Deck Carriage under the Maritime Code of Ethiopia: A Comment on the Decision of the Addis Ababa High Court in *Girma Kebede v. Ethiopian Shipping Lines Case*[*]

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1. Synopsis of the Case

A certain Girma Kebede contracted with Ethiopian Shipping Lines for the carriage of some goods (a car and some electronics items kept in the car) from Rotterdam, the Netherlands, to the Port of Assab, Ethiopia. The goods kept in the car were mentioned in the bill of lading; and they were carried on deck. Though the car was delivered at the port of Assab, the items kept inside the car were not delivered. Subsequently, Ato Girma sued the shipping lines for a total of 12,000 Eth. Birr – which, according to the plaintiff, was the total value of the items undelivered.

The shipping lines, in its part, argued, *inter alia*, that it is not liable for the lost items as they were carried on deck.[1] In response to this argument, the plaintiff invoked the Amharic version of Art.180 (4) of the Maritime Code which, according to the plaintiff, does not free the carrier from liability for loss or damage of goods carried on deck. Accordingly, the English version of Art.180 (4) of the Maritime Code, which arguably frees the carrier from liabilities related to on-deck carriage of *any* goods, is superseded by the Amharic equivalent which permits exoneration *vis-a-vis* only one type of deck cargo, i.e. on-deck carriage of live animals.

2. The Decision of the Court

The Addis Ababa High Court, which first appeared to down play the importance of the discrepancy between the Amharic and English versions of Art.180 (4) of the Maritime Code, upheld the argument of the defendant that the law frees the carrier from liability for loss or damage of any goods carried on deck. Yet, the court, on a different ground, held the shipping lines limitedly liable for the lost goods.

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[*] *Girma Kebede v. Ethiopian Shipping Lines/Maritime Transit Services Corporation*, the High Court of Addis Ababa, Civil File Case No.689/76[E.C].

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[1] Deck is the outer part of a vessel.

3. A Critique

The Ethiopian law on deck carriage is contained in a single provision of the Maritime Code – Art.180 (4). As could be understood from the facts of the case summarised above, the Amharic and the English versions of this provision are not equivalent. While the English version stipulates the exclusion, from the scope of Section 5, Chapter 2, Title IV of the Maritime Code, of the transport of *live animals* and *goods carried on deck*, the Amharic version excludes only *the transport of live animals carried on-deck* [it reads: በመርከቡ ደጅ(ደክ)ላይ ስለ ተጫኑት ህይወት ያላቸውእንስሶች እነ ዚህ ድን ጋጌዎች አይፈፀሙባቸውም]. Thus, the discrepancy has practically become a cause for judicial litigations. Called to rule on the issue, the High Court of Addis Ababa held:

> "*The discrepancy between the Amharic and English version of Art.180 (4), Maritime Code, should not have been a bone of contention. Rather, one should look into why the legislator has treated on-deck carriage and under-deck carriage separately*."[2]

Subsequently, the court went on searching for the legislative intent behind the provisions of Art.180 (4). And, it held the legislative intent is "to exculpate the carrier from liabilities associated with on-deck carriage of goods." In so doing, the court finally concluded that the provisions of Art.180 (4) favour the defendant – not the claimant.

The court's effort to ascertain the legislative policy behind Art.180 (4) of the Maritime Code is worth praising. Yet, the court's search for legislative intent was ironic as we are unclear whether the court was looking for the legislative intent behind the Amharic or English version of Art.180(4). The holding of the court that Art.180 (4) exonerates the carrier from liabilities for cargoes [both live animals and any other goods] stowed on deck appeared to imply the court was concerned with the legislative intent behind the *English* version of Art.180 (4).[3]

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[2]Translation mine.

[3] The court cannot possibly reach at this assertion based on the Amharic version of the provision which does not extend the exoneration (if any) from liability for deck carriage beyond the expressly mentioned on-deck carriage of *live animals*.

Nonetheless, the court's avoidance of the Amharic version, which normally is the controlling one, is questionable. The rejection of the otherwise decisive argument "Art.180 (4) should include or exclude *any* goods [other than live animals] carried on deck" is less plausible as the clear textual discrepancy between the two versions of Art.180 (4) is too decisive to ignore. Moreover, the court's avoidance of the question relating to the discrepancy between the two versions of Art.180 (4) was inevitably unsuccessful as it indirectly left the court at a juncture where it had to choose between the two competing versions.

It is also interesting to note that the court, which tried to approach the problem over the interpretation of Art.180 (4) through a search for legislative intent, failed to further look into any legislative rationale – if any – behind the omission of "goods" from the Amharic text of Art.180(4). Such a search for reasons behind the legislative omission of the term or, alternatively, a look into a legislative history of the pertinent provisions would have saved the court from any unsuccessful attempts to avoid the rather important question relating to the omission of an important term from the Amharic text of Art.180 (4).

A look into the historical material sources of Art.180 (4) of the Ethiopian Maritime Code appears to suggest the Amharic version is a flawed translation of its English equivalent – which was presumably drafted first. The Ethiopian law on the carriage of goods by sea in general and Art.180 (4) in particular are inspired by the 1924 Hague Rules on Bills of Lading[4] – which, by the time the Ethiopian Maritime Code was prepared, was the leading international instrument on the carriage of goods under bills of lading.[5] Alike the English version of Art.180 (4) of the Ethiopian Maritime Code, the equivalent provisions in the Hague Convention[6] and other similar[7] maritime

[4] Formally known as the 1924 International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading. Countries which either adopted or incorporated the rules in their laws are known as "Hague countries".

[5] Hailegabriel G., *Maritime Law: Teaching Material*, Addis Ababa, JLSRI, 2008, at 14.

[6] Art.1(c), the Hague Rules.

[7] For instance, see § 1301(c), the United States Codes, Title 46 (the title containing the US Carriage of Goods by Sea Act) (2000) and Art.1(c) of the 1968 Hague-Visby Rules which are applied in many jurisdictions including United Kingdom.

legislations generally lay down a rule that limit the application of the rules on carriage of goods under bills of lading to the transport of all kinds of cargoes but *live animals* and *deck cargoes*. As a result, the High Court's tacit preference to the English version of Art.180 (4) – which appears to be congruent with the equivalent provisions of its historical material sources – seems sensible.

In addition, the holding of the court that the legislative intent behind Art.180 (4) is to exculpate the carrier from liabilities associated with on-deck carriage of goods is *partly* true if seen in light of the historical background of the original law on deck carriage. As rightly pointed out by the High Court, the exclusion was designed to cover the increased risks of loss or damage to the carriage by both categories of cargo.[8] Yet, it is not safe to interpret Art.180 (4) as a provision that in all instances exonerates the sea carrier from liability for loss or damage to goods carried on deck. Art.180 (4) does not expressly deal with liability issues. It rather states: "[The provisions of section 5[9]] shall not apply to the transport of live animals and goods as are being carried on deck under the contract of carriage." Hence, the possible implications of the inapplicability of the rules [in section 5] to the transport of deck cargo are not clear from the simple reading of Art.180 (4).

Instead, two important inferences from the provisions of Art.180 (4) help identify the unwritten Ethiopian law on deck carriage and, for our purpose, the implications of the inapplicability of the rules in section 5. *Inter alia*, the readings of Art.180 (4) may imply the inapplicability of (1) the statutorily recognised carriers' duty of care to properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried[10] or (2) the principle of carrier's limitation of liability.[11] Assuming that the former is the

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[8] See, e.g., Evans J., *Law of International Trade: Textbook*, 3rd ed., London, Old Bailey Press, 2001, at 220 *et seq*.; Gillies P. & Moens G., *International Trade and Business: Law, Policy and Ethics*, Sydney, Cavendish Publishing, 2000, at 187; Whitehead J., *Deviation: Should the Doctrine Apply to On-Deck Carriage?*, 6 Maritime Lawyer 37(1981).

[9] These are the provisions of Arts.180-208, Maritime Code; they contain special rules regarding contract of carriage under bills of lading.

[10] These duties are contained in Art.196, Maritime Code.

[11] This principle, one of the most important elements of the law of sea carriage, is contained in Art.198, Maritime Code.

case, the carrier will escape liability for the loss or damage of goods carried on deck as the risks of loss or damage to goods carried on deck are higher than those carried under-deck. In the meantime, if we assume the readings of Art.180 (4) imply the inapplicability of the limitation of liability principle under Art.198, the carrier will be strictly liable when he carries goods on-deck.

Practices, in jurisdictions where comparable statutory rules exist, show that the applications of rules contained in Art.180 (4) may either imply the full liability of the carrier or the complete exoneration of the same from liability for loss/damage to goods carried on deck. If the parties *agree* to carry goods on deck and the goods so carried are lost or damaged, no liability for loss or damage will fall on the carrier.[12] The absence of such agreement, however, has been interpreted to only authorise *under*-deck stowage.[13] Accordingly, unauthorised deck carriage of goods results in full liability whenever the goods so carried are lost or damaged due to risks associated with such carriage. Thus, in other jurisdictions, the applications of rules identical to that contained in Art.180 (4), Ethiopian Maritime Code, does not exculpate the carrier from liabilities related with on-deck carriage of goods unless there is an express agreement[14] to on-deck stowage of cargos. Hence, the holding of the High Court that the application of Art.180 (4) [always] exonerates the carrier from liability is less plausible in the face of the jurisprudence relating to deck carriage established in other "Hague countries".[15]

Incidentally, it is worth noting that modern legislations on sea carriage have replaced the rule comparable to that contained in Art.180 (4) by a new and practical one. Accordingly, the rules on sea carriage [under bills of lading]

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[12] Gillies P. & Moens G., *supra* n. 9, at 186; see also the 20th century United States court decisions in cases including *St. Johns N.F. Shipping Corp. v. S.A. Companhia Geral Commercial do Rio Janeiro*, 263 U.S. 119, 124, 44 S.Ct. 30, 68 L.Ed. 201 (1923) and *Clamaquip Engineering West Hemisphere Corp. v. West Coast Carriers Ltd*., 650 F.2d 633 (5th Cir. Unit B 1981).

[13] *Ibid*; Evans J., *supra* n. 9, at 221.

[14] Note also that the burden of proving such agreements is shouldered on the carrier; see, e.g., the decision of a US court in *Ingersoll Milling Machine Co. v. M/V BODENA*, 829 F.2d 293 (2d Cir. 1987).

[15] These are countries applying the Hague Rules or its equivalents; they include leading maritime nations such as USA, Germany, and [formerly] UK.

apply to all kinds of cargo including live animals and deck cargo. The equal treatment of deck cargo and any other cargo was necessitated as the historical rationale behind the rule was no longer viable due to dynamics in maritime transportation. The now customary containerised deck carriage has greatly reduced the risk of loss or damage to goods carried on deck. Hence, carriers, who under the Hague Rules would be required to prove express permission from the cargo owner to carry cargos on deck, would under the modern rules be able to avoid strict liability [for loss resulting from unauthorised carriage of cargoes on deck] by showing the carriage on deck was the customary practice for the shipment in question.[16]

4. Conclusion

The High Court's interpretation of Art.180 (4) of the Maritime Code is partly faulty. The court's dismissal of the otherwise persuasive argument that the Amharic version of Art.180 (4) the Maritime Code overrides its English equivalent is problematic as the Amharic version is normally the controlling one. Despite this, the court's undeclared preference to the English version of Art.180 (4) looks sensible as it picked the text that is harmonious with equivalent provisions contained in the original material source. Nonetheless, the holding of the court that Art.180 (4) exonerates the carrier from liability needs a proviso. This is because Art.180 (4) does not relieve the carrier from [strict] liability for loss or damage to goods resulting from unauthorised on-deck carriage.

[16]This is particularly the case under the 1978 United Nations Convention on the Carriage of Goods by Sea – commonly known as the Hamburg Rules.