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## **Draft explanatory note on the convention on negotiable cargo documents**

### **Note by the Secretariat**

This note contains the draft explanatory note on the convention on negotiable cargo documents prepared by the UNCITRAL secretariat for information purposes. It is not an official commentary on the convention. In line with similar explanatory notes prepared by the UNCITRAL secretariat,<sup>1</sup> it begins with a general overview of the convention, followed by article-by-article remarks.

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<sup>1</sup> See, e.g., *United Nations Convention on the Use of Electronic Communications in International Contracts* (2007), United Nations publication, Sales No. E.07.V.2, and *United Nations Convention on the International Effects of Judicial Sales of Ships: with Explanatory Note prepared by the UNCITRAL Secretariat* (2023), United Nations publication, Sales No. E.23.V.7.



## I. Overview of the Convention

### A. Objective

1. The United Nations Convention on Negotiable Cargo Documents (the “Convention”) establishes a negotiable document of title that represents goods in transit, regardless of the mode of transport. This document, referred to as “negotiable cargo document” (NCD), can be issued in either paper or electronic form and is intended for use in both unimodal and multimodal transport. The Convention’s primary objective is to ensure that NCDs, whenever issued upon agreement between the transport operator and the consignor, are recognized across borders by States Parties to the Convention.

2. By introducing NCDs, the Convention extends the concept of negotiable documents of title beyond maritime transport. Traditionally, transport law conventions for rail, road and air transport only envisage the issuance of non-negotiable transport documents.<sup>2</sup> While maritime bills of lading are widely recognized by traders as negotiable documents of title, earlier maritime and multimodal conventions focused mainly on the contractual relationship between carriers (or transport operators) and shippers (or consignors), without addressing the commercial implications of bills of lading.<sup>3</sup> More recent transport law conventions have begun to introduce rules addressing the legal effect of negotiable transport documents and the rights and liabilities of their holders, although not all such aspects are comprehensively covered.<sup>4</sup>

3. The Convention provides for uniform rules on the issuance and use of NCDs, including their legal effect, as well as on the rights and liability of NCD holders. These rules are designed to encourage the acceptance of NCDs by banks and other financial institutions as a credit enhancement tool, thereby increasing liquidity for businesses – especially micro-, small and medium-sized enterprises (MSMEs) and those businesses in landlocked regions – and accelerating trade flows. They are also designed to facilitate the sale of goods in transit, which is particularly relevant for commodity trade. The Convention further aims to promote the development of door-to-door transportation by enabling the use of a single NCD covering the entire journey. While both paper NCDs and electronic NCDs (also referred to as “eNCDs”) could help streamline documentation, improve operational efficiency, and facilitate customs clearance, eNCDs offer the added benefit of driving the digital transformation of global trade.

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<sup>2</sup> The following conventions do not envisage the issuance of negotiable transport documents: COTIF/CIM Uniform Rules concerning the Contract of International Carriage of Goods by Rail, 2016; Agreement on International Railway Freight Communications, 2020 (SMGS); Convention on the Contract for the International Carriage of Goods by Road, 1956 (CMR), as amended by the Additional Protocol of 2008; Convention for the Unification of Certain Rules for International Carriage by Air, 1999 (Montreal Convention). The Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Conventions, 2023 (pending entry into force) envisages the issuance of negotiable railway consignment bills.

<sup>3</sup> International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 (Hague Rules), as amended by the Protocol of 1968 and the Protocol of 1979; United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules); United Nations Convention on International Multimodal Transport of Goods, 1980 (MT Convention) (pending entry into force).

<sup>4</sup> Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, 2000; United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008 (Rotterdam Rules) (pending entry into force); Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Conventions, 2023 (pending entry into force). See also a Note by the Secretariat on “Interaction between draft convention on negotiable cargo documents and existing international transport law conventions” ([A/CN.9/WG.VI/WP.115](#)).

4. The Convention focuses exclusively on the issuance and use of NCDs, rather than on the rights and obligations of the parties to the underlying transport contract. This approach ensures that the Convention does not interfere with existing legal regimes governing carrier liability under applicable transport law conventions, but instead complements and operates alongside these established frameworks.

## B. Outline

5. Under the Convention, the basic rule establishing “negotiability” of NCDs is that the rights provided for in the NCD can be exercised only by the holder (art. 7(1)) and will be transferred together with the transfer of the NCD (art. 11). In this context, the Convention specifies that an NCD may be transferred either by endorsement and transfer of possession or by mere transfer of possession, if the last endorsement is in blank.

6. The Convention also provides for the “document of title” function of NCDs. The issuance and initial transfer of possession of an NCD, as well as any subsequent transfers, to the holder shall have the same effect, for the purpose of acquisition of rights to the goods, as the physical handing over of the goods (art. 7(4)).

7. To promote the “negotiability” of NCDs, the Convention provides detailed rules on the rights of the holder, which shall include the right to demand delivery of the goods at destination (arts. 7 and 10). In addition, it provides for the protection of a third party relying on information in the NCD (art. 6(3)).

8. In pursuance of the principle of party autonomy, the Convention envisages the issuance of an NCD only where agreed by the transport operator and consignor (art. 3(1)). To guide the parties on how to issue NCDs, the Convention lists two methods as examples: (i) converting an existing transport document – such as a consignment note – into an NCD; or (ii) issuing a stand-alone NCD where a transport document has not been issued or has been cancelled after issuance (art. 3). In addition, the Convention sets out content requirements for an NCD (art. 4) and prescribes rules to address deficiencies in the NCD as a result of missing information (art. 5).

9. The Convention contains detailed rules to support the use of eNCDs (arts. 12–18). These rules are aligned with the UNCITRAL Model Law on Electronic Transferable Records (MLETR) and other legislative texts on electronic commerce prepared by UNCITRAL, including the United Nations Convention on the Use of Electronic Communications in International Contracts 2005 (ECC).

## C. Drafting history

*[Note: This section will be inserted when the explanatory note is submitted for publication.]*

## II. Article-by-article remarks

### A. Preamble

10. The preamble recites the objective of the Convention and the considerations that led to its adoption. It also illustrates the connection between the Convention and the work of UNCITRAL, under whose auspices the Convention was prepared.

11. The first paragraph is common to many legislative texts prepared by UNCITRAL, situating the Convention within the mandate of UNCITRAL to promote the “progressive harmonization and unification of the law of international trade”.<sup>5</sup> The second paragraph highlights the critical role of negotiable transport documents

<sup>5</sup> General Assembly resolution 2205 (XXI), section I.

(such as maritime bills of lading) in facilitating trade finance and the sale of goods in transit. The third paragraph expresses the drafters' view that establishing uniform rules for negotiable transport documents covering all modes of transport, including multimodal transport, is both necessary and beneficial. The fourth paragraph underscores the importance of reliable systems and data in enabling the digital transformation in international trade. The fifth paragraph articulates the Convention's objective to create a harmonized legal framework that ensures certainty regarding the legal effect of NCDs, as well as the rights and liability of their holders – thereby enhancing their negotiability and financing function. The final paragraph reflects the drafters' belief that the Convention will help reduce trade costs along inland routes and support landlocked regions in integrating more effectively into global supply chains.

## **B. Chapter 1. General provisions**

### **1. Article 1. Scope of application**

#### **(a) General remarks<sup>6</sup>**

12. Article 1 defines the scope of the Convention, confirming its application solely to the issuance, transfer and legal effects of NCDs that contain a conspicuous reference to the Convention. It does not extend to negotiable transport documents governed by existing transport law conventions unless a clearly visible reference to the Convention is included in these documents.

13. The chapeau clarifies that the Convention only applies to NCDs issued in connection with the international transport of goods. The term “international transport of goods” is not defined in the Convention and should be interpreted consistently with definitions found in existing unimodal transport conventions. The international character of the transport requires the goods to pass through different States.

14. The chapeau further establishes that the Convention applies to NCDs issued for international transport of goods by one or more modes of transport. This means that the Convention applies to both unimodal and multimodal transport, regardless of the specific mode(s) used.

#### **(b) Geographic scope (art. 1(1))<sup>7</sup>**

15. Article 1(1) requires a connection with a State Party to the Convention (referred to below as “State Party”) and follows a broad approach by using the connector “or” to link subparagraphs (a), (b) and (c). Considering that the issuance of NCDs is subject to the agreement of the transport operator and the consignor (art. 3(1)), the deliberate use of “or” intends to avoid unduly limiting the geographic scope of the Convention.

16. Pursuant to subparagraph (a), the Convention applies when the place of taking in charge of the goods by the transport operator, as indicated in the NCD, is located in a State Party. The term “taking in charge” appears in the United Nations Convention on International Multimodal Transport of Goods, 1980 (MT Convention) and the UNCTAD/ICC Rules on Multimodal Transport Documents. Such term specifically includes situations where the transport operator does not physically receive the goods itself.

17. Pursuant to subparagraph (b), the Convention applies when the place of delivery of the goods by the transport operator, as indicated in the NCD, is located in a State Party. The place of delivery of the goods is relevant because the buyer's bank is likely to be located there. If that bank becomes an NCD holder, it needs to rely on the

<sup>6</sup> A/CN.9/1134, paras. 38 and 55; A/CN.9/1164, paras. 15, 22 and 25; A/CN.9/1205, paras. 13–20; A/80/17, paras. 40–45.

<sup>7</sup> A/CN.9/1134, para. 41; A/CN.9/1164, paras. 16–21; A/CN.9/1205, paras. 21–22; A/80/17, paras. 33–35.

provisions of the Convention to enforce its rights. At the same time, the reference to the place of delivery as indicated in the NCD helps ensure that the Convention applies even if the actual place of delivery changes following an instruction from the holder.

18. Pursuant to subparagraph (c), the Convention applies when the place of issuance of the NCD as indicated in the NCD is located in a State Party. The place of issuance is an important factor because the law of the place of issuance is typically applied to determine whether a document can be recognized as a document of title. Given the practical difficulty for identifying the place of issuance in an electronic context, paragraph 1(c) refers to the place of issuance as indicated in the NCD.

**(c) Substantive scope (art. 1(2) and (3))<sup>8</sup>**

19. Paragraph 2 clarifies that the Convention intends to complement – not override – existing legal regimes relating to the regulation and control of transport operations. For example, customs clearance requirements, which are governed by national customs laws and international instruments such as the Revised Kyoto Convention,<sup>9</sup> remain fully applicable.

20. Given that the Convention applies solely to the issuance, transfer and legal effects of NCDs, paragraph 3 affirms that the Convention does not modify the rights and obligations of the transport operator, consignor or consignee or their liability under applicable international conventions and national laws governing transport contracts. The provision is subject to the proviso “except as otherwise provided for” in the Convention. This is intended to clarify that where the negotiability of the NCD is concerned, the rights of the holder need to be respected regardless of deviating provisions in the applicable international convention or national law granting specific rights to the consignor or consignee. Once the transport operator and the consignor agree to issue an NCD, the document issued will carry the distinct legal features of an NCD under this Convention – not those traditionally associated with negotiable transport documents under applicable international conventions or national laws.

**2. Article 2. Definitions**

**(a) Definition of “Consignor”<sup>10</sup>**

21. The definition of “consignor” corresponds to the general understanding that the “consignor” is the person who has entered into a transport contract with the transport operator. It excludes any person who merely delivers goods to the transport operator without being party to the transport contract.

**(b) Definition of “Consignee”<sup>11</sup>**

22. The term “consignee” appears once in the Convention, namely in article 1(3), which, *inter alia*, provides that – unless otherwise stated in the Convention – this Convention does not modify the rights, obligations or liability of the consignee under applicable international conventions or national law governing the transport contract.

23. The definition of “consignee” refers to the person named in the transport contract as the person entitled to take delivery of the goods. Considering that a transport contract may exist even without the issuance of a transport document, the definition of “consignee” is not linked to the person named in the transport document.

24. Importantly, under this Convention, the consignee will not always be the person entitled to take delivery of the goods. Once an NCD is issued, the rights provided for in the NCD – including the right to demand delivery of the goods at destination – can be exercised only by the holder (art. 7.1). Article 10 reinforces this principle by

<sup>8</sup> A/CN.9/1164, paras. 23–26; A/CN.9/1205, paras. 23–26; A/80/17, paras. 36–39, 113–115.

<sup>9</sup> International Convention on the Simplification and Harmonization of Customs Procedures 2006 (Revised Kyoto Convention).

<sup>10</sup> A/CN.9/1134, paras. 30–31; A/CN.9/1205, para. 27; A/80/17, para. 46.

<sup>11</sup> A/CN.9/1134, paras. 32–33; A/CN.9/1170, para. 75; A/CN.9/1205, para. 27; A/80/17, para. 47.

stipulating that delivery of the goods may be demanded from the transport operator only against surrender of the NCD by the holder.

**(c) Definition of “Electronic record”<sup>12</sup>**

25. The term “electronic record” is used in the definition of “negotiable cargo document” and throughout Chapter 4 of the Convention.

26. The definition is identical to the definition of the term in article 2 of the MLETR and the term is intended to carry the same meaning. The definition recognizes the composite nature of an electronic record, which may include information generated before or after generation of the record (e.g. information related to endorsement), provided that it is logically associated with the other information constituting the record, or otherwise linked together so as to become part of the record. It also recognizes the possibility that, in certain electronic records management systems, various data elements may, taken together, provide the information constituting the electronic record, but with no discrete record constituting in itself the NCD.

27. The reference to information being “logically associated” refers to the linking of data elements by software application. It is therefore concerned with computer logic and not with human logic.

**(d) Definition of “Holder”<sup>13</sup>**

28. The term “holder” is the key concept in the Convention. It is used throughout the Convention and is similar to the definition in article 1(10)(a) of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008 (Rotterdam Rules).

29. “Holder” within the meaning of the Convention may be the person named in the NCD as consignor. In that case, the consignor is the first holder of the NCD. If the NCD has been transferred to a third person, the holder is the person who is in possession of the NCD and is identified in it as the person to whose order it is issued or as the person to which the NCD is duly endorsed. When in possession of the NCD, the consignee can be the holder if the NCD is issued to the order of the consignee or duly endorsed to the consignee. If the NCD is endorsed in blank, the holder is the person that is in possession of that NCD.

30. For eNCDs, a functional equivalence rule for possession is set out in article 15 of the Convention (see paras. 186–191 below).

**(e) Definition of “Negotiable cargo document”<sup>14</sup>**

31. The term “negotiable cargo document” is used throughout the Convention. Adopting a medium neutral approach, the definition encompasses both paper documents and electronic records, applying identical requirements to each format.

32. The definition contains three elements that must be met in order for a document to qualify as an NCD. The first element requires the NCD to be signed and issued by the transport operator. The signature reflects the transport operator’s intent to be bound by the terms of the NCD. For eNCDs, this requirement should be read in conjunction with articles 14 and 16 of the Convention (see paras. 182–185 and 192–194 below). Issuance marks the moment when the NCD becomes operative. The second element requires the NCD to contain wording such as “to order” or “negotiable” or an equivalent expression to signal negotiability. Consequently, the NCD is not a document similar to a straight bill of lading that is non-negotiable. The

<sup>12</sup> A/CN.9/1205, para. 34; A/80/17, paras. 48–49. See also paragraphs 34–35 of the explanatory note to the MLETR in *UNCITRAL Model Law on Electronic Transferable Records* (United Nations publication, Sales No. E.17.V.5).

<sup>13</sup> A/CN.9/1134, paras. 34–37; A/CN.9/1170, paras. 76–79; A/CN.9/1199, paras. 34, 53–54; A/CN.9/1205, paras. 28–29; A/80/17, paras. 50–51.

<sup>14</sup> A/CN.9/1134, paras. 39–43, 76; A/CN.9/1164, paras. 69, 74; A/CN.9/1170, paras. 80–83, 108; A/CN.9/1205, paras. 30–33; A/80/17, paras. 52–53.

third element requires the NCD to indicate that the goods as specified in the document have been taken in charge by the transport operator and consigned to the order of the holder. This element reflects the character of the NCD as “document of title”.

33. It is important to note that these three elements defining a “negotiable cargo document” carry distinct legal weight compared to the information requirements listed in article 4. While article 4(1) states that an NCD shall include certain specified information, article 5(1) clarifies that the absence of any such information does not undermine the document’s legal effect or validity as an NCD – so long as it otherwise meets the definition of “negotiable cargo document”.

34. Contrary to the definition of “transport document” (see art. 2(7)), the definition of “negotiable cargo document” does not include any requirement to evidence or contain the transport contract. The link between the NCD and the transport contract is, however, assured through other provisions of the Convention. Pursuant to article 3(2)(a), an NCD may be issued through entering an annotation signed by the transport operator in each original of the transport document. In such case, an NCD is effectively the same document as the transport document, which evidences or contains the transport contract. Under article 3(2)(b), an NCD may also be issued as a stand-alone NCD where no transport document has been issued or where a transport document has been issued and cancelled. Article 4(1)(g) requires the terms of the transport contract to be included in the stand-alone NCD.

**(f) Definition of “Transport contract”<sup>15</sup>**

35. The term “transport contract” is relevant for the definitions of “consignor”, “consignee”, “transport document” and “transport operator”. As reflected in the definitions of “consignor” and “transport operator”, the consignor and the transport operator are the parties to the transport contract.

36. According to the definition, a transport contract only exists if the transport operator undertakes to perform international transport of goods for reward. The phrase “undertakes to perform” excludes those contracts whereby freight forwarders acting as agents procure the performance of international transport of goods for reward. The word “reward” appears in existing international conventions concerning the transport of goods by railway, road and air.<sup>16</sup> It is broader in scope compared with the word “freight” and captures a single price quote for all types of services in logistics contracts concluded by freight forwarders.

**(g) Definition of “Transport document”<sup>17</sup>**

37. The Convention uses the term “transport document” in order to differentiate between an NCD and those documents that have been issued under other transport law conventions or national law. The term “transport document” is defined broadly to avoid the risk that transport documents issued under those other conventions or national law may not qualify as a transport document under the Convention. This is important because an NCD can be issued through annotating an existing transport document (see art. 3(2)(a) and 3(3)).

38. The definition is intended to be as simple as possible and make it explicit that the transport document is issued under the transport contract without entering into details as to who issued the document, whether or not it has to be signed by both parties to the transport contract, and what obligations it reflects. The definition thus takes into account that, for instance, non-negotiable transport documents are typically not issued by the transport operator but made out by the consignor, although they need to be signed by the transport operator in order to obtain evidentiary value.

<sup>15</sup> A/CN.9/1134, paras. 44–47, 53; A/CN.9/1170, paras. 88–90; A/CN.9/1205, para. 35; A/80/17, para. 54.

<sup>16</sup> See CIM Uniform Rules (art. 1.1), CMR (art. 1.1) and the Montreal Convention (art. 1.1).

<sup>17</sup> A/CN.9/1134, paras. 48–51; A/CN.9/1170, paras. 91–94; A/CN.9/1205, para. 35; A/80/17, para. 54.

**(h) Definition of “Transport operator”<sup>18</sup>**

39. The term “transport operator” is used throughout the Convention, referring to the person issuing the NCD. The definition of “transport operator” is similar to the definition of “multimodal transport operator” in article 1(2) of the MT Convention. It is intended to capture the diversity of commercial practice such as non-vessel operating carriers. It is thus broader in scope.

40. The definition of “transport operator” requires two elements to be met: (a) concluding a transport contract with the consignor; and (b) assuming responsibility for the performance of the transport contract. Thus, freight forwarders, who act merely as agents and do not assume responsibility for the performance of the transport contract, do not fall under the definition of “transport operator” and thus cannot issue NCDs. The phrase “assumes responsibility for the performance of the contract” does not mean that the transport operator needs to perform the transport itself. This is clarified by the addition “irrespective of whether or not that person performs the transport itself”.

**C. Chapter 2. Issuance, content and legal effect of negotiable cargo documents****1. Article 3. Issuance of a negotiable cargo document**

41. Article 3 sets out the rules for the issuance of an NCD, which is entirely based on mutual agreement between the transport operator and the consignor. This principle of party autonomy ensures that the issuance of an NCD falling under the Convention is not imposed but rather adopted voluntarily, reflecting the commercial needs and preferences of the parties involved.

**(a) Condition for issuance (art. 3(1))<sup>19</sup>**

42. Paragraph 1 reflects the principle of party autonomy under which the issuance of an NCD is subject to the agreement of the transport operator and the consignor, as parties to the transport contract. Such agreement must cover two aspects: (a) whether to issue an NCD which, on the basis of a conspicuous reference to the Convention, falls under the Convention; and (b) the chosen medium for the NCD – either as a paper document or an electronic record. The requirement of a “conspicuous reference” links back to article 1(1), which stipulates that such a reference on the NCD is necessary to trigger the application of the Convention.

43. Paragraph 1 does not specify to whom the NCD should be issued. It is anticipated that, depending on the circumstances, the NCD may be issued to the consignor or to a third party delivering the goods to the transport operator.

**(b) Method of issuance (art. 3(2) and (3))<sup>20</sup>**

44. Paragraphs 2 and 3 address the methods by which NCDs may be issued. The chapeau of paragraph 2 employs the term “shall”, which means that the transport operator and the consignor are required to reach an agreement on the method of issuance. By contrast, the phrase “may include” introduces flexibility in the choice of methods. It makes clear that the examples provided in paragraph 2 are illustrative rather than exhaustive, allowing the parties to adopt any method that suits their operational needs. If the parties choose to issue an NCD alongside an existing

<sup>18</sup> A/CN.9/1134, paras. 10–14, 46, 52–53; A/CN.9/1205, paras. 36–38; A/80/17, para. 54.

<sup>19</sup> A/CN.9/1127, paras. 13–14; A/CN.9/1134, para. 56; A/CN.9/1164, paras. 27, 29, 32; A/CN.9/1199, para. 77; A/CN.9/1205, para. 40; A/80/17, paras. 55–57.

<sup>20</sup> A/CN.9/1127, paras. 16–22; A/CN.9/1134, paras. 28–29, 57–72; A/CN.9/1164, paras. 28–40, 66–68; A/CN.9/1170, paras. 95–99, 100, 102, 113–114; A/CN.9/1199, paras. 79–84; A/CN.9/1205, paras. 42–46, 52; A/80/17, paras. 58–62.

transport document, its issuance should take in account the law applicable to the transport contract and lies outside the scope of the Convention.

*Negotiable cargo document in the form of annotated transport document*

45. Paragraph 2(a) contemplates that an NCD can be issued through entering an annotation signed by the transport operator in each original of the transport document. The basic principle is that any transport document (either negotiable or non-negotiable) can be converted into an NCD if so agreed between the transport operator and the consignor, provided that the annotated document meets the definition of “negotiable cargo document” set out in article 2(5).

46. Paragraph 3 provides additional guidance to the transport operator on the required content of the annotation in order to convert a transport document into an NCD. Firstly, paragraph 3 requires the annotation to contain, in a conspicuous manner, the indication set out in the definition of “negotiable cargo document” in article 2(5). Such requirement is relevant for situations when the parties wish to convert a non-negotiable transport document into an NCD. In that case, the annotation shall contain the wording such as “to order” or “negotiable” or an equivalent expression to indicate that the goods as specified in the NCD have been taken in charge by the transport operator and consigned to the order of the holder. The purpose of such requirement is to ensure that the annotated transport document will be clearly marked as a negotiable document in order for it to be treated as an NCD. Secondly, paragraph 3 requires the annotation to indicate that the transport document is to serve as an NCD from a specified date. This requirement is relevant for all situations where a transport document (either negotiable or non-negotiable) is to be converted into an NCD. If the annotation fails to state the date from which the transport document is to serve as an NCD, the default rule in article 5(4) applies whereby the transport document is deemed to serve that function from the date of its issuance (see para. 94 below).

47. In paragraph 2(a), the phrase “entering an annotation signed by the transport operator” requires the annotation to be signed by the transport operator. It contemplates that some transport documents may eventually feature pre-printed annotations. The signature requirement ensures that the transport operator is responsible for the annotation, not the consignor, as might be the case for consignment notes issued under some transport law conventions. It should be read together with article 14 which explains how such requirement is met with respect to an electronic record.

48. The reference to “each original” imposes an obligation on the transport operator in respect of how annotations should be entered. Although the Convention does not address the legal consequences for failure to comply with such obligation, the transport operator will likely bear the legal consequences under relevant applicable law.

49. The use of the word “the” in the phrase “each original of the transport document” makes clear that the document to be converted into an NCD should not be any transport document, but the transport document that evidences or contains the transport contract between the transport operator and the consignor. In the context of multimodal transport, for instance, a freight forwarder acting as contractual carrier can issue an NCD through annotating a multimodal transport document that evidences or contains the transport contract between that freight forwarder and the consignor. That freight forwarder cannot issue an NCD through annotating a transport document issued by an actual carrier performing part of the carriage, which evidences or contains a separate transport contract between the freight forwarder and the actual carrier.

*Stand-alone negotiable cargo document*

50. Paragraph 2(b) allows for the issuance of a stand-alone NCD independent of any pre-existing transport document in two scenarios. Firstly, a stand-alone NCD can be

issued where no transport document has been issued. In practice, in some transactions the parties may agree not to issue a transport document. In some other transactions, the issued transport document may not meet the definition of transport document under applicable transport law conventions which results in the absence of a valid transport document. The absence of a transport document should not prevent the parties from agreeing to issue an NCD.

51. Secondly, a stand-alone NCD can be issued where a transport document has been issued and cancelled. For example, the parties may decide to convert a maritime bill of lading into an NCD to facilitate the movement of goods via inland transport due to unforeseen circumstances. To avoid potential confusion, it is advisable to cancel in such case the issued maritime bill of lading and to issue a stand-alone NCD, instead of converting the maritime bill of lading into an NCD through annotation.

**(c) When to issue (art. 3(4))<sup>21</sup>**

52. While paragraph 2 addresses the methods of issuance of an NCD, paragraph 4 establishes the default timing for issuing an NCD: it is to be issued when the goods are taken in charge by the transport operator. This aligns with the definition of “negotiable cargo document” which refers to a document that indicates, among others, that the goods as specified in the document have been taken in charge by the transport operator. This also aligns with standard commercial practice, where the moment of taking charge marks the beginning of the transport operator’s responsibility.

53. Recognizing the diversity of logistics operations and documentation workflows, paragraph 4 allows for a later issuance of an NCD if the parties agree and provided that a transport document has already been issued. The possibility of issuing the NCD at a later stage is contingent upon the prior existence of a transport document, which records the condition of the goods at the time of shipment. This flexibility is particularly useful in scenarios where a non-negotiable transport document is converted into an NCD in accordance with article 3(2)(a). It could also facilitate trade finance arrangements requiring NCDs at a specific milestone.

**(d) Safeguard against multiple negotiable documents (art. 3(5))<sup>22</sup>**

54. Paragraph 5 minimizes the risk of the issuance of multiple negotiable documents in respect of the same goods. Negotiable documents serve as documents of title, enabling the lawful transfer of ownership and/or control over goods in transit. If more than one negotiable document exists for the same goods, it creates confusion over rightful ownership or control over the goods, risk of double pledging or fraudulent transfer, as well as legal uncertainty for third party holders, banks and insurers.

55. Paragraph 5 establishes a strict prohibition: once a transport operator issues an NCD in respect of certain goods, that transport operator shall not request the issuance of a negotiable transport document in respect of the same goods. In the context of multimodal transport, where a freight forwarder acts as the contractual carrier, that freight forwarder is prohibited from requesting the issuance of a negotiable transport document – such as a bill of lading – from any carrier performing part of the carriage once the freight forwarder has issued an NCD for the same goods. This rule addresses a key concern arising under article 3(3) of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 (Hague Rules), as amended by the Protocol of 1968 and the Protocol of 1979, which obligate maritime carriers to issue a bill of lading upon the shipper’s request. In such cases, the freight forwarder may be considered as the shipper vis-à-vis the maritime carrier. To prevent the duplication of negotiable documents and the resulting legal uncertainty, paragraph 5 bars the freight forwarder from exercising that right once an NCD has

<sup>21</sup> A/CN.9/1127, para. 15; A/CN.9/1134, para. 56; A/CN.9/1164, para. 79; A/CN.9/1199, para. 78; A/CN.9/1205, paras. 40–41; A/80/17, paras. 63–64.

<sup>22</sup> A/CN.9/1134, para. 65; A/CN.9/1170, para. 101; A/CN.9/1199, paras. 85–87; A/CN.9/1205, paras. 47–49; A/80/17, para. 65.

been issued, thereby preserving the singularity and integrity of negotiable documents throughout the transport chain.

56. While paragraph 5 does not expressly prohibit a transport operator who has issued an NCD from issuing another negotiable transport document for the same goods, such a scenario is highly improbable in practice. A negotiable transport document serves as evidence that the transport operator has taken charge of the goods and is typically issued against the physical handing over of those goods. Once the goods have been handed over and an NCD has been issued, the same goods cannot be handed over again to justify the issuance of another negotiable transport document by the same transport operator. For the same reason, the risk of any other person (such as the consignor or the holder) to request the issuance of another negotiable transport document after the goods have been handed over to the transport operator is also highly improbable in practice. Therefore, although not explicitly barred, the issuance of multiple negotiable documents by the same operator for the same goods is effectively precluded by the operational and evidentiary nature of such documents.

57. The Convention does not address the legal consequences for a breach of the obligation set out in paragraph 5, particularly in cases where multiple negotiable documents may be issued for the same goods. Concerns such as the double presentation of bills of lading to banks in connection with letters of credit, or the circulation of fraudulent duplicates of negotiable instruments, are not unique to NCDs. These risks have long existed in international trade and are traditionally addressed under applicable domestic law, including rules governing documentary fraud, title conflicts, and banking practices. Accordingly, any future disputes or liabilities arising from such breaches in the context of NCDs will be resolved using the same legal rules that have governed double documentary presentations and fraudulent document duplication in transport and trade finance settings. These issues fall outside the scope of the Convention.

58. Paragraph 5 does not modify or disrupt the existing logistics practice whereby house bills of lading issued by freight forwarders coexist with master bills of lading issued by maritime carriers in respect of the same goods. House bills are typically issued by freight forwarders, who coordinate the entire transport chain and act as contractual carriers vis-à-vis the consignor. These documents may be negotiable, depending on how they are made out. In contrast, master bills of lading are issued by the maritime carrier responsible for the sea leg of the journey and can be made out as straight bills of lading, naming the freight forwarder as the consignee. As such, master bills are generally non-negotiable, serving primarily to document the carriage and delivery obligations between the maritime carrier and the freight forwarder.

**(e) Order document (art. 3(6))<sup>23</sup>**

59. Paragraph 6 clarifies that the NCD shall be an order document. In addition, it outlines the permissible types of order documents: it may be made out either to order or to the order of a named person. If no person is named, the NCD is deemed to be made out to the order of the consignor, thereby maintaining its negotiable nature and ensuring a clear starting point for the chain of title. Notably, the rule does not permit bearer documents, which are generally considered high risk due to their transferability without endorsement. However, it does allow for blank endorsements, which enable transfer by delivery while preserving a traceable origin.

60. In practice, this flexibility is particularly important for banks and commodity traders, who may prefer not to have their names appear on the NCD for commercial or confidentiality reasons. By allowing NCDs to be made out to order without naming a specific party, the rule accommodates such preferences while still supporting the negotiability required for financing and trading operations. This approach reflects a

<sup>23</sup> A/CN.9/1127, paras. 23–24; A/CN.9/1134, para. 73; A/CN.9/1164, paras. 41–44; A/CN.9/1170, paras. 103–104; A/CN.9/1199, paras. 53–54, 88; A/CN.9/1205, paras. 50–51.

pragmatic balance between legal certainty, commercial utility and risk management in the handling of negotiable transport documents.

## 2. Article 4. Contents of the negotiable cargo document

### (a) General remarks<sup>24</sup>

61. Article 4 outlines the content requirements for an NCD, distinguishing between mandatory and optional elements. The list in article 4(1) is mandatory in nature in the sense that the transport operator is expected to include these items when issuing an NCD. However, the absence of one or more mandatory particulars under article 4(1) does not automatically invalidate the document or affect its legal effect as an NCD – provided it still meets the definition set out in article 2(5) (see art. 5(1)). Such deficiencies may expose the transport operator to liability under applicable domestic law (see art. 5(2)).

62. By contrast, the list in article 4(2) is non-mandatory. These elements may be included at the discretion of the parties and serve to supplement the document with additional operational or legal information.

### (b) Mandatory list (art. 4(1))<sup>25</sup>

*Name and address of the transport operator (art. 4(1)(a))*

63. As the transport operator is the person contractually responsible for the transport of goods, identifying the name and address of the transport operator is essential for establishing contractual responsibility and ensuring clarity for third parties relying on the NCD.

64. In the maritime context, the importance of correctly identifying the carrier has been particularly emphasized. Disputes have arisen in practice where carriers operate through agents or intermediaries, leading to uncertainty over who is legally bound by the transport contract. For example, a shipping line may authorize a local agent to issue transport documents or conclude contracts, but the agent's name may appear on the documentation, creating ambiguity about whether the agent or the principal carrier is liable. Including the correct name and address of the transport operator in the NCD helps avoid such confusion, ensures that claims are directed to the appropriate party, and supports the enforceability of contractual obligations.

*Name and address of the consignor (art. 4(1)(b))*

65. Since the consignor is the person with whom the transport operator has concluded a transport contract, identifying the name and address of the consignor is essential for clarifying the contractual relationship between the two parties.

*Description of the goods as furnished by the consignor (art. 4(1)(c))*

66. Information describing the goods is essential for identifying the goods, enabling the NCD to function as a representation of the goods, and proving any loss during the voyage. However, article 6 allows the transport operator to qualify the particulars covered by subparagraph (c) indicating that it does not assume responsibility for their accuracy under certain circumstances (see paras. 97–106 below). The rationale for this qualification is grounded in the fact that these details are provided by the consignor, not based on the transport operator's own inspection or assessment.

*Apparent order and condition of the goods (art. 4(1)(d))*

67. The apparent order and condition of the goods at the time of taking in charge by the transport operator are critical for establishing the baseline condition of the goods.

<sup>24</sup> A/CN.9/1127, paras. 27–30; A/CN.9/1134, paras. 75–76, 78.

<sup>25</sup> A/CN.9/1127, paras. 31–50; A/CN.9/1134, para. 77; A/CN.9/1164, paras. 48–60; A/CN.9/1170, paras. 107–110; A/CN.9/1199, paras. 97–103; A/CN.9/1205, paras. 52–53; A/80/17, paras. 66–69, 82.

Unlike the descriptive particulars under subparagraph (c), which are provided by the consignor, the statement of apparent condition is based on the transport operator's own inspection and assessment at the time of taking in charge. It concerns what can be externally observed without opening packages or conducting technical analysis. Because this information is derived from the transport operator's own observations, it cannot be qualified under article 6.

68. Assessing the apparent order and condition of the goods is an obligation of the transport operator, who is expected to record it accurately in the NCD. This obligation is reinforced by the presumption rule in article 5(6), which provides that if the NCD fails to state the apparent order and condition of the goods, it shall be deemed to state that the goods were in apparent good order and condition at the time they were taken in charge (see para. 95 below).

*Place and date of taking in charge (art. 4(1)(e))*

69. The place and date at which the transport operator took the goods in charge are essential for establishing when the transport operator's responsibility begins. The place of taking in charge also plays a critical role in determining the applicability of the Convention itself (see para. 16 above). Its accurate inclusion in the NCD helps ensure that parties can determine whether the Convention governs the document's issuance, transfer, and legal effects.

70. Moreover, the date of taking in charge serves as the starting point for the transport operator's obligations and may affect the calculation of delivery deadlines, limitation periods, and liability exposure. To preserve legal certainty, article 5(5) provides a presumption rule: if the NCD does not state the date of taking in charge, the goods are deemed to have been taken in charge on the date of issuance of the NCD (see para. 94 below).

*Place and date of issuance (art. 4(1)(f))*

71. The place and date of issuance of the NCD serve multiple legal and operational functions. The place of issuance is relevant for determining jurisdiction and applicable law. The place of issuance of the NCD as stated in the NCD is also one of the criteria for triggering the application of the Convention under article 1(1)(c) (see para. 18 above).

72. The date of issuance is equally significant. It provides a reference point for various legal effects, including the commencement of negotiability and the sequencing of endorsements. To ensure legal certainty, article 5(3) and (4) establish two presumption rules that apply when a date is included in the NCD but its significance is unclear, or when a transport document is converted into an NCD without specifying the effective date (see para. 94 below).

*Terms of the transport contract (art. 4(1)(g))*

73. This subparagraph addresses situations where a stand-alone NCD is issued and functions as the primary written record of the transport contract. In such cases, the NCD is expected to reflect the terms of the transport contract, ensuring that the rights and obligations of the parties to the transport contract are clearly set out within the NCD itself.

74. When an NCD is issued through annotating an existing transport document under article 3(2)(a), the link to the transport contract is reinforced by the definition of "transport document", which describes it as a document that evidences or contains the transport contract. Where a transport document has not been issued or has been cancelled – as contemplated in article 3(2)(b) – the stand-alone NCD assumes this evidentiary role.

75. The terms of the transport contract are essential in determining the legal position of a holder of the NCD that is not the original consignor. Including these terms within

the NCD is essential to ensure that holders can understand and exercise their rights, while also assuming any liabilities that arise from their actions.

76. In addition, when the transport operator requires information, instructions, or documents to fulfil its obligations, it must first seek them from the holder under article 8. If the holder fails to provide the necessary input within a reasonable time despite reasonable efforts by the transport operator, the fallback mechanism is the transport contract itself. This underscores the transport contract's role not only as the source of the holder's rights and liability, but also as the guiding framework for operational decisions of the transport operator when its communication with the holder is insufficient (see paras. 133–136 below).

*Place of delivery (art. 4(1)(h))*

77. The place of delivery of the goods is one of the criteria for triggering the application of the Convention under article 1(1) (see para. 17 above). The place of delivery of the goods identifies the place where the holder can present the NCD and demand delivery of the goods from the transport operator. In non-liner maritime transport (tramp trade), goods are often sold during transit, and their final destination may change. However, the place of delivery – the discharge port – is generally known at the time of issuing maritime bills of lading.

*Number of originals (art. 4(1)(i))*

78. This subparagraph requires the NCD to indicate the number of originals of the NCD. This requirement applies even when only one original is issued to avoid ambiguity and confirm that no other originals exist.

79. Indicating the number of originals reflects established commercial practice, particularly in maritime transport where multiple originals of a bill of lading are commonly issued. The indication of the number of originals is especially important in financing arrangements. If multiple originals exist and only one original is held by a bank, there is a risk that another holder could claim the goods. Clearly stating the number of originals helps mitigate the risk of losing control over the goods.

80. The requirement to indicate the number of originals complements the rule on the method of issuance set out in article 3(2)(a), which permits an NCD to be issued by entering an annotation signed by the transport operator in “each original” of the transport document (see para. 48 above). Specifying the number of originals ensures that this annotation process is carried out transparently and consistently across all originals. The requirement also supports the rule in article 17 concerning the change of medium of the NCD, which mandates that all originals in the previous medium be surrendered before the change can take effect (see para. 199 below). Clearly stating the number of originals facilitates compliance with this rule and helps prevent uncertainty during the change from paper document to electronic record or vice versa.

81. The indication of the number of originals is closely linked to the rules governing the exercise of rights by the holder under article 7(5) and article 10. Where multiple originals are issued, the holder must present all originals to exercise the right of disposal. However, delivery of the goods may be demanded against the surrender of one original. Article 10 establishes a two-part framework that depends on whether the NCD states that more than one original has been issued. Such framework affects the legal consequences of surrendering one original and the status of any remaining originals (see paras. 150–153 below).

*Freight payment terms (art. 4(1)(j))*

82. Freight payment terms are a fundamental aspect of the transport contract. Indicating whether freight is prepaid or payable at destination provides clarity to all parties involved regarding the financial obligations attached to the goods. The terms such as “freight prepaid” confirm that the transport operator has already received payment and that no further freight charges are due upon delivery. The phrases such

as “freight payable at destination” signal that the freight charges still need to be settled before the holder receives the goods. This information is particularly important for the holder, who may be unaware of the original payment arrangements. It affects the holder’s ability to claim delivery and may influence the commercial value of the NCD.

**(c) Non-mandatory list (art. 4(2))<sup>26</sup>**

*Date or period of delivery (art. 4(2)(a))*

83. Including a delivery date or period offers practical benefits for parties relying on the NCD. For the holder, it provides visibility into expected delivery timelines, which may influence decisions related to resale, financing, or logistics. For banks, it helps assess the reliability and timing of the underlying trade finance transaction.

*Journey, mode of transport and tracking information (art. 4(2)(b))*

84. Including journey details and mode of transport in the NCD serves several practical purposes. Identifying the intended route and transport mode (e.g. maritime, rail, road, air) helps parties anticipate transit times, assess risks, and plan downstream logistics. Indicating trans-shipment points provides insight into where the goods may be handled or transferred, which is relevant for assessing potential delays, exposure to damage, or customs procedures. Providing tracking details – such as reference numbers, digital access codes, or platform links – supports real-time visibility and enhances supply chain coordination.

85. For the holder, journey details, mode of transport and tracking information can be valuable in managing expectations and making informed decisions about resale, financing, or inventory planning. For banks, insurers, and other third parties, it contributes to risk assessment and operational oversight.

*Law applicable to the transport contract (art. 4(2)(c))*

86. Transport contracts are often subject to complex legal frameworks, including international conventions and national laws. Including a reference to the applicable law helps clarify the legal regime governing the transport operator’s obligations, liability, and dispute resolution mechanisms. This is particularly useful in cross-border and multimodal transport.

87. For a holder other than the consignor, knowing which legal regime governs the transport contract is essential to understand both the scope of its rights and the extent of its potential liability (see arts. 7(2) and 9(2)(a)). For banks, insurers, and third parties, it helps assess legal risk and determine the enforceability of claims. These entities often rely on the NCD in the context of trade finance, cargo insurance, and commercial transactions, where clarity about the governing legal framework is particularly important.

*Any other particulars (art. 4(2)(d))*

88. This provision offers flexibility to tailor the NCD to the specific needs of the transaction. The ability to include additional particulars reflects the Convention’s recognition of the diverse and evolving nature of transport and trade practices. These particulars may include specific handling instructions, customs related information and insurance references.

**3. Article 5. Deficiencies in the negotiable cargo document**

89. Article 5 addresses the legal consequences arising from deficiencies in an NCD, specifically the absence of one or more of the required particulars listed in article 4(1). It provides a balanced approach that preserves the legal affect or validity

<sup>26</sup> [A/CN.9/1127](#), paras. 51–52; [A/CN.9/1164](#), paras. 61–65; [A/CN.9/1170](#), paras. 111–112; [A/CN.9/1199](#), para. 104; [A/CN.9/1205](#), para. 54; [A/80/17](#), paras. 70–71.

of the document as an NCD while maintaining accountability for its content. It also establishes presumption rules to address situations where key dates are either missing or ambiguously stated, as well as cases where the NCD fails to state the apparent order and condition of the goods at the time they were taken in charge by the transport operator.

**(a) Preserving validity despite missing particulars (art. 5(1))<sup>27</sup>**

90. Paragraph 1 clarifies that the absence of one or more of the particulars required under article 4(1) – such as the place of delivery, number of originals, or freight payment terms – does not automatically invalidate the document’s status as an NCD, provided it still meets the definition set out in article 2(5).

91. This rule reflects a functional approach: negotiability depends on the ability to confer rights to the holder and to be transferred by endorsement or delivery, rather than on strict formal completeness. It ensures that minor omissions or clerical errors do not undermine negotiability or disrupt commercial transactions, especially in fast-paced or high-volume trading environments.

**(b) Liability for deficiencies (art. 5(2))<sup>28</sup>**

92. Paragraph 2 makes clear that the preservation of negotiability does not exempt the transport operator from liability under applicable law for any deficiency in the NCD. If the absence of a required particular results in loss or damage, or hinders the holder’s ability to exercise its rights, the transport operator may still be held liable. This provision reinforces the importance of accurate and complete documentation, while ensuring that the Convention does not shield carriers from consequences arising under international conventions or national law. This approach supports the Convention’s broader goal of facilitating reliable and efficient use of NCDs in international trade, without imposing rigid formalities that could hinder their practical use.

**(c) Presumption rules (art. 5(3)–(6))<sup>29</sup>**

93. To promote legal certainty and operational clarity, paragraphs 3–6 set out presumption rules to address situations where key dates are either missing or ambiguously stated, as well as cases where the NCD fails to state the apparent order and condition of the goods at the time they were taken in charge by the transport operator.

94. Pursuant to paragraph 3, if the NCD includes a date but does not clarify its significance, that date is presumed to be the date of issuance of the NCD. This rule ensures that parties relying on the NCD have a clear reference point for determining when the NCD became effective. If the annotation required under article 3(3) (which deals with the conversion of a transport document into an NCD) does not specify the date from which the transport document serves as an NCD, the transport document is deemed to serve that function from the date of its issuance in accordance with paragraph 4. If the NCD does not include the date on which the transport operator took the goods in charge, the goods are deemed to have been taken in charge on the date of issuance of the NCD in accordance with paragraph 5.

95. Paragraph 6 establishes another presumption rule which is closely linked to article 4(1)(d). Where the NCD, contrary to the requirement in article 4(1)(d), fails to state the apparent order and condition of the goods at the time they were taken in charge by the transport operator, the NCD is deemed to state that the goods were in apparent good order and condition at that time. This rule relieves the transport

<sup>27</sup> A/CN.9/1127, paras. 53–57; A/CN.9/1134, para. 78; A/CN.9/1164, paras. 28, 70–74; A/CN.9/1199, para. 105; A/CN.9/1205, paras. 33 and 55.

<sup>28</sup> A/CN.9/1199, para. 105; A/CN.9/1205, para. 56.

<sup>29</sup> A/CN.9/1127, paras. 58–63; A/CN.9/1164, paras. 53, 75–80; A/CN.9/1170, paras. 115–116; A/CN.9/1205, para. 57; A/80/17, paras. 72–73.

operator from the obligation to include in each NCD a clause such as “in apparent good order and condition”. If the NCD is silent on this point, the presumption is that the goods have in fact been in apparent good order and condition at the time when the transport operator took them in charge. At the same time, the presumption rule protects the holder’s expectation that the goods were received in acceptable condition unless otherwise noted. By applying the presumption rule only to the apparent order and condition of the goods, it takes into account that the transport operator may discover any deficiencies without intrusive inspection. It does not extend to hidden defects, preserving a fair balance between transport operators’ obligations and practical limitations.

96. These presumption rules reduce ambiguity and help avoid disputes over timing as well as apparent order and condition of the goods, which can affect the exercise of rights and the enforceability of claims. By establishing clear presumption rules, the Convention enhances the reliability of the NCD as a legal and commercial instrument, even when documentation is incomplete or imprecise.

#### **4. Article 6. Evidentiary effect of the negotiable cargo document**

97. Article 6 sets out the rules governing the evidentiary value of an NCD. It addresses how information contained in the NCD may be relied upon by a holder, and under what conditions the transport operator may limit or rebut that evidentiary effect.

##### **(a) Scope of qualifiable information (art. 6(1), chapeau)<sup>30</sup>**

98. Article 6(1) concerns particulars typically provided by the consignor, such as general nature, identification marks, quantity and weight of the goods, as referred to in article 4(1)(c). These particulars, when included in the NCD, may be relied upon by holders, banks, insurers, and other third parties as evidence of the goods’ characteristics.

99. The Convention recognizes that the transport operator may not always be in a position to verify the accuracy of this information. To prevent unjust liability or misrepresentation, article 6(1) allows the transport operator to qualify such information in the document under certain circumstances.

##### **(b) Conditions for qualification (art. 6(1)(a) and (b))<sup>31</sup>**

100. The transport operator may include a qualification to indicate that it does not assume responsibility for the accuracy of the consignor’s information, but only if one of the following two conditions is met: firstly, the transport operator has actual knowledge or reasonable grounds to believe the information is false or misleading. If the transport operator knows or suspects that the consignor’s description is inaccurate, but does not qualify the description, it will take a high risk for being liable for loss or damage of the goods. The same applies if the transport operator has no reasonable means of checking the information. If the transport operator lacks the practical ability to verify the goods (e.g. sealed containers), it may disclaim responsibility for the accuracy of the stated particulars.

101. These safeguards serve to protect the transport operator from liability for unverifiable or potentially misleading information. Since subparagraphs (a) and (b) already set out the conditions for the transport operator to qualify information provided by the consignor, the transport operator is expected to specify in the NCD the subparagraph under which the qualification is made.

<sup>30</sup> A/CN.9/1127, paras. 67–68; A/CN.9/1164, para. 81; A/CN.9/1205, para. 58.

<sup>31</sup> A/CN.9/1127, paras. 67–68; A/CN.9/1164, para. 81; A/CN.9/1199, paras. 14–15; A/80/17, paras. 74–75.

**(c) Evidentiary function (art. 6(2))<sup>32</sup>**

102. Paragraph 2 establishes that, unless qualified under the conditions set out in paragraph 1, the NCD serves as prima facie evidence that the transport operator has taken the goods in charge as stated in the document. This provision reflects the evidentiary function of the NCD. The NCD functions as proof of the transport operator's receipt of the goods, including their description, quantity, and condition, as stated in the document. When the transport operator does not qualify the information provided by the consignor, it is presumed to have accepted the goods as stated in the NCD.

103. The term "prima facie" indicates that the document is presumed accurate unless proven otherwise. It shifts the burden of proof to the transport operator to rebut the presumption if the goods were not taken in charge as stated. If the transport operator has qualified the information under paragraph 1 – due to actual knowledge of inaccuracies or inability to verify – the presumption does not apply to those particulars.

**(d) Protection of third parties acting in good faith (art. 6(3))<sup>33</sup>**

104. Paragraph 3 introduces a safeguard for third parties who acquire an NCD in good faith and in reliance on the information it contains. It limits the transport operator's ability to challenge the accuracy of that information once the document has been transferred, thereby reinforcing the negotiability of the NCD.

105. The rule protects third parties – such as banks, insurers or buyers – who receive the NCD and rely on its contents to make decisions, extend credit, insure goods, or assert rights. If the transport operator later seeks to prove that certain information in the NCD was inaccurate, such proof is inadmissible against the third party, unless the information was qualified under paragraph 1. Such a rule plays a vital role in promoting the negotiability of NCDs by reinforcing the principle that a third party acting in good faith and relying on the document's contents may acquire better title than the original transferor. This protection encourages confidence in the NCD's reliability and facilitates its circulation in commercial and financial markets. Importantly, this protection applies only where the third party acts in good faith, meaning without knowledge of any inaccuracies or intent to defraud.

106. The rule includes an important exception: if the transport operator has qualified the consignor's information – either due to actual knowledge of its inaccuracy or lack of reasonable means to verify it – third parties cannot rely on that information. Consequently, there is no need for the protection of third parties in this regard.

**D. Chapter 3. Rights and liability of the holder****1. Article 7. Rights of the holder of a negotiable cargo document**

107. Article 7 establishes the foundational legal framework governing the rights of the holder of an NCD. In some common law jurisdictions, the holder is often treated as acquiring rights through mechanisms such as statutory transfer or assignment, effectively stepping into the shoes of the original contracting party. In contrast, some civil law jurisdictions conceptualize the holder as a third party beneficiary, entitled to enforce certain terms of the contract but not necessarily acquiring the full spectrum of contractual rights. These divergent theories reflect broader differences in contract law and the treatment of negotiable documents.

108. Articles 7(1) and (2) adopt a functional formulation without prescribing a specific doctrinal basis. Pursuant to article 7(1), the holder enjoys all rights provided for in the NCD and these rights can be exercised only by the holder. This rule

<sup>32</sup> A/CN.9/1127, paras. 67–68; A/CN.9/1199, paras. 16–17; A/CN.9/1205, para. 59.

<sup>33</sup> A/CN.9/1127, paras. 66, 69–70; A/CN.9/1164, paras. 83–87; A/CN.9/1199, para. 18; A/CN.9/1205, para. 59.

emphasizes the autonomous legal value of the NCD itself, independent of the underlying contractual relationship between the consignor and the transport operator. Article 7(2) supplements these rights with those that are not provided for in the NCD itself but derive from the transport contract and the law applicable to the transport contract. They include the right to bring a claim against the transport operator, the right of disposal provided that such right exists under the transport contract, and any other right provided for in the law applicable to the transport contract.

109. Article 7(3) safeguards the interests of the holder that is not the consignor and thus not the original party to the transport contract, ensuring that such holder acquires enforceable rights and is protected against inconsistent contractual terms.

110. Article 7(4) describes the character of the NCD as document of title. It states that the transfer of the NCD has the same legal effect as the physical handing over of the goods, thereby facilitating the sale of goods in transit and supporting the NCD's role in trade finance.

111. It has to be noted, however, that the Convention does not regulate how to transfer the ownership of the goods. Similarly, the Convention does not address the right of the holder to create security rights over NCDs. While the Convention is silent on the mechanisms for establishing a security right over an NCD, it does not preclude parties from doing so. The creation, third party effectiveness, and priority of any security interest in an NCD will be determined by other legal regimes, including, where relevant, the law governing the NCD itself. Nothing in this Convention prevents a State Party from seeking to provide additional legal certainty by enacting laws based on the UNCITRAL Model Law on Secured Transactions (2016).

112. Article 7(5) sets out the requirement for the exercise of rights under an NCD. Since the NCD is a negotiable document, it requires the holder to legitimize itself by presenting the document to the transport operator.

**(a) Exclusive rights of the holder (art. 7(1))<sup>34</sup>**

113. Paragraph 1 establishes a foundational principle: once an NCD is issued, the rights it confers – most notably the right to demand delivery of the goods at destination – can be exercised only by the holder. This rule affirms the NCD's function as a negotiable document.

114. By limiting the exercise of rights to the holder, the Convention ensures that the NCD operates as a singular key to the goods. The holder, whether the original consignee or a transferee through endorsement or delivery, is the only party entitled to exercise the rights provided for in the NCD, including the rights to claim delivery of the goods from the transport operator.

115. This rule is closely linked to article 10(1), which provides that delivery of the goods may be demanded only against surrender of the NCD by the holder. Together, these provisions reinforce the principle that the NCD serves as the exclusive instrument through which the right to demand delivery at destination is exercised. Importantly, the right to demand delivery at destination is inherent in the NCD, regardless of whether it is explicitly stated within its terms. This ensures that the transport operator is obligated to deliver the goods only to the party who presents and surrenders the document.

**(b) Rights acquired by the holder other than the consignor (art. 7(2))<sup>35</sup>**

116. Under paragraph 2, the holder that is not the consignor acquires rights in addition to those provided for in the NCD. They include: (a) the right to bring a claim against the transport operator under the transport contract; (b) where applicable, the right of disposal under the transport contract; and (c) those rights provided for in the

<sup>34</sup> A/CN.9/1199, para. 27; A/CN.9/1205, paras. 66–67; A/80/17, paras. 88–89 and 92.

<sup>35</sup> A/CN.9/1127, paras. 71–75; A/CN.9/1164, paras. 88–93; A/CN.9/1170, paras. 84–85; A/CN.9/1199, paras. 19–26; A/CN.9/1205, paras. 60–65; A/80/17, paras. 77–86, 90–92.

law applicable to the transport contract. For the avoidance of doubt, the provision imposes no duty on third party holders to examine the transport contract or to assess the law governing it.

*Right to bring a claim against the transport operator*

117. Article 7(2) lists, as one of the rights the holder may exercise, the right to bring a claim against the transport operator under the transport contract as if it were a party to that contract. This right is fundamental to the legal and commercial utility of the NCD, as it enables the holder to seek redress for breaches of the transport operator's obligations.

118. By providing that the holder may bring a claim "as if it were a party to the contract", the Convention ensures that the holder has direct legal standing to enforce the terms of the transport contract and can act independently of the consignor. It also allows the holder to participate in dispute resolution, such as arbitration or litigation, as provided for in the transport contract. By ensuring that the holder can bring claims directly against the transport operator, the Convention enhances the negotiability of the NCD. It enables the document to circulate freely in trade and finance, assuring each holder the right to enforce claims independently of the original contract between the consignor and the transport operator.

*Right of disposal, where applicable*

119. Another right which may be exercised by the holder is the right of disposal under the transport contract. The right of disposal generally refers to the holder's ability to give instructions to the transport operator, for example changing the place or time of delivery.

120. The concept of the right of disposal is well-established in inland transport regimes – such as rail and road – and in air transport, where the consignor or, under certain conditions, the consignee may give instructions to the carrier, such as the instruction to redirect the goods while in transit. In contrast, the existing maritime conventions in force, unlike the Rotterdam Rules, do not provide a framework for a right of disposal. Hence, the reference to the right of disposal in article 7(2) should be understood as applying only where such a right exists under the transport contract.

121. The Convention deliberately does not define the term "right of disposal", leaving its scope and application to be interpreted in accordance with the law applicable to the transport contract, including relevant international transport law conventions such as the COTIF/CIM Uniform Rules concerning the Contract of International Carriage of Goods by Rail, 2016 (CIM Uniform Rules), the Agreement on International Railway Freight Communications, 2020 (SMGS), the Convention on the Contract for the International Carriage of Goods by Road 1956 (CMR), as amended by the Additional Protocol of 2008, and the Convention for the Unification of Certain Rules for International Carriage by Air, 1999 (Montreal Convention). These conventions impose specific conditions for exercising the right of disposal, such as identification of the party entitled to give instructions, presentation of documents, and timing restrictions.<sup>36</sup> Therefore, the holder of the NCD must exercise this right in accordance with the law applicable to the transport contract. The scope of the right may differ depending on the transport mode and contractual terms.

*Those rights provided for in the law applicable to the transport contract*

122. Paragraph 2 extends the scope of the holder's entitlements by stating that the holder also acquires those rights provided for in the law applicable to the transport contract, as if it were a party to that contract. This provision ensures that the holder

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<sup>36</sup> See articles 18 and 19 of CIM Uniform Rules; article 25 of SMGS; article 12 of CMR; article 12 of the Montreal Convention.

is entitled to any statutory rights provided for in the law applicable to the transport contract.

123. Transport contracts are often governed by international conventions or national law that supplement or override contractual terms. These legal regimes may confer additional rights on parties to the contract, such as statutory rights to compensation for delay, loss, or damage as well as procedural rights related to claims, limitation periods, or burden of proof. Paragraph 2 safeguards the holder's position by clarifying that their rights are not limited to what is provided for in the NCD or the transport contract but extend to other rights under the broader legal framework in which the transport contract operates.

**(c) Protection against inconsistent contract terms (art. 7(3))<sup>37</sup>**

124. Paragraph 3 establishes a key protective rule for a holder of an NCD that is not the consignor. It provides that the transport operator may not invoke against such holder any term of the transport contract that is inconsistent with the express terms of the NCD. This provision reinforces the principle that the NCD is the authoritative document governing the legal relationship between the transport operator and the holder.

125. This rule is designed to protect third party holders who acquire the NCD in good faith and rely on its contents. Since these holders are not parties to the transport contract, they must be able to trust that the express terms of the NCD accurately reflect the obligations of the transport operator. Allowing the transport operator to invoke conflicting terms from the underlying contract would undermine the reliability of the NCD and jeopardize its negotiability function.

126. The term “express terms” refers to the clear and specific provisions stated in the NCD, such as delivery obligations. Any hidden or conflicting clauses in the transport contract – such as disclaimers, exclusions, or procedural limitations – cannot override what is expressly stated in the NCD for holders who are not the consignor.

**(d) Document of title function (art. 7(4))<sup>38</sup>**

127. Paragraph 4 affirms that the issuance and transfer of possession of an NCD – whether initial or subsequent – has the same legal effect as the physical handing over of the goods, for the purpose of acquiring rights to the goods. This provision is central to the concept of negotiability and underscores the role of the NCD as a document of title in international trade.

128. In commercial practice, especially in international transport, physical delivery of goods is often impractical or delayed due to distance, customs procedures, or financing arrangements. The Convention addresses this by recognizing that possession of the NCD is equivalent to possession of the goods. This means that the holder of the document may acquire rights to the goods even if the goods are not physically delivered to the holder. This rule applies to both the initial transfer from the consignor and any subsequent transfers through endorsement or delivery.

129. The provision facilitates the use of the NCD in sale of goods transactions, trade finance, and collateral arrangements, where rights to the goods are transferred without physical transfer of the goods. At the same time, the provision accommodates differences among legal systems as to the legal nature of rights that the holder may acquire in respect of the goods, which will be determined in accordance with the law applicable to the respective transaction.

<sup>37</sup> A/CN.9/1205, para. 65; A/80/17, para. 87.

<sup>38</sup> A/CN.9/1127, para. 75; A/CN.9/1164, para. 93; A/CN.9/1199, paras. 28–31; A/CN.9/1205, para. 68; A/80/17, para. 93.

**(e) Exercise of rights by the holder (art. 7(5))<sup>39</sup>**

130. Paragraph 5 sets out a procedural requirement for the holder to exercise its rights under an NCD: the holder must present the NCD to the transport operator. The requirement to present the NCD ensures that the transport operator can verify the legitimacy of the person exercising its right. This rule applies equally to all rights under the NCD.

131. The holder is not required to present all originals in order to exercise every right provided in the NCD. For example, as stipulated in article 10(2), the right to demand delivery of the goods at destination may be exercised by the holder upon presentation and surrender of one original of the NCD (see paras. 150–151 below). However, if the holder wants to make use of a right of disposal, it must present all originals. This safeguard prevents conflicting instructions from different holders of separate originals and ensures that control over the goods is exercised exclusively and transparently.

132. The Convention does not specify the number of originals required to exercise the right to bring a claim, recognizing that this issue is addressed differently across jurisdictions. In some legal systems, courts require the production of all originals, while others consider such a requirement unreasonable – particularly in cases involving damage to goods, where at least one original would typically have been surrendered upon delivery. Given that this matter pertains to procedural rules and varies according to the law of the forum, it is left outside the scope of the Convention.

**2. Article 8. Missing information, instructions or documents<sup>40</sup>**

133. Article 8 addresses a practical challenge in the performance of obligations under a transport contract to which the NCD relates: the potential absence of essential information, instructions, or documents required by the transport operator to fulfil its obligations. This rule is crucial in preventing ambiguity about who is entitled to give instructions to the transport operator. Without it, transport operators may face conflicting claims or uncertainty, particularly when the NCD has changed hands.

**(a) Designating the holder as the point of contact**

134. Article 8 establishes that in the context of NCDs, the holder is the person entitled to provide the transport operator with the required information, instructions, or documents. This is a critical clarification, ensuring that the transport operator does not mistakenly rely on parties who may no longer possess certain rights.

135. Where the issuance of negotiable transport documents is not envisaged, the transport operator typically seeks necessary information, instructions, or documents from the consignor or the consignee, as applicable. These parties are clearly identified and contractually empowered to provide such guidance. However, the Convention introduces a different legal architecture in order to protect the holder of the NCD. The concept of the holder – the person in possession of the NCD (art. 2(4)) – replaces certain roles of consignor and consignee. This shift necessitates a clear rule to identify who the transport operator should turn to when essential information, instructions or documents are missing.

**(b) Fallback to the transport contract**

136. While article 8 does not expressly impose a legal obligation on the holder to provide the requested information, instructions or documents, it implicitly allocates the operational risk to the holder. The transport operator must make a reasonable effort to obtain the missing elements from the holder and allow a reasonable time for a response. These standards are intentionally flexible, allowing adaptation to the

<sup>39</sup> A/CN.9/1127, para. 78; A/CN.9/1164, para. 95; A/CN.9/1199, paras. 33–42, 55; A/CN.9/1205, paras. 70–72.

<sup>40</sup> A/CN.9/1127, paras. 35, 87–89; A/CN.9/1170, paras. 11–17; A/CN.9/1199, paras. 44–45; A/CN.9/1205, para. 73; A/80/17, paras. 95–97.

specific circumstances of the transport operation such as urgency, perishability of goods, or communication constraints. However, if the holder fails to act – either by not responding or by being unreachable – the consequences of that inaction, such as delays or complications in the transport process, fall on the holder rather than the transport operator, since article 8 allows the transport operator to proceed in accordance with the transport contract. This provision serves to protect the transport operator from liability or breach arising solely from the absence of a response from the holder.

### 3. Article 9. Liability of the holder

137. Article 9 introduces a nuanced framework for determining the liability of a holder of the NCD that is not the consignor. When the consignor remains the holder, it is self-evident that the consignor is bound by all terms of its transport contract with the transport operator, including possible liability. As between the transport operator and a third party holder, however, it is less self-evident whether a holder to which the rights provided for in the NCD have been transferred will also have assumed liability. Little uniformity exists on this matter across national jurisdictions.

138. The provision draws a distinction between holders who simply hold the document and those who take action under it. Its purpose is to ensure that any person who comes into possession of the document – without exercising any rights associated with it – is not automatically burdened with liabilities under the transport contract. This is particularly important in commercial contexts where such documents may be transferred for reasons unrelated to the actual transport of goods, such as financing. At the same time, the provision ensures that those holders who do make use of the rights provided for in the NCD assume certain liabilities.

#### (a) No automatic liability for holders (art. 9(1))<sup>41</sup>

139. Derived from article 58(1) of the Rotterdam Rules, paragraph 1 establishes a foundational principle that mere possession of the NCD does not lead to liability. Specifically, it provides that a third party holder who is not the consignor and who does not exercise any rights under article 7 of the Convention is not liable under the transport contract simply because it holds the document. This provision is designed to protect parties who acquire the NCD for purposes unrelated to the performance of the transport contract – such as banks, investors, or intermediaries – ensuring they are not inadvertently exposed to contractual liability. For example, a bank that holds the NCD for trade finance purposes and is not involved in the performance of the transport contract by, for example, giving instructions to the transport operator, need not be concerned that it might be obliged to assume any liability (e.g. freight charges).

140. The provision clarifies that the transport contract remains between the transport operator and the consignor, unless a third party holder steps in by exercising any right in accordance with article 7.

#### (b) Liability of the holder upon exercising rights (art. 9(2))<sup>42</sup>

141. Paragraph 2 sets out the circumstances under which a holder of an NCD that is not the consignor may assume liability. The provision is triggered when such a holder exercises a right under article 7, such as the right to demand delivery of the goods at destination. Once a right is exercised, the holder may be treated as if it were a party to the transport contract, but only to the extent that liability is either legally attributable or contractually ascertainable as set out in subparagraphs (a) and (b).

142. Pursuant to subparagraph (a), the holder assumes any liability attributable to a person exercising such rights under the law governing the transport contract. This

<sup>41</sup> A/CN.9/1127, para. 90; A/CN.9/1170, paras. 18 and 22; A/CN.9/1199, para. 46; A/CN.9/1205, para. 74.

<sup>42</sup> A/CN.9/1164, para. 98; A/CN.9/1170, paras. 19–22; A/CN.9/1199, para. 47; A/CN.9/1205, paras. 75–77; A/80/17, para. 98.

may include statutory obligations such as the obligation to pay the unpaid freight charges.

143. Subparagraph (b) establishes an additional basis for liability: the holder assumes any liability that arises from the exercise of rights under the transport contract, but only to the extent that such liabilities are ascertainable from the NCD. The term “ascertainable” preserves the flexibility that liabilities may not be stated in the NCD if the holder can determine its existence from the NCD. For instance, if the NCD provides for the right of disposal but does not specify to which extent the holder must reimburse the transport operator for costs incurred in executing an instruction, the obligation to reimburse remains “ascertainable” from the NCD.

#### **4. Article 10. Delivery of the goods**

##### **(a) General remarks<sup>43</sup>**

144. Article 10 establishes the legal and operational framework for the delivery of goods under an NCD. It reinforces the principle that the NCD serves as a document of title, and that possession of it by the holder is the key to claiming delivery of the goods. This rule is central to the negotiability and document of title functions of the NCD, ensuring that goods are released only to the holder.

145. The provision should be read together with article 1(3), which preserves the applicability of international conventions and national laws governing the transport contract. Except as otherwise provided for in the Convention, the rights, obligations, and liabilities of the transport operator, consignor, and consignee remain subject to the broader legal framework in force (see para. 20 above). Consequently, if the applicable transport law – such as the CIM Uniform Rules, SMGS, CMR, the Montreal Convention, Hague Rules or relevant national legislation – contains more detailed or specific provisions on delivery (e.g. acknowledgment of receipt of the goods), those rules are not displaced by article 10. Instead, they supplement its application, ensuring that the Convention operates harmoniously with other international and domestic transport law regimes.

##### **(b) Delivery against surrender of the NCD by the holder (art. 10(1))<sup>44</sup>**

146. Paragraph 1 affirms that the transport operator is obligated to deliver the goods only upon surrender of the NCD by the holder. This provision is rooted in the principle that the NCD functions as a document of title, and that only the person legally recognized as the holder may claim delivery.

147. The formulation “may be demanded ... only against surrender” implies that the transport operator is not obliged to deliver the goods to any person other than the holder of the NCD. However, the provision does not address the legal consequences of delivery without surrender of the NCD; such matters are governed by the applicable national law.

148. The term “holder” is defined in article 2(4) as a person who is in possession of the NCD and is identified in it as the consignor, as the person to whose order it is issued or as the person to which the document is duly endorsed; or if the document is an order document endorsed in blank, is the bearer thereof (see paras. 28–30 above). This definition ensures that the right to demand delivery is tied to both possession and entitlement, preventing unauthorized claims.

149. Article 10 is closely linked with article 7(1) under which only the holder can exercise the rights provided for in the NCD, including the right to demand delivery of the goods at destination. Article 10(1) operationalizes this right by requiring the surrender of the NCD to the transport operator. Requiring surrender ensures that only

<sup>43</sup> A/CN.9/1134, paras. 16–17; A/CN.9/1170, para. 27; A/CN.9/1199, para. 52.

<sup>44</sup> A/CN.9/1127, paras. 91–93; A/CN.9/1170, paras. 23–26; A/CN.9/1199, para. 48; A/CN.9/1205, para. 78; A/80/17, para. 31.

the final holder – not a previous holder or an unauthorized claimant – can take delivery. This shields the transport operator from future claims by other parties.

**(c) Delivery in the case of multiple originals (art. 10(2))<sup>45</sup>**

150. Paragraph 2 sets out a two-part framework for handling delivery when more than one original of an NCD has been issued. The first sentence establishes the principle that surrender of one original is sufficient to demand delivery of the goods, recognizing that each original carries equal legal weight. This avoids unnecessary delay and logistical complications that would arise if all originals had to be presented for delivery.

151. Importantly, this provision does not conflict with article 7(5), which requires the presentation of all originals to exercise the right of disposal. This distinction is intentional and carefully calibrated: while delivery of goods can proceed on the basis of one original to promote operational efficiency in delivery, the right of disposal demands a higher level of control and certainty. Requiring all originals to exercise the right of disposal ensures that no conflicting instructions can be issued by holders of other originals (see paras. 130–131 above).

152. The second sentence introduces a formalistic rule based on the content of the NCD itself. Regardless of how many originals were actually issued, if the NCD states that multiple originals exist, then surrender of one original automatically invalidates the others. The rule, whereupon it depends on whether the NCD states that multiple originals exist, is designed to protect an innocent holder who acquires an NCD that does not state that more than one original exists, thus leaving the holder unaware of the existence of other originals. If such a holder presents one original of the NCD after the goods have already been delivered to someone else who surrendered a different original, its rights under the NCD remain legally valid. In this case, the transport operator may no longer be able to deliver the goods but remains liable for damages to the innocent holder.

153. Such rule creates a strong incentive for transport operators to explicitly state the number of originals issued in the NCD as required under article 4(1)(i) (see paras. 78–81 above). By doing so, they activate the protective mechanism that extinguishes the legal effect of remaining originals upon surrender of one, thereby limiting their exposure to liability. Failure to include such a statement leaves the transport operator vulnerable to claims from innocent holders who acquire an original in good faith and later suffer loss due to prior delivery. In effect, the rule encourages transparency at the point of issuance, aligning operational practice with legal safeguards and reducing the risk of conflicting claims.

**5. Article 11. Transfer of rights of the holder<sup>46</sup>**

154. Article 11 contains the widely accepted rule for the transfer of rights provided for in a negotiable document. The transfer of these rights goes along with the transfer of the document itself. The rule is similar to the transfer rules for bills of exchange and promissory notes set out in article 13 of the United Nations Convention on International Bills of Exchange and International Promissory Notes, 1988.<sup>47</sup>

155. Subparagraph (a) specifies how the NCD may be transferred. In view of the fact that the NCD is an order document, subparagraph (a) provides for a transfer by endorsement combined with the transfer of possession of the NCD. The endorsement may be special (to a named individual) or blank (without naming a transferee), with the latter enabling further transfer by mere delivery. This dual requirement ensures that both legal title and control are passed to the new holder.

<sup>45</sup> A/CN.9/1134, para. 15; A/CN.9/1199, paras. 49–51; A/CN.9/1205, para. 79; A/80/17, para. 31.

<sup>46</sup> A/CN.9/1127, paras. 80–86; A/CN.9/1164, para. 82; A/CN.9/1170, paras. 28–38; A/CN.9/1199, paras. 53–57; A/CN.9/1205, paras. 80–81; A/80/17, paras. 99–102.

<sup>47</sup> General Assembly resolution 43/165, annex.

156. Subparagraph (b) addresses the situation where the last endorsement is in blank. In such cases, the NCD may be transferred by mere delivery of possession, without further endorsement. This rule facilitates fluidity in commercial transactions, allowing the NCD to circulate freely among parties without the need for repeated endorsements.

157. The Convention does not define the notion of “endorsement” nor specify the formal requirements for the NCD to be duly endorsed, which remain a matter for applicable law.

158. The mechanism in article 11 ensures that the transferee who receives the NCD in accordance with these rules becomes a holder with all rights provided for in the NCD. This promotes certainty and predictability in the transfer of NCDs. Importantly, the same rights as provided for in the NCD are transferred from one holder to another. However, the Convention does not envisage the transfer of liability from one holder to another. Any costs incurred by a holder in exercising those rights are not intended to be transferred to subsequent holders.

## **E. Chapter 4. Special conditions for electronic negotiable cargo documents**

### **1. General remarks<sup>48</sup>**

159. From the outset, the Convention was prepared with a view to accommodating NCDs issued in paper and electronic form.

160. By virtue of the definition of “negotiable cargo document” in article 2, the substantive rules in Chapters 2 and 3 of the Convention apply to NCDs issued either as paper documents or as electronic records, the latter being referred to in the Convention as eNCDs. As such, the Convention adopts a “medium-neutral” approach to ensuring that the same legal regime applies to NCDs regardless of medium and without giving preference to either.

161. In keeping with this approach, the substantive rules in Chapters 2 and 3 are designed to apply to – and be met by – eNCDs. Nevertheless, some of those rules establish requirements that are traditionally associated with paper documents, such as annotating or indicating (in writing), signing, endorsing and possessing, which may not be readily relatable to electronic records. Chapter 4 therefore establishes a set of rules to overcome obstacles to the use of eNCDs that meet those requirements. It also sets minimum requirements for an electronic record to serve as an NCD, and enables the practice of “switching” the medium of an NCD once issued (from paper to electronic or from electronic to paper).

162. Chapter 4 is modelled on the provisions of the MLETR and other legislative texts on electronic commerce prepared by UNCITRAL, including the ECC. Like those texts, the rules in Chapter 4 apply a “functional equivalence” approach, whereby they prescribe the conditions by which the functions of formal requirements associated with dealings in paper documents can be fulfilled by the use of electronic means.

163. Many of the rules in Chapter 4 mandate the use of a “reliable method” to fulfil those functions. The term “method” is used in other legislative texts on electronic commerce prepared by UNCITRAL, where it is understood to encompass any number of technologies and products implemented by electronic records management systems. As employed in Chapter 4, the term is intended to carry the same meaning and is not to be confused with the method of issuing the NCD referred to in article 3(2). Whether a method is “reliable” is to be assessed against the general reliability standard set out in article 18. Consistent with the principle of technology neutrality, neither article 18 nor any other rule in Chapter 4 mandates or gives preference to the use of a particular technology or method, or, for that matter, to any

<sup>48</sup> A/75/17, part 2, para. 81; A/CN.9/1134, para. 20; A/CN.9/1170, paras. 47–49; A/CN.9/1199, paras. 59–61; A/CN.9/1205, paras. 82–85; A/80/17, paras. 105 and 113–115.

particular system model. As such, the Convention is compatible with systems based on a centralized registry model, as well as systems that deploy digital tokens recorded on a distributed ledger.

164. The rules in Chapter 4 are intended to be consistent with the provisions of the MLETR. As a result, it is expected that systems and methods used to support electronic transferable records, including electronic bills of lading, in compliance with the functional equivalence rules in the MLETR can be used to support eNCDs in compliance with the rules in Chapter 4.

165. There are, nevertheless, some differences in how the rules in Chapter 4 are drafted, which stem from the need to adapt them to the substantive rules in the Convention. Accordingly, each rule is stated to apply “for the purposes of this Convention” rather than “where the law requires or permits”, which is the standard formulation employed in the MLETR and ECC. Moreover, Chapter 4 does not contain a rule on amending eNCDs along the lines of article 16 of the MLETR, given that the Convention does not establish substantive rules providing for the amendment of an NCD. Nor does it contain a “non-discrimination” rule based on article 7(1) of the MLETR, given that the Convention itself gives legal effect and validity to eNCDs.

166. The rules in Chapter 4 are stated to apply to “requirements” in the Convention, which should be understood broadly. In keeping with other legislative texts on electronic commerce prepared by UNCITRAL, the term is intended not only to cover a rule – however worded – that mandates a particular act, but also a rule that merely contemplates an act the absence of which will attract legal consequences under the Convention. As such, the term “requirement” would apply to the indication of certain information in the eNCD that the NCD “shall indicate” under article 4, as well as the indication of certain information in an electronic record without which the record would not meet the definition of a “negotiable cargo document” under article 2(5).

167. As noted above, the Convention does not deal with all issues that may arise in connection with the use of an NCD, which may be governed by other applicable law. While the rules in Chapter 4 are primarily concerned with the requirements in the Convention and not with the requirements under such other law (e.g. laws governing the creation and effectiveness of security rights in negotiable documents), the application of those rules “for the purposes of this Convention” could extend to requirements under other law that are applied to fill gaps in the application of the Convention or are otherwise picked up by the Convention. Nothing in the Convention prevents an eNCD from satisfying paper-based requirements under applicable law, or prevents a State Party from seeking to provide additional legal certainty by enacting the provisions of the MLETR to ensure that an eNCD may do so.

168. Moreover, the rules in Chapter 4 do not address all formal requirements associated with paper documents, such as a requirement for a person to identify itself when dealing with a document. Again, nothing in the Convention prevents a person using an eNCD from satisfying this requirement by electronic means (e.g. through electronic identification), or prevents a State Party from seeking to provide additional legal certainty by enacting laws expressly enabling that use (e.g. by enacting the UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services).

169. Like the MLETR, the Convention uses the term “electronic record” to refer to an NCD in electronic form. However, unlike the MLETR, the term “document” does not refer solely to an NCD issued in paper. As clarified in the definition of “negotiable cargo document”, and consistent with the medium-neutral approach adopted by the Convention, the term “document” encompasses both the paper and electronic form. While earlier work at UNCITRAL on negotiable transport documents avoided the term “electronic document” in some languages due to a perceived association of the term “document” with the paper form (A/CN.9/390, para. 46; A/CN.9/387, para. 31), the drafters of the Convention were of the view that, at the time of drafting, the term “electronic document” had become widely accepted in practice.

## 2. Article 12. Requirements for an electronic negotiable cargo document

170. Article 12 establishes the minimum requirements for an electronic record to be able to serve as an NCD. It is modelled on article 10 of the MLETR with necessary adaptations.<sup>49</sup>

### (a) Paragraph 1<sup>50</sup>

171. Paragraph 1 reflects the approach taken in the MLETR to solving the problem, associated with electronic records, of multiple claims being made to perform the same obligation, which arises from ability of data comprising electronic records to be readily replicated (in other words, the possibility of multiple “copies” indistinguishable from the “original” electronic record). That approach combines a requirement of “singularity” of the electronic record with a requirement of “controllability”, which are reflected in subparagraphs (a) and (b), respectively. Subparagraph (c) in turn reflects a requirement of “integrity”, which is not unique to negotiable documents but is a quality associated with the paper-based notion of an “original”. The qualities of singularity, controllability and integrity are assured by the use of a “reliable method” (see para. 163 above).

172. Paragraph 1(a) requires the method to “identify” the electronic record “as the negotiable cargo document”. This requirement presupposes that the electronic record purporting to be the NCD is capable of being singled out so as to be distinguished from any other electronic record that might be presented to exercise the rights provided for in the NCD. The requirement does not preclude the issuance of an eNCD in multiplicate or an NCD in both paper and electronic form. The wording of paragraph 1(a) closely follows the wording of article 10(1)(b)(i) of the MLETR, which was carefully chosen to avoid interpretive issues across the six languages of the Convention.<sup>51</sup>

173. Paragraph 1(b) requires the method to render the eNCD capable of being subject to control throughout its life cycle. The wording closely follows the wording of article 10(1)(b)(ii) of the MLETR, except that the requirement is stated to apply from the moment of “issuance” (of the eNCD) not “creation” (of the electronic record), a change that is also reflected in paragraph 2. It was felt more appropriate for a provision setting the minimum requirements for a valid eNCD to measure controllability (and integrity) by reference to the legal act of “issuing” the NCD rather than the technical act of “creating” the electronic record serving as the NCD. The notion of “control” in paragraph 1(b) is the same as in article 15 (see para. 188 below).

174. Paragraph 1(c) requires the method to retain the integrity of the electronic record. The wording is identical to article 10(1)(b)(iii) of the MLETR. The notion of “integrity” is elaborated on in paragraph 2.

### (b) Paragraph 2<sup>52</sup>

175. Paragraph 2 elaborates on the notion of “integrity” and provides guidance on assessing whether the requirement of integrity in paragraph 1(c) has been met. It clarifies that integrity is an absolute notion that is capable of being assessed objectively; in other words, the eNCD can be proven either to retain its integrity or not to retain its integrity.

<sup>49</sup> Specifically, paragraph 1 does not reproduce article 10(1)(a) of the MLETR as the content requirements for an NCD are contained in article 4 of the Convention. In addition, apart from the use of the words “for the purposes of this Convention” (see remarks in para. 165 above), the chapeau of paragraph 1 is formulated as a legislative statement recognizing that an NCD may be in electronic form, along the lines of article 5(6) of the Beijing Convention.

<sup>50</sup> A/CN.9/1205, para. 86.

<sup>51</sup> See paragraphs 96–97 of the explanatory note to the MLETR in *UNCITRAL Model Law on Electronic Transferable Records* (United Nations publication, Sales No. E.17.V.5).

<sup>52</sup> A/CN.9/1205, para. 86; A/80/17, para. 103.

176. The point in time from which integrity is assessed is the moment that the eNCD is issued. Ordinarily, the act of issuing an NCD presupposes that the NCD has been signed and put into circulation. In practice, the requirement of integrity will be met where a reliable assurance is provided of the link between an electronic signature affixed on the record and the content of that record at the time the electronic signature was affixed.

177. Paragraph 2 closely follows the wording of article 10(2) of the MLETR, except that, as discussed earlier (see para. 173 above), the point in time from which integrity is to be assessed is the moment of “issuance” (of the eNCD) not “creation” (of the electronic record). By virtue of the definition of “electronic record”, and consistent with the composite nature of electronic records (see para. 26 above), paragraph 2 applies not only to information contained in the record at the moment of issuance, but also information that is generated after issuance and included in the record on account of the various dealings in an NCD that occur throughout its life cycle (e.g. information related to endorsement).

178. [*Text to be inserted from paras. 103 and 104 of the explanatory note to the MLETR.*]

### 3. Article 13. Content requirements<sup>53</sup>

179. Several provisions in Chapters 2 and 3 establish content requirements for NCDs. For example, the definition of “negotiable cargo document” in article 2(5), as well as articles 3 and 4, requires certain information to be contained in the NCD. With respect to a paper document, those requirements would ordinarily be met by some form of writing (by hand or typed). Article 13 specifies how those requirements are met with respect to an electronic record.

180. Article 13 is modelled on article 8 of the MLETR with necessary adaptations. In particular, it applies to requirements in the Convention for information to be “contained” in an NCD, rather than requirements for information to be “in writing”, given that no requirement in the Convention expressly refers to information “in writing”. It is nevertheless intended to have the same operation and effect as article 8 of the MLETR given that: (a) in keeping with other legislative texts on electronic commerce prepared by UNCITRAL, the requirement for information to be contained in a document is understood to encompass a requirement for information to be “in writing”;<sup>54</sup> and (b) the conditions specified in article 13 in which such a requirement is met in respect of an eNCD are identical to those specified in article 8 of the MLETR and other UNCITRAL texts, namely that the information be “accessible so as to be usable for subsequent reference”.

181. The requirement for information to be “accessible” so as to be “usable” for subsequent reference is found in several other legislative texts on electronic commerce prepared by UNCITRAL, where it is understood to reflect the notion of information being reproduced and read that is capable of being assessed objectively.<sup>55</sup> Unlike other rules in Chapter 4, article 13 does not refer to the use of a “reliable method” (see para. 163 above). Consistent with those other texts, the term “accessible” implies that information contained in an electronic record should be readable and interpretable, and that the software that might be necessary to render such information readable should be retained, while the term “usable” is intended to cover both human use and computer processing.

<sup>53</sup> A/CN.9/1134, paras. 22–23; A/CN.9/1199, para. 66; A/CN.9/1205, para. 88; A/80/17, paras. 104–107.

<sup>54</sup> See paragraph 143 of the explanatory note on the ECC (United Nations publication, Sales No. E.07.V.2) and paragraph 47 of the Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce (1996).

<sup>55</sup> See article 9(2) of the ECC and remarks in paragraph 146 of the explanatory note on the ECC.

#### 4. Article 14. Signature requirements<sup>56</sup>

182. Several provisions in Chapters 2 and 3 require an NCD or an annotation thereto to be signed. For example, the definition of “negotiable cargo document” in article 2(5) requires the NCD to be signed by the transport operator, while article 3(2) requires an annotation entered on a transport document to be signed by the transport operator. Article 14 specifies how those requirements are met with respect to an electronic record.

183. Article 14 is modelled on article 9 of the MLETR with necessary adaptations. It specifies two conditions for an “electronic signature” that are to be assured by the use of a “reliable method” (see para. 163 above), namely: (a) the signatory is identified; and (b) the intention of the signatory when affixing the electronic signature is indicated.

184. The notions of “identify[ing]” the signatory and of the signatory’s “intention” (in respect of the information contained in the electronic record being signed) are found in several other legislative texts on electronic commerce prepared by UNCITRAL, which in turn apply to a broad range of trade-related documents for which different purposes might be pursued through the use of a signature. The notion of the signatory’s “intention” is essentially concerned with the association of the signatory with the content of the electronic record being signed. In the context of the Convention and the requirement for NCDs and annotations to be signed by the transport operator, the notion ordinarily presupposes that, by affixing an electronic signature, the transport operator indicates that it is the originator of the contents of the NCD or annotation as the case may be (but not necessarily the source of the information).

185. Like the other rules in Chapter 4, article 14 does not mandate the use of a particular technology to sign an electronic record, such as an electronic signature using cryptography supported by public key infrastructure, sometimes known as “digital signatures”. Such digital signatures can be used to fulfil the conditions in article 14, while also fulfilling other functions (e.g. assuring the integrity of the electronic record being signed). The use of a digital signature or other particular type of electronic signature by the transport operator may be mandated by other law, but that other law cannot condition the effect or validity of an eNCD on the use of such a particular type of electronic signature.

#### 5. Article 15. Possession requirements<sup>57</sup>

186. Several provisions in Chapters 2 and 3 require an NCD to be possessed. For example, the definition of “holder” in article 2(4) requires the person to be “in possession” of the NCD or to be the “bearer” thereof, while article 7(5) requires the holder to “present” the NCD in order to exercise its rights. Article 15 specifies how those requirements are met with respect to an electronic record by establishing control of an electronic record as the functional equivalent of possession of a paper document.

187. Article 15 is modelled on article 11 of the MLETR with necessary adaptations. Paragraph 1 specifies two conditions that are to be assured by the use of a “reliable method” (see para. 163 above), namely: (a) exclusive control of the electronic record is established; and (b) the person in control is identified.

188. Article 15 does not define the notion of “control”, which is also referred to in article 12(1)(b). The reference to “exclusive” control in paragraph 1(a) clarifies that the term, wherever it appears in the text of the Convention, implies exclusivity in its exercise. As such, a person would ordinarily be regarded as exercising control of an electronic record if it is the only person authorized by the electronic records management system to make changes to the record that are necessary to transfer or

<sup>56</sup> A/CN.9/1170, paras. 51–55; A/CN.9/1199, paras. 58 and 62–63; A/CN.9/1205, para. 89; A/80/17, para. 60.

<sup>57</sup> A/CN.9/1170, paras. 55 and 72; A/CN.9/1199, paras. 68 and 74; A/CN.9/1205, paras. 90–93; A/80/17, para. 108.

surrender the NCD. At the same time, like possession, the notion of “control” encompasses a situation in which more than one person exercises control concurrently. It also accommodates the situation in which the services of a third party are used to exercise control. Neither of these situations denies the establishment of exclusive control of the electronic record.

189. The requirement in paragraph 1(b) to identify the person in control applies to the method used (or rather the electronic records management system implementing that method), and not the eNCD itself. Accordingly, it does not require the eNCD to name or contain other identifying information of the person in control, or to contain information relating to the identification of that person. This is particularly significant as the Convention allows for an NCD to be endorsed in blank, without the requirement to name the transferee (see para. 156 above).

190. [*Text to be inserted from para. 117 of the explanatory note to the MLETR.*]

191. Central to the “negotiability” of NCDs and the harmonized legal regime established by the Convention is the ability for possession to be transferred and thus for NCDs to circulate from one holder to another. Paragraph 2 of article 15 clarifies that the requirement for a transfer of possession is met with respect to an electronic record by transferring control thereof. This rule is particularly relevant for applying article 11 to eNCDs. It is also relevant to applying the requirement in article 10(1) for the holder to “surrender” the NCD to demand delivery of the goods, which would be met in respect of an eNCD by the holder relinquishing control.

## 6. Article 16. Endorsement requirements<sup>58</sup>

192. Several provisions of the Convention require an NCD to be endorsed. For example, for an NCD that is an order document, the definition of “holder” in article 2(4) and article 11 require the NCD to be endorsed in order to be transferred to a person who is neither the consignor nor the person to whose order the NCD is issued. As noted above (see para. 157), the Convention does not define the notion of “endorsement” nor specify the formal requirements for the NCD to be duly endorsed, which remain a matter for applicable law. Regardless, article 16 specifies how the requirements for endorsement are met with respect to an electronic record without having to refer to any specific formal requirements.

193. Article 16 is modelled on article 15 of the MLETR with necessary adaptations. It specifies two conditions, namely: (a) that the information required for the endorsement is included in the electronic record; and (b) that that information is compliant with the requirements set forth in articles 13 and 14. Consistent with the composite nature of electronic records reflected in the definition of that term in article 2(3) (see para. 26 above), required information would be “included” in the electronic record if it is logically associated with the other information constituting the record, or otherwise linked together with that information so as to become part of the record.

194. Required information is “compliant” with the requirements of article 13 if the information is “accessible so as to be usable for subsequent reference” (see para. 181 above). It is also “compliant” with the requirements of article 14 if: (a) applicable law requires the signature of the transferor for the NCD to be duly endorsed; and (b) the conditions of article 14 are fulfilled with respect of the required information (see paras. 183 and 184 above). As the required information is “included” in the electronic record, it is also subject to the integrity requirement in article 12(1)(c) (see paras. 174–178 above).

<sup>58</sup> A/CN.9/1170, paras. 66–67; A/CN.9/1199, para. 69; A/CN.9/1205, para. 94; A/80/17, para. 108.

## 7. Article 17. Change of medium<sup>59</sup>

195. While the Convention promotes the use of eNCDs as part of the digital transformation of international trade, the drafters were conscious of the different levels of acceptance of electronic means, and readiness to use those means, among different sectors and jurisdictions. In particular, while the Convention provides for an NCD to be issued in electronic form only if so agreed between the transport operator and the consignor (art. 3(1)), a subsequent holder – not being a party to the transport contract – might have difficulty accessing the electronic records management system used to support that NCD and thus exercising the rights provided for therein. The ability for that holder to “switch” from an eNCD to a paper NCD is therefore critical to promoting the wider use of eNCDs. Article 17 establishes a mechanism for such a change of medium, which seeks to ensure the continued legal effect and validity of the NCD despite the change of medium, while avoiding the risk of multiple claims arising from an NCD circulating in multiple mediums.

196. Article 17 is based on articles 17 and 18 of the MLETR and applies to switching from a paper NCD to an eNCD and vice versa. Consistent with the principle of party autonomy, and mirroring article 3(1) on the issuance of NCDs, article 17 provides for a change of medium only if so agreed between the transport operator and the holder at the relevant time. In practice, just as some transport operators will not be in the position to issue NCDs in electronic form, not all transport operators will be in the position to switch medium.

197. Article 17 establishes neither a right of the holder to a change of medium nor an obligation on the transport operator to effect the change. While the agreement to change medium may be provided for in the transport contract, a potential buyer in a sales transaction is not a party to that transport contract and thus could not rely on it to request for the change of medium. Whether that potential buyer could persuade the consignor (as seller) to request for the change is a matter beyond the scope of the Convention.

198. Paragraph 1 requires the use of a “reliable method” (see para. 163 above) for the change of medium. Paragraph 2 then establishes two conditions in order for the change of medium to take effect, namely: (a) the surrender of all originals of the NCD in its previous medium; and (b) the inclusion of a statement in the NCD in its new medium that it replaces the NCD in its previous medium. These conditions are designed to provide assurance that an NCD issued only in paper or in electronic form does not circulate in both mediums. The provision contemplates the possibility of issuing multiple originals of eNCDs. If the conditions are not fulfilled, the NCD in its new medium will not have any effect or validity.

199. Unlike article 10(2), which requires the surrender of only one original to demand delivery of the goods, paragraph 2(a) of article 17 requires the surrender of all originals. This is because the transport operator, to whom the originals are to be surrendered, issued the NCD in the first place and should be in a position to ascertain whether the number of originals surrendered corresponds with the number of original issued. In any event, pursuant to article 4(1)(i), the NCD should indicate the number of originals.

200. The reference in paragraph 2(b) to the NCD in its new medium “replac[ing]” the NCD in its old medium does not imply that the NCD is reissued. Article 17 is based on the notion that the NCD continues in existence, albeit in its new medium, and does not impose any additional form or content requirements for the NCD, apart from the inclusion of the statement required by paragraph 2(b). Indeed, it may be impossible for a paper document to reproduce all the information contained in an electronic record. Rather, the reference implies that extant form and content requirements continue to apply. This is reinforced by paragraph 4, which states that the rights and obligations of the parties are not affected by the change of medium. As

<sup>59</sup> A/CN.9/1170, paras. 68–74; A/CN.9/1199, paras. 70–75; A/CN.9/1205, paras. 95–98; A/80/17, paras. 109–111, 113–115.

such, where the NCD is switched from paper to electronic, the electronic record generated by the switch must comply with article 12 and the statement required by paragraph 2(b) must comply with article 13.

201. As an additional safeguard, paragraph 3 of article 17 requires the NCD in its previous medium to be “made inoperative”. This requirement implies some action on the part of the transport operator, but leaves sufficient flexibility as to the method used, which may include obliterating or annotating a paper document, or cancelling an electronic record. The requirement in paragraph 3 applies “upon [the] change of medium” and therefore only once the conditions in paragraphs 1 and 2 are fulfilled. This means that there should be no gap in the effect or validity of an NCD throughout its lifecycle and across different mediums.

## 8. Article 18. General reliability standard

202. Most of the rules in Chapter 4 refer to the use of a “reliable method” (see para. 163 above). Article 18 establishes a standard for assessing the reliability of the method used, which is based on article 12 of the MLETR.

203. Paragraph (a) of article 18 establishes reliability as a relative notion, in the sense that the reliability of the method is relative to the “function” that it is used to fulfil, as prescribed by the conditions laid down in the various rules in Chapter 4. It then sets out an indicative list of factors that may be relevant to the assessment of reliability. With the exception of words inserted in paragraph (a)(iii) to clarify that the word “system” refers to the electronic records management system used to implement the relevant method, the nature and content of the list is identical to the list in article 12(a) of the MLETR.

204. *[Text to be inserted from paras. 128–135 of the explanatory note to the MLETR.]*

205. Paragraph (b) dispenses with the requirement to assess the reliability of the method if it has, in fact, fulfilled the conditions laid down in the relevant rule. The wording is identical to article 12(b) of the MLETR, which in turn is based on article 9(3)(b)(ii) of the ECC, and the paragraph pursues the same objective of avoiding needless litigation where there is no dispute that the method actually fulfilled the desired function.

206. As noted earlier (see para. 163 above), article 18 is technology neutral and does not mandate or give preference to any particular technology. It also assumes that any assessment of reliability will take place after the fact (“ex post”), once the method has been used in the particular case (e.g. if the issue arises in legal proceedings). At the same time, the list of factors in paragraph (a) is intended to assist the design of electronic records management systems that are deployed to support eNCDs before they are used in a particular case (“ex ante”). As those factors are identical to those listed in the MLETR, technical standards developed for systems supporting electronic transferable records could be used for systems supporting eNCDs.

## F. Chapter 5. Final clauses

*[To reduce word count, this section only contains the draft commentary for article 24. For other provisions, the secretariat intends to reproduce the commentary found in the explanatory note to the United Nations Convention on the International Effects of Judicial Sales of Ships, 2022, as applicable to this Convention].*

### Article 24. Reservations<sup>60</sup>

207. Paragraph 1 permits a State to declare that it will exclude the Convention’s application to negotiable transport documents that evidence or contain a contract for the carriage of goods wholly by sea, where such contracts are governed by an

<sup>60</sup> A/80/17, paras. 116–124.

international convention to which the State is a party. This reservation can be made at the time of ratification, acceptance, approval, or accession or any time thereafter.

208. This clause acknowledges the existence of maritime conventions which already contemplate the issuance and use of negotiable transport documents. Notably, the reservation is limited to unimodal maritime transport and does not extend to multimodal transport involving a maritime leg. Nevertheless, as noted earlier (see para. 20 above), the Convention respects the existing rights, obligations, and liabilities of the transport operator, consignor, and consignee under applicable international conventions and national laws governing transport contracts. Therefore, becoming a State Party to this Convention should not hinder a State in subsequently signing or ratifying any conventions governing transport contracts, including the Rotterdam Rules that address door-to-door carriage of goods including a maritime leg.

209. Paragraph 2 provides that paragraphs 2 to 4 of article 23 governing the procedure and effects of declarations also apply to reservations made under paragraph 1.

210. Paragraph 3 reflects a restrictive reservation policy, typical of modern uniform commercial law instruments, and ensures that the Convention operates on a predictable and harmonized basis across jurisdictions. Any exceptions to the application of the Convention would undermine the coherence of the legal regime the Convention strives to establish.

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