OPEN ACCESS

Scholars International Journal of Law, Crime and Justice
Abbreviated Key Title: Sch Int J Law Crime Justice
ISSN 2616-7956 (Print) | ISSN 2617-3484 (Online)
Scholars Middle East Publishers, Dubai, United Arab Emirates
Journal homepage: https://saudijournals.com

Review Article

Legal Regime of the Settlement of Disputes Arising from a Contract of Multimodal Carriage of Goods within CEMAC Land lock Countries

Gho Mary Soledad Chifu[1*]

[1]Ph.D. Scholar, Department of English Private Law, Faculty of Law and Political Science, University of Dschang, Dschang, Cameroon

DOI: https://doi.org/10.36348/sijlcj.2024.v07i10.006 | **Received:** 08.09.2024 | **Accepted:** 14.10.2024 | **Published:** 17.10.2024

***Corresponding author:** Gho Mary Soledad Chifu
Ph.D. Scholar, Department of English Private Law, Faculty of Law and Political Science, University of Dschang, Dschang, Cameroon

Abstract

CEMAC landlocked countries (specifically Chad and Central African Republic) depend solely on Cameroon who serves as a transit state for the transportation of goods to and from these landlocked countries. Thus, the entering into bilateral conventions helped to facilitate and create transit corridors for the transportation of goods amongst these countries. Meanwhile Cameroon which serves as a transit state to these landlocked countries has four modes of transport (road, rail, water and air), while Chad and Central African Republic have just two or three principal mode of transportation namely road, rail and air. However, these modes of transportation pose unique challenges, particularly in countries with limited infrastructure. Through doctrinal analysis of both primary and secondary sources of data, this article seeks to examine the legal framework in resolving disputes arising from contracts of multimodal carriage of goods available to landlocked countries of the Central African Economic and Monetary Community (CEMAC). Our findings revealed that, the legal framework in resolving disputes arising from contracts of multimodal carriage of goods available to landlocked countries are not effectively implemented. As a result, some salient recommendations have been made to bridge the gap between theory and practice amongst these countries in general and Cameroon in particular.

Keywords: Legal, Regime, Settlement, Disputes, Contract, Multimodal, Carriage, Goods, CEMAC, Land lock, Countries.

INTRODUCTION

It will be unrealistic to think that all disputes arising out of a contract of carriage will only be those relating to damage of cargo or delayed or loss as the case may be. There are situations where in the absence of damages, delay or loss to cargo carried by the carrier, the carrier does not perform the contract at all. The parties be it the carrier or cargo interest all have equal rights to bring an action or claim against the other [1].

Article 3 of the CEMAC Convention on Inter-State Multimodal Transportation of Goods provides that once a contract of multimodal transportation of goods is concluded in conformity with article 2, the provisions of this convention become obligatory in its application. The provisions of these conventions shall apply to all contracts of multimodal transport between places in two states if [2]; (a) the place for the taking in charge of the goods by the multimodal transport operator as provided for in the multimodal transport contract is located in a contracting state, or (b) the place for delivery of the goods by the multimodal transport operator as provided for in the multimodal transport contract is located in a contracting state.

When a multimodal transport contract has been concluded which according to article 2 shall be governed by this convention, the provisions of this convention shall be mandatorily applicable to such contract. Nothing in the convention shall affect the right of the consignor to choose between multimodal transport and segmental transport [3]. The multimodal transport operator shall comply with the applicable law of the country in which he operates and with the provisions of this convention.

The study reviews the CEMAC Convention on inter-state multimodal transportation of goods and

[1] Article 24 on CEMAC Convention on Inter-state multimodal transportation of goods.

[2] Article 2 on both CEMAC Convention on Inter-state multimodal transportation of goods and on International Multimodal Transport of Goods.

[3] Article 3.

international treaties, such as the Convention on International Multimodal Transport of Goods, and assesses their influence on regional legal practices. It highlights the difficulties faced by CEMAC landlocked countries in enforcing legal standards and the need for harmonization amidst on-going integration efforts.

Focusing on dispute resolution mechanisms negotiation, mediation, and arbitration, the article critiques existing legal instruments and institutions for their effectiveness in providing timely and fair resolutions. Case studies illustrate common disputes, including liability issues and delays, emphasizing the practical challenges stakeholders encounter. In conclusion, this article calls for a comprehensive review of the legal regime governing multimodal transport disputes in CEMAC. It advocates for enhanced collaboration among member states to improve legal coherence and dispute resolution, ultimately supporting economic growth and regional integration.

There exist a numbers of modes of settling disputes which may arise in the course of transportation, these includes by way of litigation and ADR (Arbitration, conciliation, mediation, consultation, negotiation and mini-trial.

The most common form of dispute settlement is that of litigation. This mode of settling disputes is equally provided for by the CEMAC Convention on Inter-state multimodal transportation of goods in its article 24-26. However, there other form of dispute settlements between parties which can be done through Alternative Disputes Resolution (ADR). There are five ways of dispute resolution under ADR which includes; conciliation, arbitration, negotiation, mediation, mini-trial and private judging.

The OHADA UA on carriage of goods by road provides in Article 26 that any dispute arising from a contract of carriage governed by this Uniform Act may be settled by way of arbitration. Equally article 27 on both CEMAC Convention on Inter-state multimodal transportation of goods and on International Multimodal Transport of Goods has equally given room for arbitration [4] Moreover, there is a time- limit to fail a complaint of loss or damage or delay in delivery of the goods and in matters of interstate carriage the dispute has to be channelled to the competent jurisdiction.

The owner of the goods on receiving the goods notice any mishandling of the goods or instance of total or partial loss or damage of the goods, the owner(plaintiff) has a specific time-limit to file his complaint and this dispute on carriage of goods are solved through arbitration. Article 14 of the OHADA states that:

> "*When the carrier and the consignee agree on the condition of the goods at the time of delivery, they may draft a joint written statement"*.

Understanding the commencement of procedural action and the unfolding of the procedural action across these different modes of dispute settlement is essential for parties seeking effective resolutions to their conflicts.

COMMENCEMENT OF PROCEDURAL ACTION UNDER THE DIFFERENT MODES OF DISPUTES SETTLEMENT

The commencement of procedural action under various modes of dispute settlement is a critical phase in resolving conflicts that arise in legal and commercial contexts. Disputes can emerge from a multitude of scenarios, such as contractual disagreements, tort claims, or regulatory issues, and the choice of dispute resolution mechanism significantly impacts the efficiency, cost, and outcome of the process. Common modes of dispute settlement include litigation, arbitration, and alternative dispute resolution (ADR) methods, each with its own procedural requirements and implications for the parties involved.

In litigation, procedural action typically begins with the filing of a complaint or petition in a court of law, which formally initiates the judicial process. This stage is governed by specific rules and timelines, including jurisdictional considerations and the requirement for proper service of process. The court then sets the stage for discovery, pre-trial motions, and ultimately a trial, where evidence is presented, and a ruling is made. The formal nature of litigation often leads to a more structured but potentially lengthy process, necessitating a thorough understanding of procedural rules by the parties and their legal representatives.

Arbitration, on the other hand, offers a more streamlined and flexible approach to dispute resolution. Procedural action in arbitration typically commences with the submission of a notice of arbitration to the designated arbitral institution or directly to the opposing party, depending on the terms of the arbitration agreement. This mode allows parties to select arbitrators and establish procedural rules tailored to their specific needs, which can significantly expedite the resolution process compared to traditional litigation.

The rules of jurisdiction

Settlement of disputes that occurred during the execution of the contract of carriage is performed within

[4] Article 27 on both CEMAC Convention on Inter-state multimodal transportation of goods and on International Multimodal Transport of Goods

CEMAC zone by arbitration and litigation whether the carrier is a domestic or an international carrier.

Alternative Dispute Resolutions in transportation disputes

There exist a number of Alternative Dispute Resolution (ADR) options that can provide parties with an efficient way to address problems and at the same time alleviate over-burdened court docket. Alternative dispute resolution seeks to shift the perspective of a dispute from negative opposition to more positive problem solving. In many circumstances, the issues at dispute may be resolvable in a manner producing important benefits for both sides. Recognition at the outset that dispute resolution is essentially problem solving could help to encourage a more creative view of the options available. The benefits of ADR can nonetheless be significant. ADR [5] is generally viewed as increasing efficiency in terms of the time and resources needed to resolve disputes. It frequently reduces the time to reach a final outcome, which in environmental cases can serve to help minimize or contain environmental damage.

The CEMAC Convention [6] on Inter-state multimodal transportation of goods provides that on the reservation of this present article, parties can by a written agreement, that all disputes relating to multimodal transport b virtue of this convention is placed under arbitration. The procedure of engaging arbitration is at the choice of the plaintiff:

- Either in a place on the state territory where the plaintiff is situated.
- The principal place of business or in the absence thereof, the habitual place of residence of plaintiff.
- The place where the multimodal transport contract was concluded by the multimodal transport operator or his servants or agent.
- The place of taking over of the goods or the place of where the goods were delivered.
- Any other place designated in the multimodal transport contract and indicated in the multimodal transport documents.

The Judiciary in Dispute settlement in transportation matters

The CEMAC legislator under the CEMAC Convention on Inter-state multimodal transportation of goods has made provision under rules of jurisdiction which is also in line with the OHADA legislator of the rules that apply to transport within the state parties, it simply provides rules on inter-state transport [7]. Nevertheless, the question mains unanswerable in domestic law.

The rules of jurisdiction in internal transport

Jurisdiction with regards to inland should be set with reference to rules of procedural in force in Cameroon, Chad and Central Africa Republic as regarding territorial jurisdiction and material jurisdiction [8].

In Cameroon, the territorial jurisdiction is the place of conclusion or performance of the contract where one of the parties to the agreement is domicile. Similarly, the court in civil and commercial matters is determined by the quantum of the claim in court. According to article 1 (1) (b) and 18 (1) (b) on the 2006 law n judicial organisation, if the plaintiff claim is less than or equal to 10 million CFA francs, the competent court is the court of first instance and if the claim is above this 10 million CFA francs, the jurisdiction is vested on the high court. This rule is mandatory; any deviation is prohibited except pursuant to rules that ‘‘*who can do more can do less’’.*

The rules of jurisdiction in international transport

Apart from the assumption of a jurisdiction clause, which gives some freedom to the parties in the choice of means of resolution of their dispute, the uniform act offers the opportunity to the parties to opt for some alternatives solution. Indeed, in terms of territorial jurisdiction, the action may be brought either before a state court on whose territory the defendant has its domicile, namely the habitual residence, its business office or its branch or agency which was the intermediary for the conclusion of the contract of carriage, or the state court on whose territory the goods were taken over or the designated place of delivery [9].

[5] Alternative Dispute Resolution (ADR) refers to a range of processes and techniques used to resolve disputes outside the traditional court system. ADR encompasses various methods, including mediation, arbitration, and negotiation, which are designed to provide parties with more flexible, efficient, and cost-effective means of settling conflicts. Unlike litigation, which can be lengthy and adversarial?

[6] Article 27.

[7] Article 27 of AUCTMR and article 27 on both CEMAC Convention on Inter-state multimodal transportation of goods and on International Multimodal Transport of Goods

[8] See judicial organization of member state subject to possible current modification
Cameroon: N0 2006/015 of 29th December 2006 as amended by law N0 2011/027 0f 1 December 2011;
Central African Republic: law N0 95/0010 of 22 December 1995;
Chad: law N0 004/PR/98 of 28th may 1998.

[9] In CMR zone, see article 31 and the Recent English Case British American Tobacco Switzerland S.A and Others V. (1) Exel Europe Ltd; (2) H Essers Security Logistics B.V and Others; British American Tobacco Denmark A/S and Others V. (1) Exel Europe Ltd; (2) Kazemier Transport B V. (2013) EWCA Civ. 1319; Merzario v. Leitner (2001)1 Lloyd`s Rep. 490. In the last

In all litigations relating to multimodal transportation of good in like with the CEMAC convention on multimodal transport, the plaintiff may by choice initiate an action before the competent court with regards to the state laws or where the court is located in the one of the places listed below [10];

- The principal place of business or in the absence therefore, habitual place of residence of defendant.
- The place where the multimodal transport contract was concluded by the multimodal transport operator or his servants or agent.
- The place of taking over of the goods or the place of where the goods were delivered.
- Any other place designated in the multimodal transport contract and indicated in the multimodal transport documents.

The Pre-litigation phase

The method of suing depends on whether one choses to settle by way of a court settlement or arbitration.

Before the court

Liability claims against the carrier is subject to a pre-litigation action under the OHADA Law of which all members of the CEMAC zone are members to thus oblige to apply. Only the fulfilment of the prerequisite and respect of the mode of seizure, that one can bring an action before the judge.

The prerequisite: protest and time limit

This prerequisite must comply with the requirements of specific time. That is why we must distinguish between the protest periods from that of the graceful claim.

The deadline for protest

After the complete delivery of the goods to the rightful owner, he must conduct a thorough review of the goods received, with the carrier [11]. This implies that the parties to the contract of the carriage must agree on the conditions of the goods in case of loss or damage and may present in the best case, a joint written statement [12]. However, the legislature has developed rules applicable in case of disagreement between parties [13]. When upon inspection of goods, the receiver realised that the goods have become victim of loss and /or damage in transit; he must lodge his clam for compensation with respect to some requirements in the written statement made between the parties. It is in this context that the protest period is also called *notice period.* This is allocated to the beneficiaries of the cargo to send a written and motivated notice to the carrier. The time limit varies according to whether one is either in the presence of the loss or damage, or facing a delay in the delivery.

In the presence of loss or damage, the plaintiff in the action must send a notice to the carrier no later than the first business day following the day of the date of delivery if the loss or damage was apparent, or within seven days of the date of delivery, if they were not exposed. Consistently, the expiry of those periods without sending any notice to the carrier constitutes a presumption of conformity of the goods and the proper execution of the contract of carriage. In the event of delay in delivery, the compensation shall be payable to the person entitled if a notice is sent to the carrier within twenty-one days after the arrival of the goods at destination.

For both periods, the notification does not follow a specific formality, apart from the fact that the notice must be in writing. Thus, the notification may take the form of a recommended letter without notification of receipt. In either case, the absence of the delivery of a written notice is not a cause of disqualification from acting, but a simple presumption of conformity of delivery that can be reserved by contrary evidence. However, this absence may be invoked by the carrier I respect of the recipient as n estoppel of his action for visible or non-visible damage. This carrier's argument is irrelevant if at the delivery, the recipient has issued clear and specific reservations. The inaccuracy of damage and unlimited quantity of involved material are not sufficient to preclude this carrier estoppel. It has been held that a recipient who received without reservations of deliveries of polluted goods shall not make use of a hidden defect to rule out estoppel opposed by the carrier.

However, a request in court by the recipient to appoint one or more experts should be considered as protest of the beneficiary. Indeed, the intervention of the expert may be made in order to clarify the parties on a difficult situation the expertise implies openly protest of the condition of the goods. In case where the recipient does not undertake such initiatives, it will be more difficult to establish that the damage is attributable to the carrier faults, nevertheless, when effective measures are taken by the claimant to inform the carrier of the existence of the damage, he still has to proceed within the time limit, to the amicable and equitable claim to obtain compensation for the damages [14].

case, the question of multi actions within different states (England and Austrian) between the same parties on the same grounds in contradiction with article 31 (2) of CMR was raise up in English court.

[10] Article 26 on CEMAC Convention on Inter-state multimodal transportation of goods.

[11] Akam Akam A., les réserves à la livraison, étude des diligences des réceptionnaires dans les transports maritimes, terrestres et aériens, Doctorat Thèses, Marseille III, 1991, P. 56s.

[12] Article 14(1) of UACTMR.

[13] Article 14(2) of UACTMR.

[14] Monkam, Cyrille. "Carriage of Goods by Road under the OHADA Law". Volume 1 Contract of Liability Presses Universitaires d'Afrique, 2020, pp. 103-105.

The time limit of pre-litigation complaint

It follows from article 25(2) of UACTMR that the admissibility of the action is subject to a prior complaint filed against the carrier by the cargo interest. This article states:

> *''The action is admissible only if a written claim has been previously made … not later than sixty days after the date of the delivery of the goods or, in default of delivery six months from the date on which the goods were taken over by the carrier''.*

The uniform act has not imposed a specific content to this claim, it therefore necessary to determine its meaning and scope. Meaning like the pre-litigation claim of the Cameroonian administrative law, the one CEMAC transportation law appears as a filtration process of legal claim or better, of settlement by the parties of their dispute. The legislature, in order to give this claim probative power requires a formalisms specifying that it should be written. This implies a *contrario* that any unwritten claim has no legal value and no probative value. A distinction is made here (unlike the protest period) as the delivery has been with damage or missing or when the gods are lost [15].

In the first case, the action may be admissible only if the claimant has established his written claim to the first carrier or the last carrier within sixty days after his date for delivery. In the second case, i.e. in case of non-delivery of the goods, the written claim must be made no later than six months after the date of taking over the goods. It follows that the reasonable time for the legislature of the transport period under OHADA law is six months. However, we believe that depending on the route, judges need to shorten this period to make it more acceptable to the beneficiary of goods. The written claim after the protest of the entitle must, in our opinion; contain the financial claim for damages suffered. These claims may be based either on the estimates obtained from the difference between the quantity of damaged or most goods and the delivered one, or on the estimates of an expert required for this purpose. Moreover, regardless of the content of the pre-litigation complaint, it has a considerable impact on the procedure [16].

Scope one could say without hesitation that the on-respect of deadlines described above deprives the aggrieved applicant of any action for damages against the carrier. This implies that the carrier is perfectly safe, even in the presence of a fault on his part before or in the absence of the claim. All liability actions brought against the carrier without such claim or after the discussed deadline will be admissible. Then the pre-litigation claim contrary to protest period is a real foreclosure which distorts without consideration of the merits, the demand for compensation by the claimant.

At the end of the pre-litigation complaint, two situations may arise either the carrier shall indemnify the claimant and there has been a settlement of the arisen dispute, or the carrier oppose to amicable compensation and in this case, only the recourse to a jurisdiction may allow the person entitled to receive compensation, except to be confront with the time-barred of its action.

The method to sue, application or summons

When the applicant has satisfied the above prerequisite condition and there was no settlement, he is fee to petition to a state or judicial court. In Cameroon the method to sue before the civil jurisdiction occurs in two ways, it's either by a petition/application (requete) or summon (assignation) [17].

An application is a proceeding act under the procedural law of the state's parties and the OHADA legislature for the introduction of a claim to a judge. It must be written. The summons is the ordinary method to sue before modern courts. It is an act of bailiff in which the plaintiff asks the defendant to appear before the judge. Anyway, the act instituting proceedings will be an assignment for payment containing a minimum of information to enable the court to rule on the application, in both cases, the applicant formally invites the defendant to appear before the court to have committee debate on the merit of his claim.

Settlement under Arbitral Dispute

The Convention on International Multimodal Transport of Goods [18] provide in its article 27 arbitration as a means of settling disputes that may arise in the course of transportation. Also, the OHADA legislature had foreseen the possibility for the parties to settle their disputes by way of arbitration. The decision to bring the case before the arbitration court may be early or spontaneous. Indeed, by anticipation parties to the contract of carriage may form an arbitration clause in the consignment note provided that any dispute that will occur during its execution will be solved by arbitration. In this case, the intervention of the dispute gives rise without a require formality to the submission of the dispute to the agreed arbitral tribunal.

The contracting parties also have the ability to instantly determine when or after dispute have arisen to bring it to an arbitrator. They must thus conclude a submission agreement. The arbitral proceedings will be governed by the law of the place/or the place where the

[15] *ibid.*
[16] *ibid.*
[17] *ibid.*
[18] Article 27 on the Convention on International Multimodal Transport of Goods.

arbitration tribunal or institution has its seat [19] otherwise known as the *lex arbitri* [20] or curial law.

The Prescription of Legal Action

In transportation law, the prescription or time-barred [21] that constitutes a ground for terminating the action because of the expiration of time to act is a four for the carrier who sees his responsibility deleted (even if he has not met his contractual obligations).

All actions relating to multimodal transport in line with the presentation convention is time barred if a judicial or arbitration procedure is not initiated within the time limit of two years [22]. Once there is a written notification indicating the nature of the claim or the principal heads of demand is not made within the time limit of 6 months, counting from the date when the goods were to be delivered or when the goods were not delivered, counting the date when it was to be made, the prescription of action is said to expire under these time limits.

The Flow of Time Limit

The CEMAC Convention on multimodal transport of goods provides that [23] ‘‘*The period of limitation for any action arising out of a carriage under this uniform act shall be 6 months from the date of delivery or, in case of non-delivery from the date on which the delivery should have taken place…’’.*

While the Uniform Act provides that:

> *‘‘The period of limitation for any action arising out of a carriage under this uniform act shall be one year from the date of delivery or, in case of non-delivery from the date on which the delivery should have taken place…)* [24].

This provision retains the one-year period in situations of negligence by the carrier, regardless of whether there are actions of damage, loss or delay. Everything will depend, however whether the prescription period round normally or not.

The Normal Flow of Time Limit

In principle, all the rights and all actions are prescriptive. The prescription is the sanction of the negligence of the creditor which seeks to consolidate the position of the debtor, whether or not he has fulfilled his obligation. The CEMAC Convention and Uniform Act devotes a short time by making all actions arising from the contract to the annul prescription. This is a protective period that fills the gap created by the nature of the carrier’s liability.

The provided one-year time runs from the date of delivery or, in default of delivery from the date on which the goods should have been delivered. The accuracy of the uniform act with respect to the starting point of the computation of time limit has the advantage of simplifying the method of computation and thus reduces the task of the parties to the contract of carriage. Nonetheless, it should be noted that the starting point for effective time is actually the day after delivery or the date on which it should have been delivered.

The Abnormal Flow of Time Limit

The AUCTMR has the merit of having specified the length and starting point of the time-barred, but it failed to dwell on the prescription regime. Thus, referring to the common law of the CEMAC member’s states, we may raise several barriers to normal flow of the period of limitation.

In general, there is a principle in law that the prescription does not run or suspends against the person who is unable to act because of an impediment resulting from the law, the contract or from the force majeure. In common regime the prescription, the limitation period may as appropriate, be suspended or interrupted. The suspension is temporary stop of the countdown period, the progression can resume where it was stopped, when the circumstance that justified the sop disappears. It ‘‘temporarily stops the progression without clearing the elapsed time’’ [25].

UNFOLDING OF PROCEDURAL ACTIONS AND LIMITS ATTACHED TO THE DIFFERENT MODE OF DISPUTES RESOLUTION

Litigation in domestic courts is another avenue, but it can be challenging due to jurisdictional issues and the potential for lengthy processes. Moreover, landlocked countries may face specific limitations, such as inadequate legal frameworks or lack of access to specialized legal expertise. Overall, while various dispute resolution methods are available; their effectiveness in landlocked countries is often constrained

[19] Article 12 of the Uniform Act on Arbitration, the arbitral seat is the place whose law I intended by the parties to govern the arbitral proceedings, not the place where the proceedings actually held or the award given. It means that the link establishing the seat is legal not territorial.

[20] Lectured Notes On International Commercial Arbitration Master One by Prof. Nah Thomas 2018, P. 78.

[21] In Maritime Law, See Tetley, Marine Cargo Claims, Ch. 30; Huybrechts M., ‘‘Limitations of Liability and of Actions’’, 2002 LMCLO 370.

[22] Article 25 CEMAC Convention on multimodal transport of goods.

[23] Article 26.

[24] This principle comes from article 25(1) of AUCTMR, but in case of wilful misconduct or default equivalent to it, the period of limitation is three years.

[25] Terre F. Droit Civil, Les Obligations, 10 édition, précis Dallaz 29, No. 1496.

by economic, legal, and logistical factors, necessitating tailored approaches to improve outcomes in the carriage of goods.

Smooth running of judicial and arbitral disputes

It should be noted that, for a smooth running of the judicial and arbitral disputes, the following procedures are primordial:

Judicial disputes

After the petition to the court, a hearing date is set and in subsequent hearings, debates and discussions of the findings will be held between the parties to the disputes. After hearings, the judge will deliver a judgment deemed consistent, contradictor or in default. This judgment after exhausting all legal remedies has res judicata ad can serve as an enforceable instrument to the receiving party.

The normal outcome of judicial disputes

It is usually assumed that the carrier respects spontaneously by paying the amount resulting from the condemnation in favour of the clamant. The amicable settlement thus made terminates the contractual relationship between the parties that became confrontational during the performance. This solution would be most desirable to the creditor of the require obligation. In reaching this sentence, judges determine the nature of compensation depending in particular on the financial situation of the parties and the seriousness of the misconduct. Compensation constitutes therefore private sentence.

Where am action has been instituted in accordance with the provisions of article 26(1) on the CEMAC convention on multimodal transport of goods, or where judgement in such an action has been delivered, no new action shall be instituted between the same parties on the same grounds unless the judgement in the first action is not enforceable in the country in which the new proceeding are instituted. For the purpose of article 26 (b) neither the institution of measures to obtain neither enforcement of a judgment nor the removal of an action to a different court within the same country shall be considered as the starting of a new action.

The abnormal outcome of judicial disputes

After a judgment has obtained res judicata, the party who refuses to execute may be forced by enforcement measures. OHADA, through its uniform Act on securities offers to the creditor a wide range of measures to secure insolvent debtors to meet their obligations [26]. It means that the convinced carrier to refuses to respect the judgment may face seizure of goods that can expose the carrier to insolvency proceedings [27].

Under judicial dispute**,** Article 26 of AUCTMR opens the arbitration to any dispute arising from a contract of carriage. However, the Uniform act does not contain further requirements regarding arbitral proceeding. Each party remains free to determine the applicable rules in accordance with the provisions of uniform act on arbitration. According to uniform act.

Under arbitral tribunal Arbitral tribunals refer to panels of one or more arbitrators responsible for adjudicating disputes between parties. Arbitration is defined as where a neutral party serves as a judge who is responsible for resolving the dispute between parties. Article 26 states ‘’any dispute arising from a contract of carriage governed by this Uniform Act may be settled by way of arbitration”. Worthy of note is the fact that, Article 2 of the OHADA UA on arbitration states that This Uniform Act shall apply to any arbitration when the seat of the arbitral tribunal is in one of the States Parties. Arbitral tribunals use law in the OHADA Uniform Act on Arbitration to solve disputes that arise from OHADA UAs not excluding the OHADA uniform act on carriage of goods by road. The arbitration procedure is based on the fundamental principle that the parties be treated on an equal footing and has an opportunity to assert their rights (principle of contradiction). The non-respect of these principles can justify the intervention of a state judge in the arbitration proceedings [28].

Article 5 of the OHADA UA on arbitration gives the composition of an arbitral tribunal which states; Arbitrators shall be appointed, removed or replaced in accordance with the agreement of the parties. Failing such arbitration agreement, or where the arbitration agreement is insufficient: in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators thus appointed shall choose the third arbitrator; if a party fails to appoint an arbitrator within a period of thirty (30) days from the receipt of a request to do so from the other party, or if the two arbitrators fail to agree upon the third arbitrator within a period of thirty (30) days from their appointment, the appointment shall be made, upon request of a party, by the competent judge in the State Party; in an arbitration with a sole arbitrator, if the parties fail to agree upon appointment of the arbitrator, the latter shall be appointed, upon request of a party, by the competent judge in the State Party.

[26] In England, the selection of enforcement measures depends on wetter the judgement is a money judgment or a judgement requiring the debtor to perform some other act. See Goode R. Commercial law., p. 1158.

[27] See article 25 AUPCAP.

[28] See Kenfack Douajni G., ‘‘le juge étatique ans l`arbitrage OHADA’’, Revue camerounaise d`arbitrage, 2001, n^0 12. At 3 above ; see also, Hascher D., ‘‘ les rapports entre le juge étatique et l`arbitre’’, in L`OHADA et les perspectives de l`arbitrage en Afrique, Bruylant Bruxelles, 2000, at 209 and above; Jarrosson Ch., La option d`arbitrage, Paris, 1987, d LGDJ, Bibliothèque de droit privé, tomo , n^0 198, spec , n^0 147

Furthermore, article 8 this act states that an arbitral tribunal shall be composed of either a sole arbitrator or three arbitrators.

The arbitral award

The arbitral award may be forcefully executed only by virtue of an order of exequatur [29] granted by the competent judge of the State Party, Recognition and exequatur of the arbitral award presuppose that its existence is proven by the party relying thereupon. The existence of the arbitral award is established by the production of the original together with the arbitration agreement, or by copies of the said documents accompanied by proof of their authenticity. If the said documents are not in French, the party shall produce a translation certified by a translator registered on the list of experts established by the competent courts. The recognition and exequatur shall be refused only where the arbitral award is manifestly contrary to a rule of international public policy of the States Parties. Arbitral awards rendered on the basis of rules other than those of the present Uniform Act shall be recognized in the States Parties in accordance with any international conventions that may be applicable and, failing any such conventions, in accordance with the provisions of this Uniform Act on arbitration.

Legal Remedies for Disputes Settlement

It should be noted that the carrier is deprived of this right to a statute of limitation for compensation where the injury results from wilful misconduct. The sender (consignor) and carrier, in instances of their liability have to face consequences of their action. The carrier is liable for total or partial loss or damage and delay in delivery of the goods, while the consignor is liable for wrongful, insufficient information to the carrier which led to the total or partial loss or damage and delay in delivery of the goods. The consignor is liable to the carrier while the carrier is liable to the owner of the goods. The remedies to the liability of these parties are compensation, restitution, and satisfaction of this compensation by the parties.

Compensation

Compensation for damage is a form of reparation for the loss of the goods Article 16 (1) of the OHADA states that the carrier shall be liable for damage to the goods or for the total or partial loss thereof occurring during the time of carriage, as well as for any delay in delivery. Therefore, in case of liability of the carrier the carrier will have as obligation to pay compensation.

Also, article 19 (3, 4), the claimant shall be entitled to claim interest on compensation payable. Such interest, calculated at five per cent per annum, shall accrue from the date on which the claim was sent in writing to the carrier or, if no such claim has been made, from the date on which judicial proceedings were instituted or on which arbitration was requested. In the event of inter-States carriage, when the amounts on which the calculation of the compensation is based are not expressed in CFA Francs, conversion shall be at the rate of exchange applicable on the day and at the place of payment of compensation or, where applicable, the date of the judgment or arbitral award91. Compensation can be seen in most cases either due to the liability of the carrier or sender. This can be seen in the case of ***Societé de Transport International (STI) me Douzima Lawson vs. Ambassa Bidias me Bizon me Goungaye*** [30]**,** where it was held that when the parties agree on an amicable settlement, materialized by a memorandum of understanding, the memorandum of understanding terminates any other possibility of dispute.

Limitation by reference to the goods

In case of total or partial loss and damage, the compensation is based on the value of the loss or damage goods. Indeed, it follows from article 18(1) AUCTMR that:

> *''the compensation in respect of damage or of total or partial loss of the goods, shall be calculated by reference to the value of the goods, and shall not exceed CFA5000 per kilogram of gross weight of the goods''.*

From the interpretation of article 28 of AUCTMR, the ceiling amount withheld is mandatory because any agreement that deviates from the principle is null and void. The value of the goods Mentioned will be Determined by ''*the current market price of goods of the same kind and quality''* [31].

Similarly, this value will resolve the difference between the actual quantity of goods taken over by the carrier and the one delivered. In other words, it would be taken into account in the calculation of the compensation only the weight or missing quantity of the goods.

For the calculation of indemnity, it shall be mentioned following article 19(1) AUCTMR in fine that the value of the goods includes different transportation charges like; custom duties and other charges incurred in respect of the transit. The amount of compensation for loss or damage of the goods complement the amount of compensation paid in case of delayed.

[29] Exequatur in arbitration law refers to the legal process through which an arbitral award is recognized and enforced by a national court, granting the award the same legal force as a court judgment. This procedure is essential, particularly in international arbitration, where the parties may be located in different jurisdictions...

[30] See case of *Societé de Transport International (STI) me Douzima Lawson vs. Ambassa Bidias me Bizon me Goungaye*, on February 14, 2003, by Cour de Cassation.

[31] See article 19 of AUCTMR.

Restitution

Restitution of the goods can be a remedy to either the carrier or owner of the goods. The concept of restitution is not uniformly defined. According to one definition, restitution consists in re-establishing the status quo ante that is the situation that existed prior to the occurrence of the wrongful act. Restitution can still be defined as; restitution is the establishment or reestablishment of the situation that would have existed if the wrongful act had not been committed. In its simplest form, restitution involves such conduct as the release of persons wrongly detained or the return of property wrongly seized. In other cases, restitution may be a more complex act. Furthermore, to r-establish the situation which existed before the wrongful act was committed, restitution is possible provided and to the extent that restitution is not materially impossible and does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Satisfaction

Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality. Satisfaction is a form of reparation which the carrier may have to provide in discharge of his obligations for the damaged caused by the wrongful act. It is however a standard form of solving issues of loss or damage of goods. Material damage resulting from the wrongful act is will normally be financially assessable and hence covered with remedy of compensation. Satisfaction on the other hand is a remedy for damage which is not financially assessable.

Furthermore, Article 24(1-3) of the OHADA UA states that, once a carrier who has paid compensation in compliance with the provisions of this Uniform Act, shall be entitled to recover the principal, together with interest thereon and costs incurred by reason of the claim , from the other carriers who have taken part in the carriage, in accordance with the following provisions: the carrier responsible for the loss or damage shall be solely liable for the compensation whether paid by himself or by another carrier. Furthermore, them shall pay an amount proportionate to his share of liability; should it be impossible to apportion the liability, each carrier shall be liable in proportion to the share of the payment for the carriage which is due to him, if it cannot be ascertained to which carrier liability is attributable for the loss or damage, the amount of the compensation shall be apportioned between all the carriers as laid down in paragraph 1(b) above. If one of the carriers is insolvent, the share of the compensation due from him and unpaid by him shall be divided among the other carriers in proportion to the share of the payment for the carriage due to them. Carriers shall be free to agree among themselves on provisions other than those laid down in this article.

Limits of Attraction of Different Modes of disputes Resolutions Modes in the CEMAC Zone

It is certain that the CEMC zone does not offer in terms of safety and efficiency a framework for the emergence of justice competent to satisfy urgent needs of economic operates this situation is, without doubt, and embodiment to the economy of their area which depends largely on land transport. Consequently, it seems useful to mention the slowness of judicial proceedings, the cost of arbitration and challenges that marks the execution of judgment and arbitral awards. The limited judicial review of the arbitration procedure, the absence of unique arbitration laws or conventions and the difficulties to have in the transport sector available arbitrators shall be mentioned.

The Slowness of Judicial Proceedings

Although justice appears in most of the state parties at the constitutional pint of view, as an instrument for the promotion of social value, fairness, peace, tranquillity and security of citizens, it remains in the hands of judges [32] and politicians and instrument to subjugate citizens and economic operators.

Another difficulty concerns infrastructure. Indeed, the number of courts in charge to handle cases is sometime insufficient in some member states. As such, interlocutory proceedings or emergency proceedings may take years to end and subject to the rights of appeal that is recognized by the parties or state holders.

The combination of all these factors minimizes the action of justice in attracting economic investors. Indeed, the intervention of a late decision cannot restore confidence to transport sector operators, especially where most often, such disputes concern goods that are perishable in nature and whose value depends on the market exchange rate. Beside the fierce struggle against corruption it would be important to increase in member state court that are able to respond promptly to multiply demand of transport users and to offer appropriate training for judges through seminars impregnation on the OHADA pieces of legislation. This is to prevent the judge to no longer be a borrowing judge but an audacious judge, producer of autonomous and original OHADA Law cases.

The Cost of Arbitration

While arbitration appears alongside state justice as a solution to the procedural celerity and flexibility, it's never the less has a cost. Whatever the type of arbitration chosen by the parties to the contract, its organization usually requires huge expenses. In a context dominated by transportation companies and actors in general with

[32] There are not practically free from politics because of hierarchical subordination.

limited financial resources, arbitration remains a problem and not really a solution. Although the parties to the litigation get decision in their favour, their enforcement may become questionable.

The difficulties in enforcing judgments, and arbitral awards

Once the decision is delivered, it would be necessary that the recipient execute it. In this stage of execution of judgments or of awards, several difficulties may arise. Under judicial aspect, the resistance of the losing party can constitute a handicap for the execution of the decision paralyzing the beneficiary. Similarly, a late decision can become non-executable because of bankruptcy of the losing party. In this situation, the difficult to regain his rights become particularly improbable when facing a corporation.

Under the arbitral aspect**,** it is important to note that the recognition and enforcement of arbitral in the CAMAC state is both based on Article 34 of the OHADA Uniform Act on Arbitration and on the 1955 Convention on Foreign Arbitral Awards (New York Convention) [33]. The difficulties of execution of the awards occur in case of resistance of the losing party; or where the party makes appeal against the awards before a judicial court. Similarly, in case of a rejection of the awards by the judicial court during the procedure of enforcement order (Exequatur) for its validation in a foreign territory, the execution is compromised. In this case the beneficiary despites the benefit of the award it would be disrupted because of the legal impossibility in enjoying the award. Thus, getting into multimodal transport has helped in the consolidation of many modes of transport in a single document. Thus, reducing the paper work and involvement of so many actors and deviation on transit of goods is necessary.

CONCLUSION AND POSSIBLE RECOMMENDATIONS

Multimodal transport of goods being one of the prudent modes of the transportation of goods has indeed boasted the transport sector. There exist several mode of dispute settlement arising from multimodal transportation of goods, of which the two principal modes accepted under the CEMAC Convention on multimodal transportation of goods are judicial settlement and arbitration but these modes faced series of problem in the enforcement of their judgement or awards taken.

The adoption of other modes of settlement of disputes such as mediation, negotiations by the legal instrument regulating multimodal transport will go a long way in reducing the rate of application for court disputes settlement and that of arbitration since all of them have their lapses.

The legislators of CEMAC member states should endeavour to reduce the procedural bottlenecks when it comes to the enforcement of judgements. Not forgetting the fact that arbitral awards should be attached with an executory formula.

There should be the implementation of the use of one contract to cover the entire transport operation, this is due to the high risks associated with the land leg of transportation and the absence of appropriate legal frameworks in relation to such transportation, international carriers do not, in many cases, offer one contract to cover the entire transport operation from origin to destination, with one party taking responsibility throughout.

There should be the enforcement of a global international convention on multimodal transport, as the UN Convention on the International Multimodal Transport of Goods 1980 has not received the required number of ratifications and the international legal framework is complex and fragmented up to present date [34]. Thus, the harmonization and the importance of simplifying the procedures requires for the movement of goods from one country to another, particularly with regards to regulations, customs, banking and insurance are essential, not forgetting the various modes of settling disputes.

REFERENCES

A) TEXT BOOKS

- Baker & Mckenzie Zurich, *(2015*) *Business in West and Central Africa: The legal framework. An introduction to the laws of the OHADA*
- Brown H. and Marriott A., (1999) *ADR Principles and Practices*, 2nd ed., Bon-Garcin I., Pp. 54.
- Cashmore C., (2005) *Parties to a contract of carriage: or, who can sue on a contract of carriage,* CEA, *Les infrastrstures de transport et l'intégration régionale en Afrique centrale*, paris, éditions Maisonneuvre et Larose, Pp. 410-411.
- Clarke M. A., (2014) International *carriage of goods by road: CMR,* Sixth Edition, Pp. 25.
- David A Glass (2012), *Freight Forwarding and Multimodal Transport Contracts*, 2nd edition, Routledge Taylor and Francis group London and New York, ISBN: 978-1-84214-595-1, Pp. 4-59.

[33] Three states of CEMAC are members of this Convention: Cameroon, Central African Republic and Gabon.

[34] For an overview over the current legal framework, see Implementation of Multimodal Transport Rules, UNCTAD/SDTE/TLB/2and UNCTAD/SDTE/TLB/2/Add.1. See also Multimodal Transport: The Feasibility of an International Legal Instrument, UNCTAD/SDTE/TLB/2003/1.

- Fouchart P., (2000) *L'OHADA et les perspectives de l'arbitrage en Afrique,* Bruylant, Bruxelles, Pp. 12-16.
- Glass A. D. and Cashmore C., (1989) *Introduction to the law of carriage of goods,* Sweet and Maxwell, Pp. 98.
- Jarroson Ch., (1987) *La notion d'arbitrage,* Paris, 1, éd. LGDJ, Bibliothèque de droit privé, tome n° 198, Pp. 211-230.
- Marian Hoeks, (2010), Multimodal Transport Law, "*The law applicable to Multimodal contract for the carriage of goods*, Kluwer Law International BV, the Netherlands, vol. 6, ISBN 978-90-411-5516-0, Pp. 2-24.
- Martin Ira Glassner, (1983), *Transits Problems of three Asian landlocked countries: Afghanistan, Nepel and Laos*, School of Law University of Maryland, edition N° 4, vol.4, Pp. 4-6.
- Monkam, Cyrille. (2020) *Carriage of goods by road under the OHADA Law*. Volume 1 Contract of Liabity Presses Universitaires d'Afrique, Pp.43.
- Kouladis N., (2006) Principles of Law Relating to International Trade, (New York, Springer Science-Business Media, Pp. 12-43.

B) ARTICLES/ JOURNALS

- Arvis, J.F, G. Raballand, and J.F (2007) "The Cost of being Landlocked: Logistics, Costs and the Supply Chain", N° 4258, Washington DC, World Bank, Pp. 1-13.
- Akam Akam A., (2003) « L'information dans le contrat de transport de marchandises par route : le droit commun des contrats à l'épreuve du droit OHADA », p. 34, n° 70s.
- Batouan J.A., (2007) « La déprofessionnalisation » de la qualité de transporteur routier de marchandises : une approche de l'article 2(k) de l'Acte Uniforme OHADA relatif aux contrats de transport de marchandises par route », *Revue électronique Neptunus, CDMO*, Université de Nantes, Vol. 13-3.
- Blohorn-Brenneur B., (1999)« Conciliation, amiable composition et médiation judicaires dans les conflits individuels du travail. La pratique greenobloise », *Rev. arb*., Pp. 785.
- Bidisha L. Feroz K. (2012), Landlocked Countries: A Way to Integrate with Coastal Economies, Oklahoma State University, Journal of Economic Integration, Vol. 27, N° 4, Pp. 505-519.
- Blasche, Gerhard. (1975) "Convention on the Contract for the International Carriage of Goods by Road-CMR: An Introduction." Int'l Bus. Law. 3rd edition, Pp. 24.
- Endalcachew Bayeh (2015), "The Rights of Landlocked States under the International Law: the role of Bilateral/Multilateral Agreements", Social Sciences, vol. 4, N° 2, ISSN: Pp. 2326-9863.
- Chami D.E., (2006) "The Obligations of the Carrier", Vol. 3. Pp. 2.
- Huybrechts M., (2009) "Limitations of liability and of actions", vol. 2 LMCLQ, Pp.370.
- Mackie K., (2003) "The future for ADR clauses after Cable and Wireless v IBM", *Arbitration International*, no. 19, Pp. 345.
- Monkam C., (2018) "Some considerations on flexibility of carrier's liability in OHBLA Law", *International Transport Law Review* (ITRL), Vol 2, and Issue 1: Esruma Review, No. 8, Pp. 3-32.
- Soyer, Baris, and Andrew Tettenborn. (2013) "Convention on the Contract for the International Carriage of Goods by Road (CMR) (Geneva, 19 May 1956)." In Carriage of Goods by Sea, Land and Air, Informal Law from Routledge, Pp. 411-424.
- Tilche M., (2009) « Prescription- Repartir pour un tour », *BTL* n°3265, 30 mars 2009, Pp. 202-203.
- Tumnde, Martha Simo. (2010) "Harmonization of business law in Cameroon: Issues, challenges and prospects." Tul. Eur. & Civ. LF 25, Pp. 119.
- Formbasso M.L, (2015) "The Law and Practice of Maritime Transportation Within The CEMAC Zone: The Case of Cameroon.". (Ph.D. Diss. University of Buea, November, 2015. P1), Pp. 43-45.
- Sériaux A., (1981) "La faute du transporteur ". (PhD thesis, Marseille, Faculty of Law, Economics and Science, d'Aix-Marseille University), Pp. 6).
- Mantinkang Formbasso Lawrence, (2015), "The Law and Practice of Maritime Transportation within the CEMAC Zone: The Case of Cameroon, University of Dschang, Faculty of Law and Political Science.

C) REPORTS AND CONFERENCES

- Jacques Degbelo, Catherine Hennis Ret ALL, (2013) Report on Trade Policy Review, Countries of the Central African Economic and Monetary Community (CEMAC), and Members of World Trade Organization.
- Khiane Phansourivong, Signe Burg ET ALL, (2014) Intergovernmental Preparatory Committee report for the Second United Nations Conference on Landlocked Developing Countries on its First Session, New York.
- Jean-Francois, Arvis ET ALL, (2007), The Cost of Being Landlocked; logistics, costs and Supply Chain Reliability, Conference Edition, World Bank 199.
- Francois Arvis and karlygash Dairabayeva, (2014), "Improving Trade and Transport for Landlocked Developing Countries", united nation report for the 2nd United Nation Conference on Landlocked Developing Countries (LLDCs).

D) REPORTS

- Trade Policy Review Report by the Secretariat Countries of the Central African Economic and Monetary Community (CEMAC), World Trade Organisation, 24 June 2013.

- UNCTAD Secretariat, "Legal Aspects of International Trade", United Nations Conference on Trade and Development (1999), P. 1.

E) MEMOGRAPHS

- Dashaco John (2019), *International Trade and Investment Law in Africa*, Faculty of Law and Political Science, University of Dschang.
- Simon TabeTabe (2019), *Legal writing and legal research* (FSJP), University of Dschang.
- Nah Thomas (2018), *International Commercial Arbitration* (FSJP), University of Dschang.
- Monkam C., (2019/2020), International Transport Law (Law 616): Lecture notes, University of Buea.

F) DICTIONARY

- Hornby A.S, Oxford Advanced Learner's Dictionary, International Students Edition, Oxford University Press, 8th Edition (2018).
- Cambridge learner Dictionary, Intrernational Student Edition University Press, 4th edition (2015).
- Black Law Advanced Dictionary, Garner A.B., 8th edition (ST. Paul, Minnesota, West Group, (2000).