transport …."Art. 5(3) and again to show that it has the power to "issue license to persons desiring to engage in multimodal transport business, renew such license and supervise their operation" –Art.6 (7).

[42] This writer is fully aware that the proclamation is primarily intended to solve the transport problems of the country and more particularly, that it is a land locked country as of 1991 and that it needs to move its cargoes as fast as possible. The port congestion at its main transit port Djibouti and the unnecessary port dues to be paid have necessitated the enactment of this law as well as the establishment of dry ports at hinterland locations. Though this is a wise and timely move, the writer's contention is that, the law should also have encompassed non - international/local multimodal transportations, which do not need to be transported in and out of the country as is the case in so many other coastal or land locked countries and this could have been made by deleting the term "international" from the definition.

the proclamation, however, the situation is vise versa, i.e. the contract is an ordinary contract while the operator has to be an international operator. Moreover, the term "procure" is omitted from the proclamation's definition and replaced by the phrase "to effect the performance of …" It is not clear whether it is a proof of creativity in legal drafting or slip of the pen again. Whatever the case and in the absence of any convincing reason for not copying the provisions of the convention as they are, it would have been better to copy them *in toto*, for this helps in the unification of laws, which is one of the fundamental rationales of such Conventions as the one under discussion. Moreover, the changes made in the proclamation can be potential grounds for future litigations.

4.Multimodal transport document[hereafter MTD] means a document which evidences a multimodal transport contract, the taking in charge of the goods by the multimodal transport operator, and an undertaking by him to deliver the goods in accordance with the terms of that contract - Art.2(4).

5. The term "goods" is defined as any property including live animals as well as containers, pallets, or similar articles of transport or packaging, if supplied by the consignor. This definition though a verbatim copy of Art.1 (7) of the Convention has added "live animals". Though, the probable rationale for such an addition is not known, it may be assumed that it is necessitated by the exclusion of live animals from the coverage of carriage of goods by sea under the Maritime Code[43].

The other terms defined in the proclamation are: shipper, consignee, person, delivery, endorsee, endorsement, Special Drawing Right, mode of transport and dangerous goods. Except for the terms "consignor and consignee" all other terms are not found in the Convention. Though many of these terms are known by those engaged in the field and some are taken from other laws, the following terms, however, attract one's attention:

- The term "consignor" found in the Convention is replaced by the term "shipper" in the definitional part of the proclamation. This term is not, however, used in the other operative parts of the proclamation in a consistent manner. Accordingly, in the English version of the law, and under Arts.3 (3), 5 (7), 8 (1) (f), 15(3), 28, 35 (twice), 37 (twice), and 43, the proclamation makes use of the term "consignor" instead of "shipper". The same inconsistency is observed in the official Amharic version too. Accordingly, the term is expressed in two ways and this are: a sender and one who delivers goods, when taken literally. In the absence of any convincing reason/s, it would have been

[43] Art. 180 (4) of the Maritime Code provides that [special provisions regarding contract of carriage supported by a bill of lading] shall not apply to the transport of live animals and goods as are being carried on deck under the contract of carriage. This writer does not see any problem in modifying the definition so as to include live animals.
Note – in addition to the above, the probable reason may also be the country's engagement in the export of live animals to Middle Eastern countries.

preferable to make a consistent use of one of the terms than what is seen at the present.

- "Taking charge" means that the goods have been handed over and accepted for carriage by the multimodal transport operator. This definition is so important in that multimodal transport documents are issued when the MTO takes charge and since such documents are negotiable, - as discussed below - banks can accept such documents for their transactions even if these are not shipped documents or put differently goods are not yet put on board a ship- as in the case of sea voyage.
- "Mode of transport" is defined as carriage of goods by road, air, rail, or sea. These being the currently available means of transport, it is mentioned here for the purpose of comprehensiveness and not out of any other concern.

4.2. Scope of application

The relevant article of the proclamation, i.e. Article 3, provides that its provisions apply to all multimodal transport contracts after conclusion of which an MTD is issued and their application is mandatory and a consignor has the right to choose between multimodal and unimodal transport.

4.3. Documentation

Part two of the Convention that deals with documentation is wholly reproduced in the proclamation with some modifications, but under a different title that reads as "Issue [*sic*] of Multimodal Transport Document". This part deals with, *inter alia*, the duty of the MTO to issue MTDs either in a negotiable or non negotiable form; the necessity of having the signature of the MTO in handwriting, printing in facsimile, stamping, in symbols, or any other mechanical or electronic means; the issuance of a non-negotiable MTD by making use of any mechanical and electronic means or other means preserving a record of the particulars; the duty of the MTO to issue a readable document containing the particulars so recorded; the negotiability of MTDs and that it is to be considered in the eyes of the law as a document of title; the different contents of an MTD and reservations that should be made on the document when the MTO suspects that the particulars offered by a consignor are suspect; and the liability of the MTO for intentional misstatement or omission. All these issues are similar to those legal conditions provided under different laws, such as the Commercial Code on commercial – (negotiable) instruments and the Maritime Code on negotiability of bills of lading. For this reason alone, no comment will be offered in this article regarding this part of the proclamation. Notwithstanding this remark, it seems appropriate to mention that the proclamation has created a new legal situation in the country and this is the non-applicability of the legal standards of a written document.

Regarding the legal standards of written contracts, the Civil Code provides the following:

Art. 1727 – Written form

1. Any contract required to be in writing shall be signed by all the parties bound by the contract[44].
2. It shall be of no effect unless it is attested by two witnesses.

Article 4 (4) of the proclamation has repealed the application of Article 1727(2) and this in effect means that an MTD will have all the necessary legal effects though it is not attested by any witness. It appears that the proliferation of legal issues in courts pertaining to the attestation of written contracts by witnesses has motivated the introduction of such an exception to the rule. The Cassation Bench of the Supreme Court has ruled on the issue maintaining that such requirements are not mandatory even to insurance contracts which are required by law to be made in writing[45]. Given the fact that transport contracts need speed to be entered into and performed, such a requirement serves no purpose other than frustrating the transaction. In this regard, the legal recognition of the non-applicability of attestation is a ground breaking legal phenomenon that needs to be emulated by other similar laws.

In addition to the above, the proclamation provides under Arts. 4(3) and 5 that signatures can be made by electronic means and that an MTD may be issued by making use of electronic means. The electronic means mentioned here *most probably* suggests the use of the internet for the conclusion of transport contracts –online business transaction. Though it cannot be certainly said that it is the intention of the legislature, if the above cited articles are meant to apply to such types of contracts, this is again a ground breaking legal phenomenon. It helps to note in this regard that the current trend is towards a paperless cargo movement as opposed to the traditional issuance and movement of papers between parties.

Though it is not yet a full fledged practice throughout the world, a recent practice shows that paperless cargo movement has the tendency to replace the traditional mechanism. Accordingly, an experimental data freight system in Sweden uses the following procedures:

> The basic information concerning the shipment is supplied by the shipper and fed into the carrier's computer at the port of loading when the cargo is received

[44] Note – though an MTD is a written contract in the legal sense, it is not required to be signed by both parties, but by the MTO only. See Arts. 4-13 of the proclamation. As per Arts. 4 and 12, the consignor submits particulars to be filled in an MTD and the MTO inserts such particulars in the document and issues an MTD. The former will be liable for inaccuracy.

[45] In the case Salini Nex Joint vs. Awash Insurance Company, Cassation File No. 23003, the Supreme Court of the Federal Democratic Ethiopia, had ruled that contracts for short periods of time including those required to be in writing are not required to be made in writing nor be attested by two witnesses.

> by him. The carrier will add supplementary information pertinent to himself, including the amount of freight due, 'clean bill' notation if appropriate or otherwise the relevant clausing. The computer will then print out a data freight receipt containing all the information fed into it, and this will be certified as a first printout and handed to the shipper. All the particulars in the computer will then be transferred to the carrier's second computer at the destination port, where, advance notice of the arrival of the cargo will be dispatched to the consignee together with a further copy of the data freight receipt. As the procedure is based on the waybill model, problems relating to the disposal of the goods during transit will not arise and consequently the consignee will only be required to identify himself in order to obtain delivery of the cargo.[46]

It is argued that such a mechanism affects the transferability of the document and that such documents will not be considered as documents of title to goods. These fears are however, mitigated by the fact that:

> …the procedure will provide adequate security for a commercial credit if the financing bank is identified as the consignee. In such a situation, the seller of the goods would obtain payment from the corresponding bank on shipment of the goods followed by presentation of the certified computer printout of the data freight receipt, provided that the latter is satisfied with the requirements imposed by the bank.[47]

The problem of transferability can also be solved by providing the shipper with 'a private key' to access such material and control the goods while they are in transit.[48] Given the level of technological advances achieved so far, the use of electronic data interchange (EDI) and the issuance of electronic bills of lading will naturally permeate the Ethiopian transport system in the near future[49]. Thus, regulating this inevitable

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[46] Wilson John, F, Supra Note 12, p.171.See also William J.Coffey, Multimodalism and the American Carrier, Tulane Law Review, Vol. 64, Nos.2 &3, December 1989, p.589. According to Coffey, "Electronic Data Interchanges (EDI) of transportation information have and will continue to be a substantial factor in multimodal trade. The bill of lading and similarly formatted documents, such as the dock receipt, will be prepared and transmitted among various parties to the transaction by EDI means. The applicable tariffs will, in the near future, filed and accessible by EDI, shippers can already access many carrier information bases through systems such as Sea-Track, made available by Sea-Land, to obtain real-time status reports on their shipments. Freight payments can be made by EDI means through systems such as the Sea-Pay system, greatly expediting release of goods. Similar systems using EDI have been implemented by the US Customs Service, again leading to more expeditious clearing of the goods".

[47] Ibid.

[48] Id. P.172. For details, see CMI Rules for Electronic Bills of Lading, which can be incorporated into MTCs when the parties so agree.

[49] As per Art5(7) of the agreement signed between Ethiopian and Djibouti, mentioned above at Note 35, the Government of Djibouti has pledged to use an electronic data exchange system in order to ensure an efficient communication. In the absence of a reciprocal pledge on the part of Ethiopia, this may not be taken as the only rationale behind the inclusion of the phrase "electronic means" in the proclamation. However, it may "cautiously" be argued that the

phenomenon is a timely issue not only with regard to multimodal transport, but also in all other forms of transport. By way of conclusion, though, as noted above, it is hard to conclude with certainty that the legislature had this in mind, it is also possible to argue that the use of 'electronic means' should include EDI and the issuance of electronic bills of lading.

4.4. Bases of liability

It should be noted from the outset that Articles 16 and 17 of the proclamation on basis of liability are verbatim copies of the relevant part of the Convention. According to paragraph 17 of the preamble of the Convention, the liability of the MTO is based on the principle of presumed fault or neglect. This principle is a direct replica of the United Nations Convention on the Carriage of Goods by Sea, 1978, otherwise known as the Hamburg Rules (see Article 5(1)). It is this principle that sets apart the Hamburg Rules from other similar international instruments, such as the Hague and Visby Rules as well as the source of disagreement among the conflicting interests of ship owning and cargo generating countries.[50]

Under the proclamation, an MTO is liable for loss or damage to goods as well as delay. The period of liability for the purpose of loss and damage, starts at the time when it takes the goods in its charge and ends upon their delivery to the consignee or other persons authorized or entitled to demand delivery - Arts.15 and 16. Delay, occurs when goods have not arrived at their destination, either on the expressly agreed date, or in the absence of such agreement, within the time which it would be reasonable to require of a diligent MTO, having regard to the circumstances of the case. Goods which have not arrived within 90 consecutive days following the date of delivery determined according to the aforementioned dates are treated as lost goods (see Article17 (2 and 3)).

In light of the above provisions, an MTO is absolutely responsible for loss or damage to goods unless it can invoke any one of the defenses to be discussed below. It should, however, be noted that a claimant for compensation arising out of loss, damage or delay has to give notice to the other party within a fixed time. Accordingly, as stipulated on Article 32, in cases of apparent loss or damage, a claimant has to give notice in writing not later than the working day after the day when the goods were handed over to it. According to Article 33 (1) [51]in cases of non apparent loss or damage notice should be given within seven consecutive days.[52] Article 33(2) provides that notice is not required when the state of the goods upon delivery has been subject of a joint survey or inspection by both parties. In the case of delay, the claimant has to

agreement is a possible source.

[50] For further details on the limit of liability under international conventions for carriage of goods by sea, see, Wada, Supra Note - 29.

[51] Note – failure to give notice creates a presumption that goods have been received well as described in the MTD – See, Arts. 32 and 33(1).

[52] According to Art.24 (2) of the convention, the duration is "six consecutive days".

give notice within 60 consecutive days, in the absence of which it will lose its right to claim any compensation (see Article 34).

If the claimant for loss or damage is the MTO, Article 35 provides that the claimant has to give notice within 90 consecutive days after the occurrence of such loss or damage or after the delivery of the goods, whichever is later, in the absence of which, it will be presumed that it has not sustained loss or damage due to the fault or neglect of the consignor, his servants or agents. It helps to note that as provided under Article 36 if the last date of notice falls on a day which is not a working day at the place of delivery, such period shall be extended to the next working day, and Article 37 provides that notice can be served on the consignor or the MTO or those working on their behalf. Moreover, an MTO is not liable for its acts or omissions only, but also for the acts and omissions of its servants or agents when they are acting within the scope of their employment contract or other persons whose services it makes use of when they are acting in the performance of the contract (see Article 16).[53]

4.5. Defenses

As noted above, the liability of the MTO is based on the principle of presumed fault or neglect. Accordingly, Article 17 (1)[54] provides that an MTO can be relieved of liability when he proves that he, his servants, or agents or any other person whose services he makes use of took all measures that could be required to avoid the occurrence and its consequences. This defense is general and what matters is the "reasonableness" of the measures taken to avert loss, damage, or delay which is subject to interpretation.[55]

The proclamation contains an article which does not form part of the Convention, which is its source, and it reads as follows:

Art.18 Exemption from liability

> The *carrier* shall however be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by instructions of the claimant given otherwise than as a result of a wrongful act or neglect on the part of the carrier, by inherent vice or [sic…of] the goods or through force majeure. [Emphasis added]

[53] Note – basis of liability discussed above, pertains to the liability of the MTO, but not that of the consignor or consignee. The latter's liability will be discussed under defenses available to an MTO.

[54] The Sub Article reads as follows: "The [MTO] shall be liable for loss resulting from loss of or damage to goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge as defined in Article 15(1) above, unless the [MTO] proves that he, his servants or agents or any other person referred to in Art.16 took all measures that could reasonably be required to avoid the occurrence and its consequences."

[55] Note – the proclamation's basis of defense is general, while that of the different transport laws is detailed and express.

This article[56] seems to be out of place for different reasons. First, the exemptions listed can be availed by of a "carrier" alone, but not necessarily by an MTO. As noted above, an MTO may not necessarily be a carrier. If at all it is a carrier, it may perform one leg of the transport only but not all. Second, the term "carrier" is general and denotes all modes of transport. Thus, given the fact that each mode of transport is governed by its own laws, and that the proclamation is mainly concerned with the rights and liabilities of MTOs but not carriers, providing a provision that is designed to a particular carrier – surface transport in this case – serves no purpose other than creating confusion. It is interesting to note here that the official Amharic version of the article is consistent with its English counterpart as a result of which, it cannot be said that the error is committed as a result of slip of the pen.

Second, one of the defenses expressly provided in the proclamation is "fault of a consignor" or a shipper, according to the proclamation's naming. Accordingly, Article 28 provides that an MTO is relieved from liability for loss caused by the fault or neglect of the shipper, his servants or agents acting within the scope of their employment. As has been noted above, Article 18 states that the wrongful act or neglect of a claimant or causes that emanate from its instructions can relieve an MTO from liability. Depending on circumstances, a shipper can also be a claimant. If this is so, relieving an MTO for identical reasons, but under two separate articles makes one of the articles redundant. This situation is created as a result of the insertion of Article 18, discussed above, which is not part of the Convention. For all these reasons, deleting[57] Article 18 *in toto* is the only rational way out to make the proclamation consistent and avoid redundancy.

In addition to the different grounds of exemption, Article 19 of the proclamation also provides that in cases of concurrent causes of loss, damage or delay some of which are not attributable to it, an MTO will be liable for that part or ratio of loss, damage or delay only. Moreover, Article 25 explains those agents, servants or other persons whose services an MTO makes use of can avail these defenses if an action is brought against them.

4.6. Limitation of liability

In any transport contract, a shipper is required to establish a *prima facie* case by showing receipt in good condition to a carrier or an MTO as the case may be, and delivery in bad condition, i.e. loss or damage – partial or total – or delay while receiving the cargo at the destination. As shown above, a carrier or an MTO can be exempted from liability on a number of grounds. If a carrier or an MTO, however, fails to prove these, then it should be made liable to the full extent of the loss incurred. In transport law, however, this is not so. Accordingly, carriers as well as an MTO are

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[56] Note – the provision is a verbatim cop of Art.22 of Proc. No.547/2007, on Carriage of Goods by Land, discussed above.
[57] This is to suggest that an amending legislation should be enacted.

entitled to limit their liabilities even when they cannot interpose a successful defense. The right of an MTO to limit its liability is discussed below.

As per Art.20(1) of the proclamation, the liability of an MTO shall not exceed SDR 835 per package[58] or other shipping unit or 2.5 per kilogram of the gross weight of the goods lost or damaged, whichever is higher.[59] With regard to loss resulting from delay, Article 21 provides that an MTO's liability is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the MTC.

Though the relevant article of the Convention, i.e. Article 18 (1), does not provide the prerequisite under which an MTO can lose its right to limit its liability, its parallel, Article 20 (1) of the proclamation provides that package limitation applies where the nature and value of the goods have not been declared by the consignor before such consignment have been taken in charge by the MTO. Though it is not a new invention as such, for a similar exception exists under Art.198 (3) of the Maritime Code of Ethiopia, its inclusion helps to preempt disputes that may arise in this regard and this is commendable.

The Convention provides that, "notwithstanding the [above], if the international multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterways, the liability of MTO shall be limited to an amount not exceeding 8.33 units of account [SDR] per kilogram of gross weight of the goods lost or damaged". This limitation is, however, omitted from the proclamation. Given the fact that the probable rationale behind the provision is that much of the world cargo is transported by sea, ships should benefit from the lower limitation of liability and when the carriage does not include a sea or waterways carriage, other carriers should be liable not to the same extent as the former but to another limit which is higher. This exception should have, been reflected in the proclamation. Whatever the reason, a consistent application of the convention's formulae would have been preferable, for they are not provided without reason.

It has been noted above that the limitation of liability of an MTO may take two forms.

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[58] As per Art.20 (2) of the proclamation, " where a container, pallet or similar article of transport is used to consolidate goods, the packages or other shipping units enumerated in the MTD as packed in such article of transport are deemed packages or ship ping units. Except as aforesaid, the goods in such article of transport are deemed one shipping unit .b. in cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the MTO, is considered as one separate shipping unit."

[59] This sub article a verbatim copy of Art.18 (1) of the Convention, except for a few changes in numbers. Article 18 (1) reads as follows: "When a multimodal transport operator is liable for loss of or damage to the goods [sic] his liability shall be limited to an amount not exceeding 920 units of account per package or other shipping unit or SDR 2.75 units of account per kilogram of the gross weight of the goods lost or damaged, whichever is the higher." It should be noted here that under the proclamation, the unit of account in the case of packages and weight are reduced by 85 and 0.25 units of account [SDR] respectively, for unknown reasons.

These are: the uniform and network systems. In principle, the Convention's as well as the proclamation's bases of liability are based on the uniform system. It should, however, be noted here that this formula applies only when the place of damage or loss is not known. If this is known, however, both the Convention and the proclamation follow a different formula. Accordingly, as per Article 20 (1) of the proclamation:

> When the loss or damage to the goods occurred during one particular stage of the multimodal transport, in respect of which an applicable law provides a higher limit of liability than the limit stipulated under sub article 1 of this article, then the limit of the MTO's liability for such loss or damage shall be determined in accordance with the provisions of the relevant law applicable in relation to the mode of transport during which the loss or damage occurred.

This provision is a verbatim copy of Article 19 of the Convention. As far as the application of the Convention is concerned, it is presumed that the second alternative formula is adopted to accommodate the solutions of other conventions or local laws that give better benefits to a shipper or consignee and there can be several conventions and laws in this regard. However, in the Ethiopian situation, there cannot be several transportation laws, for all transport laws in the Commercial and Maritime Codes are national laws, meaning regional states in Ethiopia cannot enact their own transport laws[60]. Third, as shown above, none of the separate transport laws of Ethiopian provide for a higher limit of liability than the proclamation[61]. Moreover it is shown above that the country is interested in formulating a uniform limitation of liability and this may be carried forward to air and sea transport. Thus assuming that the provision is meant to apply to local transport laws but not foreign transport, for the law cannot apply beyond the Ethiopian jurisdiction, it would have been preferable to delete this provision and apply a uniform formula instead.

Article 27 (1) and (2) of the proclamation provides that the MTO as well as its servants, or agents or other persons of whose services he makes use for the performance of the MTC are not entitled to limit their liabilities if it is proved that the loss, damage or delay in delivery resulted from their respective acts or omissions done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss or damage or delay would probably result. This, as usual is a verbatim copy of Article 21 of the Convention. Despite this fact, it is not clear why the phrase "Notwithstanding the provisions of [the above sub article]" in the Convention is changed into "without prejudice to the [above provisions]" in the proclamation. Given the importance of such preconditions in legal parlance, care should have been taken while changing such an important legal position. Whatever the case, the convention's position appears to be

[60] Art.55 (2) of The Constitution of the Federal Democratic Republic of Ethiopia provides that …the House of Peoples Representatives shall enact specific laws on the following matters: (c) Air, rail, water and sea transport.

[61] Note that the highest limit of liability is provided under Art.27 (2) of Proclamation No.547/2007, mentioned above and this is equivalent but not more than that provided under the proclamation under discussion. See Note No. 30, Supra.

more logical than that of the proclamation.[62]

According to Article 23 of the proclamation, limits of liability exceeding those provided [in the law] may be fixed in the MTD by agreement between the MTO and the consignor. This in short means that what is provided under the law is the minimum liability which cannot be reduced even by the agreement of the parties[63].

4.7. Miscellaneous[64]

4.7.1. General average – Article 38 of the proclamation is as usual a verbatim copy of Article 29 (1) of the Convention. The articles provide, in short, that adjustment in general average apply to MTCs. The proclamation has, however, omitted Sub-Article 2 of the Convention for unknown reason.[65] It appears that the omitted provision is important to determine the liability of a party to general average contribution and it is not without reason that it has been included in the convention. Thus, its omission is unwarranted.

4.7.2. Lien right of the MTO – Though the Convention is silent on this point, Article 39 of the proclamation provides that an MTO shall have a lien right on the goods and any documents relating thereto for all sums payable to it under the contract , including storage fees and cost of recovering these sums. The express acknowledgement of this right is commendable, for it preempts any dispute that may arise in this regard.

5. The Practice

The Ethiopian Shipping Lines, which is the national carrier, has been issuing different bills of lading. One of these is the "Bill of Lading for Combined and Port to Port Shipments". According to this bill of lading, "combined transport" arises when the place of receipt and/or place of delivery are indicated on the face hereof and "port to port" shipment when the carriage called for in this bill of lading is not combined transport - Clause 1- Definitions. Under Clause 5(b), entitled "Carrier's responsibility",

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[62] Note – The Amharic version also provides for the same precondition.

[63] It helps to note that the limitation of liability of a dry port operator is "equivalent to the price of the good and where the price of the good was not expressed in the document at the time of delivery, the extent of liability shall be on the basis of the weight of the good per kilogram SDR2.5"., Art.5 (1) of Proclamation No. 588/2008.

[64] The dangerous goods provisions of the proclamation –Arts.29-31- are not much different from their counterparts in the Maritime Code –Art. 200. Thus, they are not discussed here. Moreover, the limitation of actions provision –Art40- which provides that actions shall be barred within two years, is self explanatory so as not demand any further discussion.

[65] Art.29 (2) reads as follows: "With the exception of Art.25 [limitation of actions] the provisions of this Convention relating to the liability of the MTO for loss of or damage to the goods shall also determine whether the consignee may refuse contribution in general average and he liability of the MTO to indemnify the consignee in respect of any such contribution made or any salvage paid."

the bill provides the following:

> Combined transport - Where the carriage called for by this bill of lading is combined transport then, the responsibility of the carrier with respect to:
> I. The transportation to the port of loading named herein and/or from the port of discharge named herein will be as follows:
>
> a. Except in the United States of America and in Canada if by road, rail or air, in accordance with the provisions respectively of the CMR, Convention on the Contract for the International Carriage of Goods by Road, (dated 19th May, 1956), the CIM (International Agreement on Railway Transports (dated 7th February, 1970) or the Convention on the Unification of relating to International Carriage by Air, (dated 12th October, 1929) as amended by the Hague Protocol dated 28th September, 1955.
> b. In the United States of America and in Canada, to procure transportation by carriers (one or more) authorized by competent authority to engage in transportation between such points, and such transportation shall be subject to the in land carrier's contracts of carriage and tariffs. The Carrier guarantees the fulfillment of such inland carriers' obligations under their contracts and tariffs.
> c. During any transportation by sea or water to the port of loading named herein and/ or from the port of discharge named herein, the carrier shall be responsible in accordance with the provisions applicable under Sub – Clause (A) herein, notwithstanding the reference in such sub – clause to sea going vessel.
>
> II. The time from and during loading onto any seagoing vessel up to and during discharge from that vessel or from another sea going vessel into which the goods shall have been transshipped shall be in accordance with the provision s of Sub – Clause (A) hereof.
>
> As to services incident to through transportation, the carrier undertakes to procure such services as necessary. All such services will be subject to the usual contracts of persons providing the services. The carrier guarantees the fulfillment of the obligations of such persons under the pertinent contracts.
>
> When the goods have been damaged or lost during through transportation and it cannot be established in whose custody the goods were when the damage or loss occurred, the damage or loss shall be deemed to have occurred during the ocean voyage and the carrier shall be liable in accordance with the provisions under Sub – Clause (A) hereof.

To begin with, the bill's definition of combined transport is not consistent with the traditional one, i.e. transportation by at least two modes of transport, though the other conditions – transportation to and from the port of loading and discharge, respectively, under Clause 5(I) - indirectly indicate the same. The combined transport service

envisaged in the bill is simply divided into two, and these are services in the USA and Canada and other countries and Ethiopian services fall under the latter. What makes the provisions quite interesting is the fact that no Ethiopian law is mentioned as a source of liability. In light of this major omission it will be hard to conclude that the bill's provisions are designed with Ethiopian customers in mind. Furthermore, the bill makes use of the network formula to determine liability, meaning if the place of loss or damage is known then liability will be determined according to the pertinent law, and if not (it appears) the carrier's liability will be determined according to the maritime law – Clause II- last paragraph. Given the fact that the limit of liability under the Maritime Code is disproportionately lower than those provided under the other laws, this provision is undoubtedly contrary to the mandatory application of the law and thus, void.

It is expected that the Ethiopian Shipping Lines will be the major MTO in the future if not the only one, for it is not clear whether other business organizations or public enterprises can or cannot engage in the field[66]. With this in mind, the national carrier has to amend the provisions of its bills so that they should accord with the new law on multimodal transport, in the absence of which it will violate Art.44 of the proclamation which demands that "the MTD shall contain a statement that the multimodal transport is subject to the provisions of the proclamation…" as well as Art. 42, which provides that "any stipulation in the MTC or MTD, shall be null and void to the extent that it derogates from directly or indirectly , from the provisions of the proclamation". It is hoped that a new bill of lading with all the necessary guarantees provided in the new law, and that will best serve the interests of cargo owners will be issued soon.

Conclusion

The enactment of the proclamation on multimodal transport is undoubtedly a timely response to the ever increasing volume of goods transported in different modes of transport. Moreover the proclamations that have established the Dry Port Administration Enterprise and the one that has established its limit of liability are intended to facilitate this sector of business and their enactment is also timely. Given the fact that the revision of the Commercial Code has been delayed for more than a decade, enacting such legislation without waiting for the total revision of the Commercial Code is commendable.

The new multimodal transport law has introduced fundamental changes to the existing transportation laws of the country. One of such changes is the increase in the limitation of liability which was so disproportionate in light of the interest of a shipper or a consignee. Moreover, given the fact that the Ethiopian currency had been highly devalued in the course of time, the limitations were simply tokens as opposed to

[66]As per Art.6(7) of Proclamation No.549/2007, the Authority has the power to "issue to persons desiring to engage in multimodal transport business , renew such license and supervise their operation – Art.6(7). This is an indication that other businessmen can join the business at their option.

anything close to the real value of goods lost or damaged. Since the limitations are close to the international legal standards, shippers and consignees are no more disadvantaged by outdated laws and this is a victory to this group. Notwithstanding all these merits, however, the air and shipping laws of the country – enacted in 1960 – are not yet touched. This situation undoubtedly creates discrepancy between the transport laws of the country and their revision should be given utmost priority.

Since the multimodal transport law is a new law, this writer did not come across a single court case decided on any one of the issues discussed above. Despite this, courts and litigants will undoubtedly start to grapple with the different issues contained in multimodal transport contracts in the near future and this writer believes that this article - as a modest contribution to legal discourse - will help all those engaged in the field have a fair idea about the area of law. With this in mind, it will be helpful to rectify some of the "limitations" reflected in the proclamation, before they start to pose issues of interpretation and it is hoped that this will be so, for the benefit of all that may be affected.