



APPRAISAL OF THE ETHIOPIA LEGAL ENVIRONMENT IN LIGHT OF ITS COMPATIBILITY FOR INTRODUCTION OF ELECTRONIC BILL OF LADING

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Abstract:

Bill of lading is playing vital role in international commercial transaction. In terms of development it has been used in forms of paper until recent time. Due to the advent of technology and the inherent problems associated with being used in forms of paper results introduction of dematerialized bill of lading in the maritime industry. It is not abundantly used by the maritime community for reason mainly attributed to lack of uniform international law governing such dematerialized bill of lading. Ethiopia has tendency towards introduction of electronic bill of lading. However, there are concerns regarding compatibility of Ethiopian laws to accommodate digitalize bill of lading. This paper looks into legal concerns of introducing electronic bill of lading and the existing Ethiopia legal environment in light of its room for accommodating electronic bill of lading and it revealed that the law has gaps to address the legal concerns associated with EBL.

Keywords:

Electronic Bill of Lading, Digitalization, Signature, Evidence, Contract, Policy, Model Law, Maritime, Technology.

1. Introduction

Although there are technical and other factors which affect the development of electronic bill of lading across the maritime community, failure of the law to recognize and regulate takes the upper hand. However, after a decade of the technological innovation of electronic bill of lading, the issues of law are getting recognition. Accordingly, through the help of UNCITRAL United Nation Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, Model law on Electronic Commerce, Model on Electronic Signature, recently model law on Electronic Transferable Records are enacted. At the national level states has recognized and regulated electronic bill of lading. Besides, there are also contractual rules developed by private initiatives; in this regard CMI Rules and the Bolero Rule Book are mentionable.

In Ethiopia cargo can be transported from abroad through two main modalities of transportation that is either through carriage by air or carriage by sea. Besides, recently since 2012 the FDRE government has been realizing a multimodal transport system to achieve the plan on the modernization of the logistics sector primarily to address the long dwell times at the port and the demurrage costs in Djibouti (Tilahun L. et al. (2016). Accordingly, the multimodal is used for importation of containerized cargo and some vehicle; and the unimodal is used for import of other cargoes and exports of all types of cargoes. According to the 2016/17 Ethiopian Shipping Line sector annual report, the total number of imports is shared between multimodal and unimodal is 43% and 57%, respectively. The goods transported through ocean which is either bulk or containerized cargoes are characterized by consolidation or deconsolidation near the source or destination which in effect would cost Ethiopia by the fact that, it is landlocked country. Therefore, there is a need to have well facilitated foreign trade regime in order to use the opportunities at hand at the possible lower cost.

However, if there are no regulatory and institutional framework which accommodate this technology, it would be very difficult to have facilitated foreign trade regime. There are concerns regarding the compatibility of Ethiopian laws to accommodate digitalize bill of lading or not. Among others concern regarding the legal recognition or scope of recognition of electronic bill of lading in Ethiopia, the case under the multimodal transport of goods proclamation. If argued it is recognized, there are worries about its insufficiency owing to the absence of detailed regulation, the case under the Maritime Code, customs law and security law of Ethiopia, the case under the contract

law: whether our law leaves the possibility of issuing electronic bill of lading within the framework of contractual autonomy deserves critical analysis. Besides, concern regarding the main issues that a law dealing with electronic bill of lading need to incorporate, upon the introduction of electronic bill of lading needs thorough investigation. Accordingly, the paper explore legal concerns of introducing electronic bill of lading and the existing Ethiopia legal environment in light of its room for accommodating electronic bill of lading.

Methodologically, the author heavily relied on the analysis of the existing domestic and international legislations, soft laws and scholarly writing. The arrangement of this article is as follows. Section one of this article examine legal issues associated with electronic bill of lading introduction in the maritime industry. The second section is devoted for deep analysis of the existing Ethiopian legal and policy framework in light of its compatibility for accommodation of dematerialized bill of lading. In the final section finding and conclusion are drawn.

2. Legal Issues of Electronic Bill of Lading

Although there is a shift towards using other non-negotiable transport documents than the traditional bill of lading because of the drawbacks of the latter, the importance of bill of lading still win out as a best marine transport document for the sake of having the advantage of its negotiability (Farhang J., 2015).. However, this glorified and unique transport document can only be revitalized if it can be made competitive in this commercial world with other non-negotiable marine transport documents by having both its unique feature of being negotiable and its recognition as a document of title (Farhang J., 2015).

Today the international business community tends towards using this historical and unique marine transport document in the electronic format. However, the usage of electronic bill of lading is not as easy as the paper bill of lading; as its application face both technological and legal challenges. As per one study conducted by United Nations Conference on Trade and Development on identifying the obstacles that discourage the use of electronic transport documents, it is the legal uncertainty that takes the upper hand even above the costs of switching to an electronic environment and any associated confidentiality concerns (UNCTAD, 2003). Moreover, many legal scholars agreed that technology was not the real and the major challenge rather it is the orthodox belief of the legal community by sticking to the legal principle that a document of title can only be issued and transferred in paper format (Sy, I., 1999). In terms of technology, because of the innovation and flourishment of computer technology, the international business community developed electronic bill of lading which actually outdoes all features of paper bills of lading (W.H. van Boom, 1997).

As a matter of fact, unlike sales contract, contract of carriage is subject to detail regulation of law. Thus, national as well as the international legal instrument has a vital role in the regulation of the overall application of transport documents. However, in case of electronic transport document especially electronic bill of lading, there is uncertainty which challenges the application and validity of electronic bill of lading (Sy, I., 1999). Consequently, parties to the international business transaction would become suspicious of the application of electronic bill of lading if there is uncertainty as to the validity or effectiveness of an electronic bill of lading.

Knowing this United Nation as well as national states come up with two possible legislative approaches to enable the use of electronic transferable records generally and electronic bill of lading specifically. The first approach is to create a “purely electronic” regime on electronic bill of lading which has no paper-based counterpart. According to this approach, the empowering legislation shall have all the substantive rules concerning the rights, obligations and characteristics of the “purely electronic” electronic bill of lading (Zvonimir Š, 2016). This approach is called substantive approach. So far, this approach is employed by the Rotterdam Rules while defining electronic transport records.

The second approach is called functional equivalence approach. According to this approach, functional equivalence rules have to be set only for electronic functional equivalents of paper-based requirements (Zvonimir Š, 2016) The second approach does not intend to affect the substantive law relating to the paper-based electronic bill of lading rather it only addresses hurdles to the use of the electronic form that are there because of paper-based form requirements stated under the existing law. The functional approach excludes those transferable records which only exist in the electronic environment or which could develop in future exclusively as electronic records (Zvonimir Š, 2016). The functional approach is currently accepted and employed by majority of states which enacted electronic transaction laws. Besides, Model Laws, guidelines and convention enacted by international institutions have also followed the second approach with the exception of the Rotterdam Rules. The first approach is no more in use since

the actual tendency and practice at the global level is towards employing the functional approach. Legal issues regarding the regulation of electronic bill of lading mainly revolve around addressing the functional equivalents of paper-based requirement; among others, it includes permanent accessibility to the information, ability to preserve the original information, uniqueness, transferability, ability to identify the holder and the ability to authenticate the issuer (Zvonimir Š, 2016).

2.1. Writing (Document) and Signature Requirement

The substantive law regulating transport document may require that bill of lading should be made in a written document. The functional equivalent electronic transport document should in such cases fulfil the legal requirement of writing or document in order to make the record or the transaction valid and enforceable (Luis, 1999). When we come to the case of bill of lading, by mercantile custom it has been used in the international business transaction in the form of a written document (Luis, 1999; Krailek, 1999). However, we cannot find an express stipulation either under The Hague-Visby or the Hamburg Rules about a requirement that a bill of lading has to be in writing. Let's start with the Hamburg Rules, it states that bill of lading is a "document." Whether the term document includes an electronically generated and maintained bill of lading or not; is not clear. Besides, the term writing is defined by having illustrative list. Therefore, it is possible to argue that electronic bill of lading is recognized as document under the Hamburg convention.

According to The Hague-Visby Rules (1924), there is no definition of bill of lading. However, The Hague Visby Rules do not expressly specify that a bill of lading must be written on paper rather it only specifies that the carrier has the duty to issue a bill of lading when requested by the consignor. What does to mean by issue? Is that to refer writing and document? It is not cleared. As a result, state courts tried to interpret the word like writing, document issue in different ways while the question of functional equivalence raised. Some state courts interpreted it in an orthodox way whereas others interpreted it by employing a purposive approach to have media neutral application of those instruments (Boom, 1997). Therefore, the fact that there are such difficulties while applying electronic bill of lading, the law has to have a say for the functional equivalent application of electronic bill of lading.

The other legal issue that needs a solution is the reliability and validity of an electronic signature. Signature is mostly regarded as the very important requirement for the authentication of every document used in business as well as government activities (Boom, 1997). It is practically known that a document which holds rights and obligation to be accepted in the court of law must be authenticated by the parties and mostly it is done by having the signature of the parties (Samantha P, 2002). In this regard Johnson C. (1992) while appreciating the importance of signature stated that signature has four main functions: -

- (1) To identify a piece as having originated from a particular person, bearing in mind that no two signatures are the same.
- (2) To show the agreement of the person signing to the contents of the document being signed.
- (3) To show that the person signing realizes that the document is formal and that he intends to be bound by it.
- (4) To show that the document is an original.

This shows that how much signature is the most important legal requirement for the admission and validity of a given document. International business transactions require the transfer of documents with the shipment as proof of the quantity and quality of the shipment and hence, authentication is given priority. It is seldom to find laws of a bill of lading which provided signature requirement as validity requirement for bill of lading (Johnson C, 1992). However, by mercantile customary usage the requirement of signature is required as validity requirement for bill of lading (Johnson C, 1992). The mercantile practice tells us that the signature might not always be made in hand-written, there are bill of lading signed either by a facsimile or rubber stamp (Johnson C, 1992). This shows that the mercantile practice is open for accommodating any method of signature (Johnson C, 1992). Before the coming of electronic data interchange and electronic signature, there was no actual problem regarding the means of signature employed by the parties.

In the Hague-Visby Rules which in one-way or other way influenced most national states law regulating bill of lading, there is no any provision which requires that bill of lading has to be signed by the parties. However, article 14(2) of Hamburg Rules (1978) provide that a bill of lading has to be signed by a person having the authority to do so. Besides it also stated that "the signature on the bill of lading may be in handwriting, printed in facsimile, perforated,

stamped, in symbols, or made by any other mechanical or electronic means if not inconsistent with the law of the country where the bill of lading is issued.” However, by the fact that most national laws are crafted in light of The Hague –Visby rules, it is seldom to have such provisions under national laws. The business community wants to become certain as to whether the courts accept an electronic form of authentication as a signature or not. This has to be done through the instrument of law by legislating the functional equivalent of in hand signature.

2.2. Uniqueness and Guaranty of Singularity

The very function of transferable documents is that they embody rights which represents the actual rights and obligations of the transaction. Paper-based transferable documents due to their material nature are characterized by uniqueness (Zvonimir Š, 2016). Here, a paper bill of lading required to be in a single and original unique document that represents the rights embodied in such transferable paper; which in turn guarantees the singularity of these rights and liabilities (Zvonimir Š, 2016) Any negotiation or assignment of such rights by the holder requires the physical transfer of the singular and original bill of lading (Zvonimir Š, 2016). Therefore, in case of a paper bill of lading, its singularity and uniqueness can be kept by having and transferring the original document as between all the parties which are participating in the transaction.

Coming to the case of electronic bill of lading, it requires more strict legal and technical requirement to guarantee uniqueness or singularity of the document as an electronic record can be copied in a way that generates a duplicate record identical to and indistinguishable from the first one (Zvonimir Š, 2016). As per the report of UNCITRAL working group (2012) on electronic commerce, “if a person is to receive possessory title of a transferable instrument or a document of title by receiving it as an electronic message, the addressee will need to be satisfied that no identical message could have been sent to any other person by any preceding party in the chain...” In terms of technology, today it is possible to guarantee the uniqueness and singularity of a given electronic transferable record by employing two means (Koji T, 2016).

The first one is by using a central registry administered by a trusted intermediary. Nevertheless, to make transactions on central registry system, all parties of the given transaction must be registered members. Accordingly, when a non-member later on, becomes part of the transaction an electronic bill of lading needs to be replaced by a paper bill of lading (Koji T, 2016). Later on, thanks to the invention of block chain technology, it is possible to guarantee the uniqueness or singularity of electronic transferable record by simple circulation of the token in an open and decentralized platform (Koji T, 2016).. In case of block chain technology, the transaction of electronic bill of lading can be taken place peer-to-peer on an open platform where no prior subscription to membership is required (Koji T, 2016). This very characteristics of the token system can warrant worldwide reach of the participants by the fact the application of bill of lading involves the participation of enterprises from many business parties like trader themselves, banks, carriers, freight forwarders, government bodies(Koji T, 2016). Therefore, in terms of technology now it is possible to use either the registry or token system.

However, both system would not work unless it is given sufficient support from the legal infrastructure to keep the singularity or uniqueness of electronic bill of lading. Therefore, there should be a means to prevent unauthorized replication of an electronic transferable bill of lading by the electronic system and it is normal to be done by providing legal requirements though it may also be possible by providing technical requirements.

Besides, the paper bill of lading shall be presented or retained in its original form. Here, there should be legal requirements which allows electronic documents to be presented or retained in their original form.

2.3. Physical Possession and Transfer of Rights by Delivery

Transfer of a right and its performance embodied in a paper-based negotiable document can be achieved with the transfer of the actual or constructive possession over that document (UNCITRAL, 2012). . Any right to claim the performance cannot be detached from the physical paper. Accordingly, the person who physically owns the document is supposed to be the person who is titled to claim the right. Thus, mere physical submission of a document is a formal requirement for acquiring the right to claim incorporated in the document (Zvonimir Š, 2016). However, in case of electronic bill of lading, the concept of actual or constructive possession does not work as there is no actual document to be transferred through this method. Therefore, there should be a means to have the possession of the right embodied on the electronic bill of lading. Physical possession is substituted by control in a case of electronic bill of lading. Generally, the system to transfer the rights and performance of electronic bill of

lading to another person is called control (Zvonimir Š, 2016). Hence, the transfer of electronic document generally and electronic bill of lading particularly can be done with the transfer of control over the electronic transferable record. Here, the person with control of the electronic bill of lading is considered the holder capable of enforcing the electronic bill of lading (UNCITRAL, 2011). Thus, if control of an electronic bill of lading is used as a substitute for physical possession of paper-based document, transfer of control serves as the substitute for delivery of an electronic bill of lading as delivery and subsequent endorsement used as transfer of a paper-based document (UNCITRAL, 2011).

Control and transfer rights of an electronic record can be made by either the registry system or token system (UNCITRAL, 2012). In case of the registry system, as the identity of the owner of the electronic bill of lading is found in a separate independent registry system, control is to be made on the registry system. Here, what is required is to make the integrity of the registry system (UNCITRAL, 2011). In case of token system by the fact that the identity of the holder of electronic bill of lading is found in the electronic bill of lading itself may not be as such problematic. Besides, any changes in the ownership of the rights can be known by alterations made directly to the electronic record (UNCITRAL, 2012). Thus, to maintain the integrity, there should be control over the electronic record itself and the process for transfers of the bill. It is by the instrument of the law that the use of electronic bill of lading through control over that record can be enabled.

2.4. Identification, Authorization and Authentication of Holder and Issuer

Identification and authentication of issuer and holder have double fold benefits (UNCITRAL, 2012). It allows the exercise of control and verifies the validity of the chain of transfers of the electronic transferable record (bill of lading) (UNCITRAL, 2011). The identity of the issuer who signs the original electronic bill of lading and of the transferor who endorses the electronic bill of lading to transfer it to another party is required to have a valid electronic signature (UNCITRAL, 2011). Identification of the holder of electronic bill of lading is very important to know the creditor and the beneficiary of the bill of lading. As a matter of fact, the identity of the holder may not be known from the electronic record; as there is a possibility to be changed from time to time.

In case of paper bill of lading, the person in possession of the unique negotiable bill of lading is presumed to be the holder. However, in case of electronic bill of lading, as the physical possession is to be substituted by control of electronic bill of lading, the law has to come up with a mechanism to identify the person who is going to be considered as the holder of the bill of lading at any time.

2.5. Evidential Value of Electronic Bill of Lading

As stated before, bill of lading has a function of being an evidence for receipt of goods and contract of carriage. As a receipt, the paper bill of lading evidences the quantity, condition (quality) and leading marks of the goods (Samantha P, 2002). As evidence of a contract of carriage, the paper bill of lading evidences the existence of the contract between the carrier and shipper. This shows that how much the evidential value of bill of lading has to be given emphasis; as two of its basic functions is about evidence and evidence.

Electronic bill of lading is equally capable of describing the goods and the contracts in the same way. In case of a paper bill of lading, the paper itself can be brought before a court of law as an evidence for receipt and contract of carriage. However, when we come to the case of electronic bill of lading, there is uncertainty as to whether it is admissible before the court of law or not. Most procedural rules dealing with the admissibility of evidence are crafted by taking the admissibility of paper-based documentation into consideration (Emanuel L, 2002).

However, though those laws are crafted by taking into consideration such paper documents, theoretically both under the common law and civil law legal system, there is a possibility for the admission of electronic bill of lading as evidence before a court of law (Emanuel L, 2002). Under the common law legal system, both documents and computer records are grouped as hearsay evidence (Samantha P, 2002). Hence, an electronic bill of lading could satisfy the best evidence rule of common law legal system and could be accepted as evidence as far as there is no available evidence. In case of the civil law legal system, there is a principle that all material evidence can be admissible to establish the material truth (Emanuel L, 2002). But, it does not mean that electronic records are always admissible before a court of law under every legal system as there is the possibility to prohibit such admission. Today, in most jurisdictions; as they are aware of the influence of technology in a day to day business transaction; electronic records are recognized as evidence.

2.6. Issues Related to Amendment of Electronic Bill of lading

Once an electronic bill of lading is issued, later on, that electronic record may be subject to amendment or correction. This may be done for different reasons among others transfer, correction, and subrogation, succession, splitting and combining of the record (UNCITRAL, 2012). For different reasons errors may occur on a given electronic bill of lading while it is issued or later on. To mention, the information provided by the requesting party may be different from what is actually recorded under the electronic bill of lading, if there is an issuance of electronic records without a request, if there is omission of details to be recorded and incorrect early termination of the electronic record (UNCITRAL, 2012). Besides, electronic bill of lading may be split or combined for different reasons; for instance, a given electronic bill of lading may be split for partial performance. These all issues have to address through contractual or legislative actions.

2.7. Formation of Contract between the Endorsee and the Carrier

Bill of lading is an evidence for the contract of carriage between the carrier and the shipper; not a contract itself. Therefore, there may not be a problem when the dematerialization issues come, as the contract between the carrier and the shipper is to be governed by a prior written or oral contract not the bill of lading. However, regarding the relationship between the carrier and third-party endorsee, it is not merely evidence of contract carriage rather it is a contract itself (Emanuel L, 2002). Here the prior contract between the shipper and carrier would not have an effect on the relationship between third parties (banks, buyers or other endorsees) and the carrier (Emanuel L, 2002). Rather, the terms of a bill of lading will govern the overall relationships as between those endorsees and contracting carrier; thus by default, it is a contract of carriage.

In case of paper bill of lading, the process of formation of contract can be conducted as any documentary contract. However, when the bill of lading is dematerialized, there are legal concerns that need to be addressed. The first issue to be addressed is whether a contract can be validly concluded between parties using electronic data and interchange method or not; mostly by the general obligation law. Secondly, the when and where about of formation of a contract between the carrier and third-party endorsee have to be addressed (Samantha P, 2002).

2.8 End of Life Cycle of Electronic Bill of Lading

The life cycle of electronic bill of lading may end up for different reasons. The obvious reason is the performance of the obligation. Under both the registry as well as the token system, end of life cycle of electronic bill of lading through performance needs to be regulated (UNCITRAL, 2012). Like performance, refusal to perform and partial performance of the rights and obligation embodied in the bill needs careful regulation.

Besides, there are circumstances which necessitate replacement or conversion of electronic bill of lading to paper bill of lading or the vice versa. It could not be done arbitrarily rather there should be contractual or legislative mechanisms to do so. Moreover, once the rights and obligations under the bill are discharged, electronic bill of lading needs to be terminated to avoid its further circulation and possible manifold requests of performance (UNCITRAL, 2012). For instance, termination of electronic bill of lading in a registry-based system takes place with recording of the full performance of the obligation on that bill.

2.9. Legal Issues Relating to Third Party Operator System

Unlike the token system in case of registry-based systems, third-party registry operators are required. Thus, legislation governing electronic bill of lading has to have explicit provisions on the regulation of those third-party operators (UNCITRAL, 2012). The regulation can be at entry, during operation as well as at existing. At entry stage, the law has to state the minimum requirements to be fulfilled to apply for operating registry system. Requirements like capital, the form of incorporation and information on technological, financial, human and other resources to be employed has to regulate (Emanuel L. (2002)). At the operation stage, there may erroneous communication, fraud, system breakdown or other technical problems. Determination of liability for such failures has to be addressed. Besides, the liabilities of users for erroneous communication has also be addressed. Furthermore, dispute settlement mechanisms have to be established.

3. Analysis of the Existing Ethiopian Legal Environment in Light of Its Compatibility for Electronic Bill of Lading.

Introduction

Ethiopia has laws governing contract of carriage supported by the bill of lading since 1960. However, the recent advent of information communication technology in the international commercial transaction has brought some changes on the documentation process of foreign trade generally and maritime transport sector specifically. As a result, the paperless international business transaction is developing in the maritime sector. The very important case is introduction of electronic transport document like an electronic bill of lading as a substitute for paper transport documents. Accordingly, under this part, the paper analyzes whether the existing legal environment of Ethiopia is compatible in accommodating introduction of electronic bill of lading or not.

3.1. Policy

As per the study conducted by UNCTAD (2012) on the economic, social and legal implications of electronic commerce and electronic international transport services for developing countries, there are policy questions to be addressed by national governments. The study *inter alia* raised the commitment of governments in giving due consideration to adapting national laws and regulations to foster electronic commerce and paperless international trade as a policy question. This study emphasized on the role of developing countries government through policy instrument for enhancing the competitiveness of developing countries in the international paperless trade. In particular, the expert group found out that a policy to reform customs procedures and application of information technology is a timely question that needs an imminent answer. Accordingly, states crafted transport policy, foreign trade policy, logistics strategy in light of the international technological development to alleviate the grounded problems of foreign trade.

When we come to the case of Ethiopia, recently it has drafted both national logistics strategy and transport policy at the national level. As per the draft national transport policy of Ethiopia, inadequate institutional arrangements; lack of proper laws, regulations and procedures which are consistent and compatible to create a conducive climate for the growth of the transport sector are identified as the major challenge of the general transport sector. Besides, the phenomenal changes in transport technology, ICT, integrated logistics and supply chain management is identified as to one of the triggering factors which necessitates having a policy in the transportation sector.

For addressing such challenges, the government is recommended to encourage introduction of appropriate transport technology and strengthen the application of ICT and database development. Besides, the government is also recommended to review, update and consolidate the legal and institutional framework by taking technological developments in the sector into consideration (Draft National Transport policy, 2012). Moreover, encouraging acquirement of new modern and appropriate technology and techniques by setting standards and enforcement mechanism through regulation; as a policy direction.

For the maritime transport and transit sector; the draft policy identified high transport costs and delays on foreign trade in the logistic chain and lack of updated legislation of maritime law in light with modern technological developments (Draft National Transport policy, 2012). As a solution, it is recommended that the government should have to ensure cost-effective and efficient transit and logistics operation, update, adapt and disseminate maritime laws, international convention and to introduce the effective usage of information communication technology in the sector.

Although both the national transport policy and national strategy are at the draft stage, it shows the government commitments towards transforming the existing legal framework on the maritime and transit sector to accommodate the information communication technology development in the sector. Thus, policy wise there is a clear tendency towards employing electronic data interchange in the documentation of foreign trade documents which includes bill of lading.

3.2. The 1960 Maritime Code

Ethiopia is not a party to any one of the international instruments governing carriage by sea. Accordingly, in Ethiopia, the major law governing carriage by sea as a whole and bill of lading in particular is the 1960 maritime code. Although, it is not clearly known as to the material source of the code; as per Tsehail W. (2006), the then

conventions and commercial practice governing maritime affairs are regarded as the possible source of the code. It was the International Convention for the Unification of Certain Rules Relating to Bills of Lading [The Hague Rules] that influenced almost all of the national law governing contract of carriage supported by the bill of lading and enacted before Hamburg Rules.

Accordingly, as the Ethiopia maritime code is enacted in 1960 in which the only governing and widely applicable rules on this area is The Hague Rules, it is logical to conclude those provisions of the code governing contract of carriage supported by bill of lading are influenced by the later one. Besides, it is also found that many provisions of the Code are very similar to that of The Hague Rules and other national legislation adopting the Rules.

Let's examine the specific part of the code governing contract of carriage as to whether it is possible to issue an electronic bill of lading or not. Under the Ethiopia maritime code (1960), there is no specific provision which expressly defines the term bill of lading rather only contract of carriage is defined. The law defines contract of carriage as "a contract of carriage covered by a bill of lading or any similar document of title in so far as such documents relate to the carriage of goods by sea." According to this definition, there is no indication as to where the bill of lading is only in paper format or not; rather it only emphasizes on the nature of the document that is being a document of title.

Should the phrase "any similar document of title" be interpreted to include an electronic bill of lading? A look at the literal interpretation of the phrase, we can argue in favor of its inclusiveness. What does the phrase ... "such documents" refer to? Is that a document required or referring documents of title in plural form? It is not referring a document requirement rather simply it is referring any documents of title. However, it would become illogical to conclude that it was the intention of the then legislature to recognize electronic bill of lading as the possible negotiable document which covers a contract of carriage; as this law was enacted while there was no practical knowledge about none of these technological possibilities.

Besides, under the special part governing contract of carriage supported by bill of lading, though there is no definition of what bill of lading is, it addresses how bill of lading is to be issued. Accordingly, as per article 181 of the maritime code, "[t]he carrier or his representative shall, after receiving the goods, issue to the shipper a bill of lading." "[Emphasis added]". Here, the carrier is required to issue bill of lading after receiving the goods. It does not expressly specify that a bill of lading must be written on paper rather it only requires the carrier to issue the bill. The same approach is adopted under The Hague Rules. Therefore, as far as there is no specific requirement to make it in paper format, still it is difficult to conclude that electronic bill of lading is excluded from the ambit of article 181 of the code. However, it would not be the intention of the legislature to recognize electronic counterpart of the paper bill of lading as the time in which paper is the only recognized mode of issuing such types of document. Moreover, the law also provides that "[a] bill of lading shall draw up in two originals, of which one shall be delivered to the shipper and the other retained by the carrier." Unless it is issued in paper format, there would not be two originals that can be delivered and retained at the same time. Therefore, for this author, as far as electronic medium of communication was not known while the maritime code of Ethiopia was enacted and there is the requirement of two originals paper bill of lading, it is sound to conclude that electronic bill of lading is recognized under the maritime code of Ethiopia.

Coming to the signature issue, as per the Ethiopian maritime code (1960), "[t]he bills of lading shall be dated and signed by the carrier or his representative." It is different from the Hague Rules in this regard; as there is no signature requirement under the latter. The law states that bill of lading has to be signed; however, it is silent as to the mode of signature. The signature may be in a mechanical or electronic means. As the maritime code is silent on the mode of signature, it is logical to argue that, it is media neutral. However, still it would be difficult to conclude that it was the intention of the legislature to recognize electronic signature at the time in which the concept of digitalization was not known.

To conclude, though the maritime code does not clearly stipulate both document and signature requirement for issuance of bill of lading; it would not be the intention of the legislature to include the electronic counterpart of paper bill of lading as a transport document while enacting the code.

3.3. Multimodal Transport of Goods Proclamation

Multimodal transport document is one types of bill of lading. In Ethiopia multimodal bill of lading is regulated under the separate law. Before the enactment of the Multimodal Transportation of Goods Proclamation, multimodal bill of lading is not properly regulated. The imminent driving force for the enactment of the proclamation was the Ethio –

Djibouti Multimodal Transport System Agreement concluded in 2006. As a result, in 2007 the government enacted multimodal transport of goods proclamation.

Let's examine whether electronic bill of lading has a place under this proclamation. Under the Multimodal Transport of Goods Proclamation (2007), multimodal transport document (bill of lading) is defined as "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." Multimodal transport document (bill of lading) is defined as a document. Does it mean only paper bill of lading? The literal interpretation of the word document is to refer paper multimodal bill of lading.

However, article 4 of the proclamation which deals about the issuance of multimodal transport bill of lading provides that "[t]he signatures on the multimodal transport document may be in handwriting, printed in facsimile, stamped, in symbol or made by any other mechanical or electronic means." "[Emphasis added]". It is recognized that the signature on the multimodal transport document can be made by electronic means. Does electronic signature presuppose electronic record? May not be, it is not sufficient to say that electronic multimodal bill of lading is recognized under the proclamation.

But, when we look at the subsequent two provisions; it raised doubt as to the recognition of electronic multimodal bill of lading proper. Let's analyze each of them; article 5 of the proclamation which deals about non-negotiable multimodal transport document states that "a non-negotiable multimodal transport document may be issued by making use of any mechanical and electronic means or other means preserving a record of the particulars...." This provision adopting electronic means of recording recognized the use of the information technology for the issuance of non-negotiable multimodal transport bill of lading. Non-negotiable multimodal transport document is a transport document which only performs the function of being an evidence of multimodal transport contract and receipt of goods by the operator. In this case, the originality of this document may not be required while delivery of the goods is performed; mere identification of the consignee by any means is sufficient. Thus, it can be recorded electronically and transferred to the consignee.

Let's come to the case of article 6; which address issues of negotiable multimodal transport document. Unlike the preceding provision, it is silent as to whether the document can be in electronic record or not. Is that intentional omission of the legislature? Besides, there are terms which indicate that negotiable multimodal transport document is to be issued only in paper format. For instance, the phrase more than one original under the English version presupposes paper bill of lading as there is no the concept of copies and more than one original in case of electronic bill of lading. For this author, the above phrases and the fact that article six is silent as to whether electronic counterpart is possible or not unlike the preceding provision shows that the legislature only intended to have paper negotiable multimodal transport bill of lading, unlike the non-negotiable one.

Nevertheless, as far as an electronic signature is recognized under article 4 of the proclamation which governs all multimodal transport documents, still it is possible to argue that electronic negotiable multimodal transport bill of lading is recognized. Despite the law makes difference on digitalization of negotiable and non-negotiable multimodal bill of lading, it is unhidden fact that unlike the maritime code, this proclamation gave clear legal recognition for electronic multimodal bill of lading.

The next issue is as to whether the provisions are sufficient enough to address legal issues of electronic bill of lading. As discussed in the preceding, there are many legal issues that need attention upon recognition of electronic bill of lading. Under this proclamation, nothing is stated more than indicating that the multimodal transport document and signature may be issued and signed in electronic form. It does not address how the originality, singularity and uniqueness of electronic bill of lading are to be guaranteed. Besides, it does not also address how the requirement of physical possession and transfer of rights by delivery is to be performed when the multimodal transport document is in electronic form. Moreover, issue like how electronic multimodal bill of lading can be amended and corrected is not addressed. Furthermore, it does not also address legal issues regarding the conversion of electronic bill of lading to a paper bill of lading and vice versa, issues related to end of life cycle of electronic bill of lading, liability about erroneous communication and other issues that need the attention of the law.

3.4. The General Contract Law of Ethiopia

As stated before, the relationship between third-party endorsee and carrier is governed by the bill of lading itself. Here, unlike the relationship between the shipper and the carrier; bill of lading is not a mere evidence rather it is also a contract of carriage. It is recognized under the Ethiopia maritime code governing bill of lading. The law stated that the terms of a contract of carriage between the carrier and shipper can be brought against third-party holder of a bill of lading if and only if the third-party holder knew of terms of the contract of carriage (Maritime code of Empire of Ethiopia, 1960). This provision impliedly tell us that the relationship between third party holder and carrier is only subject to terms of the bill of lading issued by the carrier.

Thus, in effect, the bill of lading is not only an evidence of contract of carriage as between the carrier and shipper but also a contract itself for the relationship between the carrier and third-party holder. Therefore, in a case of electronic bill of lading, what is to be addressed by the law is not only limited to its recognition as transport document rather issues related to electronic formation of contract has to be taken in to consideration; as it can be a contract itself beyond being an evidence for contract of carriage. The very important issues that needs to be addressed when we think of electronic bill of lading as a contract are concerns relating to when and where a new contract was formed between the carrier and third-party endorsee. Besides, when bill of lading itself is a contract, it is clear that; it cannot be made orally. Accordingly, bill of adding as a contract has to pass formality requirement of being in written or electronic record from.

Coming to the Ethiopia general contract law, as per article 1681 (1) of the Civil Code offer and acceptance “may be made orally or in writing or by sign or...by a conduct...” From this provision, it can be deduced that the law does not prescribe any method of communicating offer and acceptance to form a contract. Thus, there is no prohibition under the Ethiopia general contract law to have electronic contracts. This in effect entitles parties transacting in business to conclude contracts by electronic means by using the so-called principle of party autonomy. Therefore, principally under Ethiopian general contract law, it is possible to issue electronic bill of lading by employing the party autonomy principle.

However, there are subsequent issues that need to be addressed by a given contract law which looks for the formation of electronic contracts. The mere fact that the law does not prohibit the formation of contract through electronic communication is not a guaranty for having the proper formation of electronic contracts. The Ethiopia general contract law does not address issues related to consent in case of formation of an electronic contract (Gebrehiwot E, 2012).

For the case at hand, it is not known as to whether the mere transfer of electronic bill of lading through control amount as a conclusion of contract of carriage as between the third-party endorsee and the carrier. Moreover, under the Ethiopian general contract law, there is formality requirement provided to have valid formation of contract. As stated before a bill of lading cannot be made orally; rather it has to be prepared either in written or any other form which can able to achieve its functions. Thus, there is an obvious requirement by law or custom of merchants to make it indistinguishable form. The Ethiopian general contract law requires the signature of the parties if that contract is required to make in written form (Civil Code of the Empire of Ethiopia, 1960). Regarding the mode of signature, the law clearly states that a written contract shall be affixed by the handwritten signature or thumb-mark of contracting parties (Civil Code of the Empire of Ethiopia, 1960).

Therefore, though the law doesn't prohibit formation of a contract through electronic means; our general contract law is not compatible to form electronic contracts; as the law fails to address issues relating to the characterization of consent and functional equivalence of signature and written requirement.

3.5. Security and Customs Laws of Ethiopia

Bill of lading enables sale and purchase of goods that are in the process of transporting. Besides, when the transaction is financed through banks and documentary credit system, as the bank provides finance to the buyer; it is the bill of lading which serves as security for the financing bank. The traditional bill of lading fulfills this requirement of security by the fact that it is easy to identify its originality through the physical presence of the document.

Coming to the Ethiopia security law, any transferable securities can be pledged (Commercial Code of the Empire of Ethiopia, 1960). Under the commercial code or civil code of Ethiopia, we cannot find any provision which provides that electronic transferable records can serve as security notwithstanding that both the warehouse receipt proclamation and multimodal carriage of goods proclamation of Ethiopia gives electronic warehouse receipt and electronic multimodal transport document the same legal status with the paper counterpart. However, later on, the

Ethiopian Commodities Exchange come up with internal working procedure which allows pledging of electronic warehouse receipts held by it (Rules of the Ethiopian Commodities Exchange, 2010). This shows that pledging of electronic securities is possible in Ethiopia law. However, it is only limited to electronic warehouse receipt. Thus, as the basic security laws of Ethiopia which are scattered in different laws of the country does not give recognition for pledging of electronic securities and as there is no special law which regulates electronic bill of lading, it is fair to conclude that electronic bill of lading cannot serve as security in Ethiopia before having a special provision which allows doing so.

Coming to the customs law of Ethiopia, it is found that electronic records are given equal recognition with paper documents. Accordingly, as per article 2(25) of the Ethiopia custom proclamation document is defined as “any document presented physically or by electronic means to the authority to complete customs formalities.” Unequivocally the law clearly recognizes the admissibility of electronic records as equivalent document with paper documents for purpose of conducting customs formalities. Transport documents which include a bill of lading are among the required document to be the submitted before the authority along with the goods declaration for completing custom formalities (Customs Proclamation, 2014). The literal interpretation of this provision tells us that, electronic bill of lading is recognized as document under the current custom law of Ethiopia in order to complete customs formalities. Besides, the law also recognizes completion of customs procedures through the electronic exchange system (Customs Proclamation, 2014).

Any person is allowed to process and submit reports on “the arrival or departure of a means of transport and travelers taken on board or goods loaded; to complete custom formalities, to effect payments and to receive an order of release of goods electronically through the electronic exchange system to be developed by the authority.” (Customs Proclamation, 2014). However, subsequent provision of the custom proclamation which deals about verification of electronic information provides that submission of original documents may be required to check the accuracy of electronically transmitted messages. Thus, what is recognized under the Ethiopia custom proclamation is submission of electronic copies of paper documents; not pure electronic documents. However, the originality of electronic bill of lading cannot be verified by bringing an original paper bill of lading.

3.6. The Ethiopian Evidence Law

It is known that so far Ethiopia does not have separately codified evidence law. However, the absence of codified evidence law does not mean that Ethiopia does not have evidence law. The Ethiopia evidence laws are found by being scattered throughout both the substantive and adjective laws of the country which are enacted by the 1960 codification process or later on. Besides, by the fact that our substantive and procedural laws are influenced by both the common law and civil law legal systems, our evidence law is influenced by both the common law and civil law evidence rules. To begin with, under the 1960 civil code, “[a] written instrument shall be conclusive evidence, as between who signed it, of the agreement therein contained and of the date it bears.” The law recognizes that written instrument is conclusive evidence for those who signed it to perform the underlying transaction. While the code was enacted, the concept of electronic records was not known; as a result, the 1960 civil code was enacted by taking the admissibility of paper-based documentation into consideration.

However, as the civil code is influenced by the civil law legal system, it is still possible to argue that electronic records generally and electronic bill of lading can be admissible; as there is an accepted principle in the civil law legal system which provides that all material evidence can be admissible to establish the material truth. Thus, in a case when electronic record is brought before a court of law as an evidence, it can be accepted by alleging this principle unless prohibited otherwise by specific legislation.

Coming to other laws, under the maritime code there is no provisions regarding the admissibility of bill of lading. However, in the multimodal transport of goods proclamation (2007) subject to the interpretation provided before under this part, electronic multimodal transport document is admissible before court of law. Moreover, the 2016 computer crime proclamation of Ethiopia (2016),

[a]ny document or a certified copy of the document or a certified printout of any electronic record relating to computer data seized in accordance with this Proclamation may be produced as evidence during court proceedings and shall be admissible.

This provision tells us that Ethiopia courts are required to accept electronic records as an admissible evidence when there is a need to do so. Generally, knowing that the Ethiopia legal system is the hybrid of common law and civil

law system and also electronic records are admissible in case of the criminal proceeding, the writer of this paper believes that nothing is there to prohibit admission of an electronic bill of lading as an evidence under the current Ethiopia court system.

3.7. Draft Electronic Transaction Law

The Ministry of Science and Technology of Ethiopia has drafted both electronic commerce and signature law with the support of United Nation Economic Commission for Africa (UNECA) as of 2009. The draft electronic commerce law provides that “electronic documents shall have the legal effect, validity or enforceability as any other document or legal writing” By doing so, this draft law avoids the legal uncertainty created related to the validity, enforceability and admissibility of electronic records. The law also provides that an electronic record satisfy the written requirements of any law as far as the information in the record can be accessible and usable for subsequent reference (Draft Electronic Commerce law of Ethiopia, 2015). Besides, though it has no detail regulation; it recognizes electronic signature. Moreover, the draft law also addresses legal issues related to electronic contracts like how an electronic contract is to be formed, the validity of electronic contracts which includes the where and when about of formation of electronic contract (Draft Electronic Commerce law of Ethiopia, 2015). Last but not least, the draft electronic commerce law of Ethiopia, openly recognizes the admissibility of an electronic data message or electronic document as an evidence with detail provision as to its submission (Draft Electronic Commerce law of Ethiopia, 2015).

However, this draft electronic commerce law is silent as to whether it is applicable for carriage of goods and transport documents or not. Electronic commerce laws including the UNCITRAL Model Law on electronic commerce clearly recognize and regulate issues relating to electronic contract of carriage and transport documents. But, the draft electronic commerce law of Ethiopia though it is somewhat similar to the UNCITRAL Model Law in other aspects, it fails to have a provision on electronic carriage contract and transport documents. Therefore, for this writer, it is intentionally left by the legislature. Hence, the draft electronic commerce law of Ethiopia is not applicable to electronic shipping documents as there is no provisions on recognizing electronic data on shipments.

4. Conclusion

The paper identified and expounded the possible legal issues associated with digitalization of paper bill of lading. The creation of functional equivalence for the requirement of signature, document, writing, originality, uniqueness and singularity, possession, identification of holder and issuer of electronic bill of lading, circulation of the electronic bill of lading, evidentiary value of electronic bill of lading, formation of contract as between the carrier and endorsee, end of life cycle of electronic bill of lading and attribution of the reliability of the operating system are the major issues of electronic bill of lading that need to be addressed by law.

Afterwards, the paper examined the compatibility of the existing legal environment of Ethiopia in accommodating electronic bill of lading or not? The writer analyzed the policy and laws of the country which are relevant for governance of bill of lading. In terms of policy, although both the draft national logistics strategy and transport policy are at the draft stage, the study showed that the government of Ethiopia is working towards digitalizing transport documents used in the international trade. Coming to the regulatory framework, the analysis of the maritime code revealed that there is no clear statement under the law which requires issuance of bill of lading in document or writing form. However, for the writer of this paper as far as electronic medium of communication was not known while the maritime code of Ethiopia was enacted and there is a requirement of two set of originals under the same the same law leads to conclude that it is not possible to issue electronic bill of lading Regarding the signature requirement, the maritime code is still silent as to how it can be signed. The writer of this do not believe that it was the intention of the then legislature to recognize electronic signature at the time in which the concept of digitalization was not known at all.

Coming to the Multimodal Goods Proclamation of Ethiopia, the study revealed that electronic bill of lading is recognized although there is difference between the negotiable and non-negotiable multimodal transport document. The study finds out that the law is not sufficient to address legal issues of electronic bill of lading. It fails to address how the originality, singularity and uniqueness of electronic bill of lading are to be guaranteed, how the requirement of physical possession and transfer of rights by delivery is to be performed, how electronic multimodal bill of lading can be amended and corrected and other legal issues which can be raised with digitalization of bill of lading.

Related with the legal issue associated with the status of electronic contracts as between the endorsee and the carrier under the Ethiopia law, it is found that an electronic contract between the carrier and third-party endorsee through bill of lading is not recognized although there is no prohibition to have electronic contracts under the Ethiopia General Contract Law. The law fails to address issues relating to the characterization of consent and functional equivalence of signature and written requirement stated under the law as validity requirement. Concerning the compatibility of Ethiopia security and custom laws in light of introduction of electronic bill of lading, it is found that the basic security laws of Ethiopia which are scattered in different laws of the country does not give recognition for pledging of electronic records as security. As a result, under the existing Ethiopian security law, electronic bill of lading cannot be pledged before having a special provision which allows doing so. It is also indicated that the customs law of Ethiopia allows to use electronic records for customs formalities. However, the existence of a requirement to produce original documents in order to check the accuracy of electronically transmitted messages hinder the application of negotiable electronic bill of lading.

Regarding the admissibility of electronic bill of lading as an evidence before Ethiopian court of law, it is noted that nothing is there to prohibit admission of an electronic bill of lading as an evidence under the current Ethiopian evidence law. Moreover, the analysis of the draft electronic commerce law of Ethiopia indicated that electronic carriage of goods and transport documents are not included. To sum up, the existing legal environment does not properly address legal issues associated with introduction of electronic bill of lading although there is a tendency towards recognizing electronic bill of lading as electronic records.

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