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Negotiable Cargo Documents

Note by the Secretariat

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I. Introduction

1. The background information about the project on negotiable multimodal transport documents referred to the Working Group by the Commission at its fifty-fifth session¹ may be found in the provisional agenda of the forty-third session of the Working Group ([A/CN.9/WG.VI/WP.99](#), paras. 5–8). This note contains a revised annotated set of preliminary draft provisions for a new instrument on negotiable cargo documents, which have been prepared by the secretariat to reflect the deliberations of the Working Group at its forty-first, forty-second and forty-third sessions.

II. Organization of future work

2. The Working Group may wish to use the revised preliminary draft provisions for a new instrument on negotiable cargo documents in the annex to this note as a basis for its deliberations at its forty-fourth session. After conclusion of its deliberations, the Working Group may wish to request the secretariat to prepare a further revised version of the preliminary draft provisions for consideration by the Working Group at its forty-fifth session, tentatively scheduled to be held in Vienna from 9 to 13 December 2024.

¹ *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17* ([A/77/17](#)), para. 202.

Annex

Preliminary draft provisions for a new instrument on negotiable cargo documents

CHAPTER 1. GENERAL PROVISIONS

Article 1. Scope of application

1. This Convention applies to the issuance, transfer and legal effects of a negotiable cargo document in connection with the international transport of goods¹ if:

(a) The place of taking in charge of the goods by the transport operator as provided for in the transport contract is located in a Contracting State; or

(b) The place of delivery of the goods by the transport operator as provided for in the transport contract is located in a Contracting State.²

2. This Convention does not affect the application of any international convention or national law relating to the regulation and control of transport operations.³

3. Other than as explicitly provided for in this Convention, this Convention does not modify the rights and obligations of the transport operator, consignor and consignee and their liability under applicable international conventions or national law.⁴

Article 2. Definitions⁵

For the purposes of this Convention:

1. “Consignor” means any person with whom the transport operator has concluded a transport contract.⁶

¹ The Working Group agreed that the meaning of “international transport of goods” was sufficiently clear despite its decision, at its forty-second session, to delete the corresponding draft definition. It was noted that such term was generally well understood and also defined in various unimodal transport conventions (A/CN.9/1134, para. 38; A/CN.9/1164, para. 15).

² United Nations Convention on International Multimodal Transport of Goods 1980 (MT Convention), article 2. The Working Group agreed to keep the conjunction “or” at this stage. It was noted that the requirement that the place of delivery must be located in a Contracting State would create great uncertainty on the applicability of the draft instrument when goods were sold in transit. The Working Group may wish to consider combining a broader scope of application with an opt-out mechanism which provides that “The consignor and the transport operator, as parties to the transport contract, may exclude the application of this Convention”. This exclusion will occur, for example, if parties choose the law of a non-contracting State as the law applicable to the transport contract. Similar wording can be found in article 6 of the United Nations Convention on Contracts for the International Sale of Goods (CISG). (A/CN.9/1164, paras. 15–21). A third alternative, which would in turn limit the scope of application of the draft provisions, might be to make the requirements in paragraph 1 cumulative, but add a subparagraph allowing parties to agree to apply the convention even if only one of the requirements is met.

³ MT Convention, article 4 (1). The Working Group agreed to retain the current wording, noting that the desirability of excluding international transport with a sea leg could be discussed at a later stage when discussing possible conflicts with other conventions (A/CN.9/1134, para. 55; A/CN.9/1164, paras. 22–25).

⁴ The Working Group was reminded that the paragraph was intended to reflect the dual-track approach adopted by the draft instrument (A/CN.9/1164, para. 26).

⁵ The definitions of “actual carrier” and “international transport of goods” were deleted from earlier drafts. The Working Group deferred its consideration of the definitions of “electronic record”, “negotiable electronic cargo record” and “transfer” (A/CN.9/1134, paras. 28, 38 and 43; A/CN.9/1164, para. 15).

⁶ MT Convention, article 1 (5). The Working Group agreed to limit the definition of “consignor” to the person who concluded the transport contract with the transport operator, not the person by whom the goods were actually delivered to the transport operator in relation to the transport contract. It was noted that the right for the consignor to consent to the issuance of a negotiable cargo document would justify a narrow definition (A/CN.9/1134, paras. 30–31).

2. “Consignee” means the person named in the transport contract as the person entitled to take delivery of the goods.⁷
3. “Holder” means a person that is in possession of a negotiable cargo document and is identified in it as the consignor or the consignee or is the person to which the document is duly endorsed; or if the document is a blank endorsed order document or bearer document, is the bearer thereof;⁸ [or a person who has control of a negotiable electronic cargo record].⁹
4. “Negotiable cargo document” means a document signed and issued by the transport operator that indicates by wording such as “to order” or “negotiable” or an equivalent expression 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.¹⁰
5. “Electronic record” means information generated, communicated, received or stored by electronic means including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not.¹¹
6. “Negotiable electronic cargo record” means a negotiable cargo document issued in the form of electronic record.
7. “Right of disposal” means the right under the transport contract [in accordance with applicable international conventions or national law governing the rights and obligations of the transport operator, consignor and consignee and their liability] to give instructions to the transport operator in respect of the goods [and modify the transport contract], for instance by requesting the transport operator to [discontinue the carriage of the goods][stop the goods in transit], to delay the delivery of the goods, to deliver the goods to a consignee different from the one entered on the [transport document] [negotiable cargo document] or to deliver the goods at a place other than the place of destination entered on the [transport document] [negotiable cargo document].¹²
8. The “transfer” of a negotiable electronic cargo record means the transfer of exclusive control over the record.¹³

⁷ MT Convention, article 1 (6). A concern was expressed about defining consignee as the person “entitled to take delivery of the goods”, considering that only the holder of a negotiable cargo document would be entitled to take delivery. The definition has been revised to refer to the person named in the transport contract as the person entitled to take delivery ([A/CN.9/1134](#), paras. 32–33).

⁸ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2008 (Rotterdam Rules), article 1 (10)(a).

⁹ The Working Group may wish to consider the additional phrase “or a person who has control of a negotiable electronic cargo record” to accommodate the electronic context.

¹⁰ Rotterdam Rules, article 1 (15). The signature of the transport operator was considered as an essential element in order for a document to be recognized as a negotiable cargo document. The term “receive” was replaced by “taken in charge” in the definition and throughout the draft instrument, given that in practice goods were typically not physically received by freight forwarders themselves. For previous deliberations, see [A/CN.9/1134](#), paras. 39–43 and 76; [A/CN.9/1164](#), para. 74.

¹¹ UNCITRAL Model Law on Electronic Transferable Records (MLETR), article 2.

¹² COTIF/CIM Uniform Rules concerning the Contract of International Carriage of Goods by Rail 2016 (CIM-COTIF), article 18; Convention on the Contract for the International Carriage of Goods by Road (CMR), article 12; Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (Budapest Convention), article 14; Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), article 12. The secretariat has added a new definition for the “right of disposal” in light of the revised wording in draft article 7.

¹³ Rotterdam Rules, article 1 (22).

9. “Transport contract” means a contract whereby a transport operator undertakes to perform international transport of goods for reward.¹⁴

10. “Transport document” means a document

Option 1

issued under a transport contract by the transport operator who issues the negotiable cargo document¹⁵ that:

- (a) Evidences or contains the transport contract; and
- (b) Evidences the taking in charge of the goods by the transport operator under the transport contract.¹⁶

*Option 2*¹⁷

that evidences a transport contract, the taking in charge of the goods by the transport operator who issues the negotiable cargo document, and an undertaking by the transport operator to deliver the goods in accordance with the terms of that contract.¹⁸

11. “Transport operator” means any person who concludes a transport contract with the consignor and who assumes responsibility for the performance of the contract, irrespective of whether or not that person performs the carriage itself.¹⁹

CHAPTER 2. NEGOTIABLE CARGO DOCUMENTS

*Article 3. Issuance of a negotiable cargo document*²⁰

1. The consignor and the transport operator may agree that when the goods are taken in charge by the transport operator, the transport operator shall issue a negotiable cargo document in accordance with the provisions of this Convention.²¹

2. A transport document that contains information set out in article 4, paragraph 1, shall serve as a negotiable cargo document for the purpose of this Convention if it contains a conspicuous annotation stating that the transport document shall serve as a negotiable cargo document from a specified date and with reference to this Convention.²²

¹⁴ Rotterdam Rules, article 1 (1); MT Convention, article 1 (3). The reference to “freight” was replace by “reward” since certain transport contracts may include a single price quote for all types of services without specifying freight (A/CN.9/1134, paras. 44–47).

¹⁵ The secretariat has added the phrase “who issues the negotiable cargo document” for improved clarity (A/CN.9/1134, para. 62).

¹⁶ Rotterdam Rules, article 1 (14); see also MT Convention, article 1 (4). For previous deliberations, see A/CN.9/1134, paras. 48–51.

¹⁷ Option 2 was added at the request of the Working Group for its further consideration of the definition (A/CN.9/1134, para. 51). The secretariat has added the phrase “who issues the negotiable cargo document” for improved clarity.

¹⁸ MT Convention, article 1 (4).

¹⁹ MT Convention, article 1 (2). The Working Group agreed that the scope of application of the new instrument should not be limited to contractual carriers who did not perform the carriage themselves (A/CN.9/1134, paras. 10–14 and 52–53).

²⁰ The Working Group noted that the dual-track approach adopted by the draft new instrument entailed that the negotiable cargo document would not replace any transport document issued under the transport contract but did not necessarily require the issuance of two different documents. A distinction was made between the dual-track approach and the dual-document system of the Negotiable FIATA Multimodal Transport Bill of Lading (A/CN.9/1134, para. 54).

²¹ MT Convention, article 5 (1). The current wording reflects the understanding that the intended evidentiary value of such negotiable document would require the document to be issued at the time of shipment. For previous deliberations, see A/CN.9/1127, paras. 14–15; A/CN.9/1134, para. 56; A/CN.9/1164, para. 27.

²² The Working Group agreed that upgrading the transport document into a negotiable cargo document would be the default rule. It was noted that the paragraph should not impede the use of a non-negotiable transport document as a negotiable cargo document if allowed under domestic

3. Notwithstanding paragraph 2 above, the consignor and the transport operator may agree that the transport operator shall issue the negotiable cargo document as a separate document, if the transport document is not negotiable. The negotiable cargo document shall, in such event, contain a conspicuous annotation with reference to this Convention.²³ If a negotiable cargo document has been issued as a separate document in addition to a non-negotiable transport document, the transport operator shall acknowledge the issuance of such negotiable cargo document by inserting a corresponding conspicuous annotation in the non-negotiable transport document.²⁴
4. The negotiable cargo document that is issued as a separate document pursuant to paragraph 3 above does not substitute any transport document which the transport operator may be required to issue pursuant to the law applicable to the transport contract or to the terms of the contract.²⁵ The transport operator who issues a negotiable cargo document in accordance with paragraphs 2 or 3 above shall not request the issuance of a negotiable transport document in respect of the same goods by any transport operator performing any part of the carriage to which the negotiable cargo document relates.²⁶
5. A negotiable cargo document shall be made out to order, to order of a named person or to bearer.²⁷
6. A negotiable cargo document that is issued in a set of more than one original shall indicate the number of originals in the set. If any copies are made, each copy shall be marked as “non-negotiable” copy.²⁸

laws. The Working Group also agreed to delete the phrase “on its face” given its ambiguity and the challenge to apply this concept in an electronic context. The paragraph was revised to clarify the content of the annotation and that it should be conspicuous. For previous deliberations, see [A/CN.9/1127](#), paras. 16–18; [A/CN.9/1134](#), paras. 57–64; [A/CN.9/1164](#), paras. 28–32.

²³ The Working Group agreed on a fallback rule to the effect that the negotiable cargo document could be issued as a separate document in addition to the non-negotiable transport document. It was emphasized that the issuance of two negotiable documents in respect of the same goods should not be permitted. The paragraph was revised to clarify that annotations should appear in both the negotiable cargo document issued as a separate document and in the related transport document to acknowledge the issuance of the negotiable cargo document. For previous deliberations, see [A/CN.9/1127](#), paras. 16–18; [A/CN.9/1134](#), paras. 57–64; [A/CN.9/1164](#), para. 33–37.

²⁴ The Working Group agreed to require the transport operator to enter annotations in the transport document to acknowledge the issuance of a negotiable cargo document, instead of linking the validity of a negotiable cargo document to the existence of a corresponding annotation in the transport document. For previous deliberations, see [A/CN.9/1127](#), paras. 20–22; [A/CN.9/1134](#), paras. 69–72; [A/CN.9/1164](#), paras. 32, 34 and 37.

²⁵ MT Convention, article 13. The Working Group decided to delete the reference to the issuance of any other documents relating to transport or other services involved in international transport of goods. For previous deliberations, see [A/CN.9/1127](#), para. 19; [A/CN.9/1134](#), paras. 28 and 65–68; [A/CN.9/1164](#), paras. 38–40.

²⁶ The secretariat has added the phrase to address the concern that the draft instrument does not explicitly prohibit the issuance of two negotiable documents covering the same goods. For previous deliberations, see [A/CN.9/1134](#), para. 61; [A/CN.9/1164](#), paras. 33 and 38.

²⁷ MT Convention, article 6 (1)(a). It was noted that “straight” bills of lading will not be covered in the draft instrument. The Working Group decided to delete the presumption rule in case the name is not indicated in a negotiable cargo document made out to order. For previous deliberations, see [A/CN.9/1127](#), paras. 23–24; [A/CN.9/1134](#), para. 73; [A/CN.9/1164](#), paras. 41–44.

²⁸ MT Convention, article 6 (1)(d) and (e). The paragraph is not intended to prescribe the number of originals to be issued but simply to permit the issuance of multiple originals if needed, as is the usual practice in maritime transport. For previous deliberations, see [A/CN.9/1127](#), para. 25; [A/CN.9/1134](#), para. 74; [A/CN.9/1164](#), paras. 45–47.

*Article 4. Content of the negotiable cargo document*²⁹

1. The negotiable cargo document shall be signed by the transport operator and shall indicate:³⁰

- (a) The name and address³¹ of the transport operator;
- (b) The name and address of the consignee, if required by the law applicable to the transport contract for inclusion in the transport document or identified by the consignor;³²
- (c) The name and address of the consignor;³³
- (d) The general nature of the goods,³⁴ the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the gross weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the consignor;^{35, 36}
- (e) The apparent order and condition of the goods as taken in charge by the transport operator, or a statement to indicate that the transport operator has no reasonable means of inspecting the goods;³⁷
- (f) The place and date of taking in charge of the goods by the transport operator;³⁸
- (g) The place and date of issuance of the negotiable cargo document and, if issued separately, of the transport document;³⁹

²⁹ With respect to draft article 4, the Working Group decided to delete the reference to the manner in which the transport operator is to be notified of the transfer of the negotiable cargo document, since introducing such a notification obligation would undermine its negotiability ([A/CN.9/1127](#), para. 34). The Working Group also agreed to delete the provision on the method of signature ([A/CN.9/1127](#), para. 52; [A/CN.9/1164](#), para. 69).

³⁰ The paragraph is intended to provide a mandatory list of information which must be contained in a transport document in order for it to be upgraded into a negotiable cargo document as set out in draft article 3, paragraph 2. However, the absence of any such information is not linked to the validity of a negotiable cargo document under draft article 5, paragraph 1. For previous deliberations, see [A/CN.9/1127](#), paras. 27–30; [A/CN.9/1134](#), para. 76.

³¹ Rotterdam Rules, article 36 (2)(b). For previous deliberation, see [A/CN.9/1127](#), paras. 31–32.

³² Rotterdam Rules, article 36 (3)(a). For previous deliberation, see [A/CN.9/1127](#), para. 33.

³³ CIM-COTIF, article 7 §1 (b) and the Agreement on International Railway Freight Communications 2020 (SMGS), article 15 §1 (1).

³⁴ The secretariat has deleted the phrase “as taken in charge by the transport operator” in this context since the item refers to the particulars furnished by the consignor. The same phrase has been added to item (e) below referring to the apparent order and condition of the goods, which will not be furnished by the consignor but assessed by the transport operator.

³⁵ Rotterdam Rules, article 36 (1); Montreal Convention, article 5 (c); CIM-COTIF, article 7 §1; SMGS, article 15 §1. As regards dangerous goods, see e.g., CIM-COTIF, article 7 §1 (h), and SMGS, article 9 and annex 2.

³⁶ The Working Group was reminded of different requirements under various transport conventions on the issue. The term “general nature” of the goods was considered as the common denominator and thus could be generally acceptable to parties involved in different modes of transport. For previous deliberations, see [A/CN.9/1134](#), para. 77; [A/CN.9/1164](#), paras. 48–51.

³⁷ Rotterdam Rules, articles 36 (2)(a) and 36 (4). The Working Group decided to allow transport operators with no reasonable means of checking the goods to insert a statement to that effect. The secretariat has added the phrase “as taken in charge by the transport operator” given that the condition of the goods may change at a later stage. For previous deliberations, see [A/CN.9/1134](#), para. 77; [A/CN.9/1164](#), paras. 52–55.

³⁸ Rotterdam Rules, articles 36 (2)(c) and 36 (3)(c). The Working Group decided to delete the reference to the loading of goods given that the distinction between loading and taking in charge came from the ICC Incoterms which might not be necessary in this context. For previous deliberations, see [A/CN.9/1127](#), paras. 36–37.

³⁹ The subparagraph was revised to clarify that the place and date of issuance of the negotiable cargo document should always be included. The Working Group was reminded that the place of issuance of the transport document would be relevant for determining the law that would govern the liability of the carrier for loss of or damages to the goods, and the date of issue would be

- (h) The place of delivery of the goods;⁴⁰
 - (i) The number of originals of the negotiable cargo document, when more than one original is issued;⁴¹ and
 - (j) A statement as to whether the freight has been prepaid or an indication as to whether the freight is payable by the consignee.⁴²
2. The negotiable cargo document may further indicate:
- (a) The date or the period of delivery of the goods at the place of delivery, if expressly agreed upon between the consignor and the transport operator;⁴³
 - (b) The intended journey route, mode of transport and places of trans-shipment, if known at the time of issuance of the negotiable cargo document;⁴⁴
 - (c) The law applicable to the transport contract, in particular any international convention to which the transport contract is subject;⁴⁵ and
 - (d) Any other particulars which the consignor and the transport operator may agree to insert in the negotiable cargo document.⁴⁶
3. A negotiable cargo document that is issued as a separate document in accordance with article 3, paragraph 3, shall reproduce the particulars indicated in paragraph 1 above as stated in the transport document.⁴⁷

*Article 5. Deficiencies in the negotiable cargo document*⁴⁸

1. The absence of one or more of the particulars referred to in article 4, paragraph 1 does not of itself affect the legal character of the document as a negotiable cargo

relevant for calculating the limitation period within which claims could be brought against the carrier. For previous deliberations, see [A/CN.9/1127](#), para. 38; [A/CN.9/1164](#), paras. 56–57.

⁴⁰ CIM-COTIF, article 7 §1 (f) and SMGS, article 15 §1 (5). The phrase “when known to the transport operator” was deleted given the importance of the place of delivery for determining the applicability of the draft instrument as provided in draft article 1, paragraph 1. It was noted that that the place of delivery of the goods in the maritime context was often understood as the port of unloading, which was not necessarily the final destination of the goods. For previous deliberations, see [A/CN.9/1127](#), paras. 39–41; [A/CN.9/1164](#), para. 58.

⁴¹ Rotterdam Rules, article 36 (2)(d). The subparagraph is included to ensure the completeness of the checklist provided in draft article 4, which serves a different purpose compared with draft article 3, paragraph 6. For previous deliberations, see [A/CN.9/1127](#), paras. 43–45; [A/CN.9/1164](#), paras. 59–60.

⁴² CIM-COTIF, article 7 §1 (o). The subparagraph is intended to accommodate different scenarios in international trade where the freight could be prepaid by the consignor or the consignee, depending, for example, on the particular Incoterm they chose, or be payable at the time of delivery ([A/CN.9/1127](#), para. 47).

⁴³ MT Convention, article 8 (1)(h). The subparagraph was removed from the mandatory list on the ground that the date or the period of delivery of goods was more relevant for carrier liability issues which would fall outside the scope of this instrument ([A/CN.9/1127](#), para. 42).

⁴⁴ MT Convention, article 8 (1)(m). The subparagraph was removed from the mandatory list given that the transport operator should have the discretion to decide on the journey route and suitable mode of transport ([A/CN.9/1127](#), para. 48).

⁴⁵ The Working Group decided to retain the current wording considering that the negotiable cargo document reproduced certain contents of the transport contract and, therefore, information concerning the law applicable to the transport contract would be important for banks ([A/CN.9/1127](#), para. 49; [A/CN.9/1164](#), para. 61).

⁴⁶ E.g., the Rotterdam Rules require naming the ship in the transport document, including a negotiable transport document and specifying there also the port of loading and the port of discharge, if specified in the transport contract (see article 36 (3)(d)). The Working Group agreed to delete the law of the country where the negotiable cargo document was issued, as such references would be unnecessary and confusing ([A/CN.9/1164](#), paras. 62–65).

⁴⁷ The subparagraph envisages that the transport operator shall bear the risk of documentary inconsistency. For previous deliberations, see [A/CN.9/1134](#), para. 75; [A/CN.9/1164](#), paras. 66–68.

⁴⁸ The Working Group agreed to delete the paragraph concerning the liability of the transport operator with the intent to defraud on the basis that such issue should be addressed under relevant applicable law ([A/CN.9/1127](#), para. 65).

document provided that it nevertheless falls within the definition of negotiable cargo document as set out in article 2, paragraph 4.⁴⁹

2. If the negotiable cargo document includes a date but fails to indicate its significance, the date is deemed to be the date of issuance of the negotiable cargo document. Unless otherwise indicated, a negotiable cargo document issued as a separate document pursuant to article 3, paragraph 3, is deemed to have been issued simultaneously with the transport document.⁵⁰

3. If the annotation as referred to in article 3, paragraph 2 does not state the date from which the transport document shall serve as negotiable cargo document, the transport document is deemed to serve that function from the date of its issuance.⁵¹

4. If the negotiable cargo document does not include the date of taking in charge of the goods by the transport operator, the goods are deemed to have been taken in charge by the transport operator on the date of issuance of the negotiable cargo document.⁵²

5. If the negotiable cargo document fails to state the apparent order and condition of the goods at the time the transport operator takes them in charge, the negotiable cargo document is deemed to have stated that the goods were in apparent good order and condition at the time the transport operator took them in charge, unless the negotiable cargo document indicates that the transport operator has no reasonable means of inspecting the goods.⁵³

Article 6. Evidentiary effect of the negotiable cargo document

1. The transport operator may qualify any of the information referred to in article 4, paragraph 1 (d) as furnished by the consignor and contained in the negotiable cargo document in a manner that indicates that:

(a) The transport operator does not assume responsibility for the accuracy of such information because it has either actual knowledge or reasonable grounds to believe that any such information is false or misleading; or

(b) The transport operator has no reasonable means of checking such information.⁵⁴

⁴⁹ United Nations Convention on the Carriage of Goods by Sea 1978 (Hamburg Rules), article 15, paragraph 3. The Working Group agreed to retain the current wording and to reflect the minimum requirements for a negotiable cargo document in its definition in draft article 2, paragraph 4. For previous deliberations, see [A/CN.9/1127](#), paras. 53–57; [A/CN.9/1164](#), paras. 70–74.

⁵⁰ The provision is intended to create a default rule for situations when a negotiable cargo document fails to state its own date, and not to supplement the deficiencies in the transport document which should be addressed in the applicable rules governing the transport document. For previous deliberation, see [A/CN.9/1127](#), paras. 58–61.

⁵¹ Divergent views were expressed on whether a transport document could become a negotiable cargo document after its issuance. The Working Group agreed to retain the current wording and revisit the paragraph at a later stage ([A/CN.9/1164](#), paras. 75–78). The Working Group may wish to note that draft article 3, paragraph 1 currently envisages that the negotiable cargo document will be issued when the goods are taken in charge by the transport operator, not at a later stage.

⁵² The Working Group agreed to retain the current wording ([A/CN.9/1127](#), paras. 58–61; [A/CN.9/1164](#), para. 79).

⁵³ Rotterdam Rules, article 39 (3); MT Convention, article 9 (2). The provision reflects maritime transport practice and is important for letter of credit transactions because most bills of lading do not contain any explicit statement about the apparent order and condition of the goods, as banks typically require “clean” bills of lading. For previous deliberations, see [A/CN.9/1127](#), paras. 62–63; [A/CN.9/1164](#), para. 80.

⁵⁴ Rotterdam Rules, article 40; MT Convention, article 9 (1). The Working Group agreed to retain option 1 as it contains an autonomous regime with explicit rules on how qualifications could be made by the transport operator when issuing the negotiable cargo document. The Working Group also agreed to replace the conjunction “and” with “or” since, in practice, transport operators may not have reasonable means to check the goods for a variety of reasons ([A/CN.9/1164](#), para. 81). For previous deliberations, see [A/CN.9/1127](#), paras. 67–68.

2. Except to the extent that the information furnished by the consignor has been qualified, the negotiable cargo document shall be prima facie evidence of taking in charge of the goods by the transport operator as stated in the negotiable cargo document.⁵⁵

3. If the negotiable cargo document has been transferred to a third party acting in good faith in reliance on the description of the goods therein, proof to the contrary by the transport operator in respect of any information in the negotiable cargo document shall not be admissible against that third party.⁵⁶

Article 7. Extent of rights of the holder under a negotiable cargo document

1. A person who becomes a holder of a negotiable cargo document pursuant to article 11 shall, by virtue of becoming the holder, have acquired all rights under the transport contract as if it had been a party to that contract, including:

- (a) the right to demand delivery of the goods at destination;
- (b) the right of disposal; and
- (c) the right to bring a claim against the transport operator.⁵⁷

2. Any entitlement to the rights referred to in paragraph 1 above that is conferred upon the consignor or the consignee, as applicable, shall extinguish upon the issuance of a negotiable cargo document.⁵⁸

3. The issuance and delivery of the negotiable cargo document to the holder shall have the same effect, for the purpose of acquisition of rights to the goods, as a physical handing over of the goods, provided that the transport operator is in possession of the goods.⁵⁹

4. The rights and effect set out in paragraphs 1 and 3 above exist after the issuance of the negotiable cargo document and cease, except for that listed in subparagraph 1 (c), when the negotiable cargo document is surrendered.⁶⁰

⁵⁵ Rotterdam Rules, article 41 (a); MT Convention, article 10 (a); see also CIM-COTIF, article 12.

⁵⁶ Rotterdam Rules, article 41 (b) and (c); MT Convention, article 10 (b); Multimodal Transport Act of Singapore, article 11 (2). The Working Group agreed to delete the phrase “including a consignee” since a consignee, unlike other third parties, would have information about the goods and therefore would not need to act in reliance on the description of goods in the negotiable cargo document. The provision was revised to clarify that proof to the contrary by the transport operator should not be admissible only against a third party to whom a negotiable cargo document had been transferred. It was noted that the provision should also protect a subrogated insurer. For previous deliberations, see [A/CN.9/1127](#), paras. 69–70; [A/CN.9/1164](#), paras. 83–87.

⁵⁷ The provision was revised to refer to the “right of disposal” since such term is often used in transport conventions and the term “right of control” may be confused with the notion of exclusive control in the electronic context. For previous deliberations, see [A/CN.9/1127](#), paras. 71–75; [A/CN.9/1164](#), paras. 88–92.

⁵⁸ The provision was inserted to reflect that a holder of negotiable cargo document should be given the rights to control the goods during transit and, as a result, any pre-existing rights on the goods would cease to exist. For previous deliberation, see [A/CN.9/1164](#), para. 91.

⁵⁹ Draft provisions of the Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Conventions (ECE/TRANS/SC.2/2023/2/Rev.1), article 38; Budapest Convention, article 13 (3). The secretariat has deleted the word “disposition” in the phrase “for the purpose of acquisition of rights to the goods” to align the text closer to the cited provisions. The Working Group may wish to consider whether the current wording is sufficient for the negotiable cargo document to function as a document of title in all jurisdictions and whether an explicit reference to “document of title” should be included (see, for example, article 13 (1) of the Budapest Convention). For previous deliberations, see [A/CN.9/1127](#), para. 75; [A/CN.9/1164](#), para. 93.

⁶⁰ Rotterdam Rules, article 50 (2). The Working Group may wish to note that a concern was raised during its forty-first session that linking the rights of the negotiable cargo document holder with the surrender of the negotiable cargo document might be problematic when the negotiable cargo document, like for instance the maritime bill of lading, might not yet have been transmitted to the destination when the goods arrived ([A/CN.9/1127](#), para. 77). For previous deliberations, see [A/CN.9/1127](#), paras. 76–77; [A/CN.9/1164](#), para. 94.

5. In order to exercise the rights listed in paragraph 1 above, the holder shall produce the negotiable cargo document to the transport operator and shall [properly] identify itself [if the negotiable cargo document was made out to the order of a named person].⁶¹ If more than one original of the negotiable cargo document was issued, all originals shall be produced, failing which the right mentioned in subparagraph 1 (b) cannot be exercised.⁶²

6. [Any demand, declaration, instruction, request, reservation or other communication relating to the transfer of a negotiable cargo document or the delivery of the goods mentioned in the negotiable cargo document, may be made out by electronic communication [through the channel of communication designated]].⁶³

*Article 8. Channel of communication*⁶⁴

If the transport operator needs information, instructions or documents relating to the goods in order to perform its obligations under the transport contract, the transport operator shall seek those information, instructions or documents from the holder of the negotiable cargo document. If the transport operator is unable to obtain those instructions within a reasonable time, the transport operator shall proceed in accordance with the transport contract.⁶⁵

Article 9. Liability of holder

1. A holder of the negotiable cargo document that is not the consignor and that does not exercise any right under the transport contract does not assume any liability under the transport contract [and this Convention] solely by reason of being a holder of the negotiable cargo document.⁶⁶

2. A holder that is not the consignor and that exercises any right under the transport contract assumes any liabilities imposed on it under the transport contract to the extent

⁶¹ Rotterdam Rules, article 51 (3)(c). The Working Group may wish to consider whether the paragraph needs to be adapted to the electronic context (A/CN.9/1127, para. 78). During its forty-third session, some support was expressed for differentiated rules on the production of originals of negotiable cargo documents providing an exception for negotiable cargo documents endorsed to a named person (A/CN.9/1164, para. 95). The Working Group may wish to note that, under article 47, subparagraph 1 (a)(i) of the Rotterdam Rules, the requirement for properly identifying itself when claiming delivery of the goods does not apply to the holder of a blank endorsed order document or a bearer document as referred to in article 1, subparagraph 10 (a)(ii). For previous deliberation, see A/CN.9/1127, paras. 76–77.

⁶² Rotterdam Rules, article 51 (3)(c). The provision was revised to clarify that all originals shall be produced in order to exercise the right of disposal mentioned in paragraph 1 (A/CN.9/1164, para. 93). The secretariat did not include any reference to paragraph 3 because the exercise of property rights (such as the right to pledge the goods) should be in accordance with the procedure set out in relevant domestic laws (such as secured transaction laws), not this instrument on negotiable cargo documents.

⁶³ Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road concerning the Electronic Consignment Note (e-CMR), article 2 (1). The Working Group may wish to recall that some support was expressed during its forty-first session for deleting the paragraph on the ground that the manner of communication would be subject to party autonomy and applicable domestic law. It was noted that the purpose of the paragraph was unclear and it might be misinterpreted as not allowing electronic communication to be made out for situations not explicitly referred to in the paragraph. There was also some concern that the draft paragraph might be misconstrued to suggest that electronic communications might suffice in all instances where the holder exercised its right under the negotiable cargo document irrespective of specific mechanisms for exercising the right of disposal under existing international conventions concerning carriage of goods (e.g., inserting instructions on the transport document itself). For previous deliberations, see A/CN.9/1127, para. 79; A/CN.9/1164, paras. 96–97.

⁶⁴ Rotterdam Rules, article 55. The provision was added after the Working Group decided to delete the reference to the manner in which the transport operator is to be notified of the transfer of the negotiable cargo document in draft article 4 concerning the content of a negotiable cargo document (A/CN.9/1127, para. 35).

⁶⁵ Reference is made to the transport contract to avoid possible conflicts with existing regimes. For previous deliberation, see A/CN.9/1127, paras. 87–89.

⁶⁶ Rotterdam Rules, article 58 (1). The provision was added at the request of the Working Group (A/CN.9/1127, para. 90).

that such liabilities are incorporated in or ascertainable from the negotiable cargo document.⁶⁷

Article 10. Delivery of the goods

1. Delivery of the goods may be demanded from the transport operator only against surrender of the negotiable cargo document duly endorsed where necessary [and upon the holder [properly] identifying itself [if the negotiable cargo document was made out to the order of a named person]].⁶⁸
2. If more than one original of the negotiable cargo document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity.⁶⁹
3. On request of the transport operator, the holder shall acknowledge receipt of the goods from the transport operator. The transport operator may refuse delivery if the holder refuses to acknowledge such receipt.⁷⁰
4. [The law applicable to the transport contract shall govern other aspects of delivery of the goods to the holder.]⁷¹

*Article 11. Transfer of rights under a negotiable cargo document*⁷²

1. The holder may transfer the rights incorporated in the negotiable cargo document to another person by:
 - (a) Delivering the negotiable cargo document duly endorsed either to such person or in blank, if an order document;⁷³ or
 - (b) Delivering the negotiable cargo document without endorsement, if: the negotiable cargo document is (i) made out to the order of a named person and the negotiable cargo document is delivered by the consignor identified in the negotiable cargo document to the named consignee; or (ii) a document made out to bearer or endorsed blank.⁷⁴

⁶⁷ Rotterdam Rules, article 58 (2). The secretariat added the provision to address the concern that the draft instrument did not contain any provision on who bore the costs incurred by the transport operator in carrying out instructions given by the holder of the negotiable cargo document (A/CN.9/1164, para. 98).

⁶⁸ The Working Group agreed to delete the reference to the surrender of the transport document as the negotiable cargo document should be the only document required for taking delivery of the goods so as to ensure its negotiability. For previous deliberation, see A/CN.9/1127, paras. 91–93.

⁶⁹ Rotterdam Rules, article 47 (1)(c). The provision reflects the practice in the maritime sector to issue bill of lading in three originals and to require only one original to be presented when demanding delivery of the goods. (A/CN.9/1134, para. 15).

⁷⁰ Rotterdam Rules, article 44. The Working Group agreed to delete the phrase “in a manner that is customary at the place of delivery” since a negotiable cargo document would be a new instrument and thus no custom would have been developed (A/CN.9/1134, para. 16).

⁷¹ The Working Group agreed to place the paragraph within square brackets in light of draft article 1, paragraphs 2 and 3 (A/CN.9/1134, para. 17).

⁷² The Working Group may wish to consider which documents the customs and other authorities of the countries concerned would be expected to examine (i.e. whether the transport document or the negotiable cargo document or both) and the extent to which they would be expected to acknowledge transfers of rights to the goods under a negotiable cargo document (A/CN.9/1127, para. 85).

⁷³ Rotterdam Rules, article 57 (1)(a).

⁷⁴ Rotterdam Rules, article 57 (1)(b). The reference to “the first holder” in subparagraph (b) was replaced by the term “the consignor” (A/CN.9/1127, para. 84). It was noted that, in practice, when the carriage of goods was arranged by the buyer (e.g., under Incoterms “F-Terms”), the seller typically retains the transport document pending payment and thereafter delivers it to the buyer without endorsement. For previous deliberations, see A/CN.9/1127, paras. 80–85.

2. If more than one original of a negotiable cargo document was issued, all originals shall be delivered to the person in order to effect a transfer of rights under a negotiable cargo document.⁷⁵

3. If a negotiable cargo document was issued as a separate document in addition to the transport document, the transport document shall be delivered to the person together with the negotiable cargo document in order to effect a transfer of rights under a negotiable cargo document.⁷⁶

CHAPTER 3. NEGOTIABLE ELECTRONIC CARGO RECORDS⁷⁷

Article 12. Legal recognition of a negotiable electronic cargo record⁷⁸

A negotiable electronic cargo record shall have the same legal effect of a negotiable cargo document and shall not be denied legal effect on the sole ground that it is in electronic form.⁷⁹

Article 13. Conditions for use of a negotiable electronic cargo record

1. A negotiable electronic cargo record can be issued if the issuance and subsequent use of a negotiable electronic cargo record is with the consent of the transport operator and the consignor.⁸⁰

2. A negotiable electronic cargo record shall be signed by the transport operator or a person acting on its behalf by means of a reliable electronic signature that ensures its link with the negotiable electronic cargo record.⁸¹ The reliability of an electronic signature method is presumed, unless otherwise proved, if the electronic signature is:

- (a) Uniquely linked to the signatory;
- (b) Capable of identifying the signatory;
- (c) Created using means that the signatory can maintain under its exclusive control; and

(d) Linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.⁸²

3. A negotiable electronic cargo record may also be signed by any other electronic authentication method permitted by the law of the country in which the negotiable electronic cargo record has been issued.⁸³

4. Where the Convention requires or permits the issuance and transfer of the negotiable cargo document,⁸⁴ that requirement is met by an electronic cargo record if:

⁷⁵ The provision was revised to link the transfer of rights of the holder with the physical delivery of the negotiable cargo document (A/CN.9/1127, para. 86).

⁷⁶ The secretariat added the provision to address the concern that the draft instrument does not require a separately issued negotiable cargo document to be circulated together with the transport document (A/CN.9/1164, paras. 82 and 89).

⁷⁷ The secretariat has restructured the draft instrument and placed all provisions relating to negotiable electronic cargo records in one chapter.

⁷⁸ The secretariat has split draft article 5, paragraph 1 of the preliminary draft provisions for a new instrument on negotiable cargo document as contained in the annex to the previous working paper (A/CN.9/WG.VI/WP.98) into two separate articles to address concerns expressed during the Working Group's forty-second session (A/CN.9/1134, para. 21).

⁷⁹ MLETR, article 7 (1).

⁸⁰ Rotterdam Rules, article 8 (a).

⁸¹ e-CMR, article 3 (1).

⁸² e-CMR, article 3 (1).

⁸³ e-CMR, article 3 (2).

⁸⁴ The phrase derives from MLETR reflecting the functional equivalence rule (A/CN.9/1134, para. 20).

(a) The electronic cargo record contains all information required by article 4, paragraph 1⁸⁵ in a manner that is accessible so as to be usable for subsequent reference;⁸⁶

(b) The electronic cargo record indicates the method by which confirmation could be given to indicate that delivery of the goods to the holder has been effected, or that, pursuant to article 10, or article 17, paragraph 4 the negotiable electronic cargo record, if any, has ceased to have any effect or validity;⁸⁷

(c) A reliable method is used:

(i) To identify that electronic record as the negotiable electronic cargo record;⁸⁸

(ii) To render that negotiable electronic cargo record capable of being subject to exclusive control from its creation until it ceases to have any effect or validity;⁸⁹

(iii) To permit the identification of the holder and the transfer of exclusive control over the negotiable electronic cargo record to another holder⁹⁰ [including by endorsement or to the bearer];

(iv) To provide confirmation that delivery of the goods to the holder has been effected, or that, pursuant to article 10, or article 17, paragraph 4 the negotiable electronic cargo record has ceased to have any effect or validity;⁹¹ and

(v) To retain the integrity of that negotiable electronic cargo record.⁹²

5. The criterion for assessing integrity shall be whether information recorded in the negotiable electronic cargo record, including any authorized change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered apart from any change which arises in the normal course of communication, storage and display.⁹³

Article 14. Reliability requirements of negotiable electronic cargo records

In determining the reliability of the method used for the purposes of this Convention, all relevant circumstances shall be taken into account, which may include:⁹⁴

(a) Compliance of the operational rules, policies and practices used in the method with any applicable internationally recognized standards and procedures;

(b) Any relevant level of reliability of the method used;

(c) Any applicable industry standard;

⁸⁵ The Working Group may wish to consider whether including a date on the negotiable electronic cargo record (as required by article 4, paragraph 1 (g)) might cause confusion as the date of issuance of electronic records would typically be automatically generated by the system (A/CN.9/1127, para. 38).

⁸⁶ MLETR, articles 8 and 10 (1)(a); e-CMR, article 4 (1); Rotterdam Rules, article 8 (a).

⁸⁷ The secretariat has relocated the paragraph as it relates only to the negotiable electronic cargo record, not the negotiable cargo document. This paragraph was previously included in draft article 4, paragraph 3 of the preliminary draft provisions for a new instrument on negotiable cargo document as contained in the annex to the previous working paper (A/CN.9/WG.VI/WP.98).

⁸⁸ MLETR, article 10 (1)(b)(i).

⁸⁹ MLETR, articles 10 (1)(b)(ii) and 11 (1)(a); Rotterdam Rules, articles 1 (21) and 1 (22).

⁹⁰ MLETR, article 11 (1)(a); see e-CMR, article 5 (1)(c) ("The manner in which the party entitled to the rights arising out of the electronic consignment note is able to demonstrate that entitlement.").

⁹¹ Rotterdam Rules, article 9 (1)(d); e-CMR, article 5 (1)(d). In the consultations held by the secretariat, it was noted that the negotiable electronic cargo record might still have some evidentiary value after the transfer although it would cease serving the primary purpose.

⁹² MLETR, article 10 (1)(b)(iii); e-CMR, article 5 (1)(b); Rotterdam Rules, article 9 (1)(b).

⁹³ MLETR, article 10 (2); e-CMR, article 4 (2).

⁹⁴ The Working Group may wish to consider whether the chapeau of this article needs to be further revised to explicitly refer to specific situations where reliable methods need to be employed, including the identification of the holder and exclusive control.

- (d) The security of hardware and software;
- (e) Financial and human resources, including existence of assets;
- (f) The regularity and extent of audit by an independent body; and
- (g) The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method.⁹⁵

Article 15. Transfer of rights under a negotiable electronic cargo record

When a negotiable electronic cargo record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the exclusive control of the electronic cargo record.⁹⁶

Article 16. Endorsement⁹⁷

Where the Convention requires or permits the endorsement in a negotiable cargo document, that requirement is met with respect to a negotiable electronic cargo record if the information required for the endorsement is included in the negotiable electronic cargo record.

Article 17. Replacement of a negotiable cargo document with a negotiable electronic cargo record and vice versa^{98,99}

1. If a negotiable cargo document has been issued and the transport operator and the holder agree to replace that document by a negotiable electronic cargo record:

(a) The holder shall surrender the negotiable cargo document, or all of them if more than one original has been issued, to the transport operator;

(b) The transport operator shall issue to the holder a negotiable electronic cargo record that reproduces [all] information as recorded in the negotiable cargo document, consistent with article 4, paragraph 1¹⁰⁰ and includes a statement that it replaces the negotiable cargo document; and

(c) For the change of medium to take effect, a reliable method for such change shall be used.¹⁰¹

2. [If a negotiable electronic cargo record has been issued and the transport operator and the holder agree to replace that negotiable electronic cargo record by a negotiable cargo document]/[When a negotiable electronic cargo record has been issued, the

⁹⁵ MLETR, article 12; UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services, article 10.

⁹⁶ Rotterdam Rules, article 57 (2).

⁹⁷ The Working Group agreed that Chapter III on negotiable electronic cargo records should include a functionally equivalence rule for endorsement (A/CN.9/1134, paras. 34–37).

⁹⁸ Rotterdam Rules, article 10; MLETR, articles 17 and 18. The Working Group may wish to note the existing practice with the use of transport documents comprising several copies, each of which performed a particular function and consider whether the same could be achieved in the use of a negotiable electronic cargo record.

⁹⁹ In the consultations held by the secretariat, a suggestion was made to introduce provisions dealing with the transfer of a negotiable electronic cargo record from one system to another system with a different technology, considering that different technologies might be employed by different systems.

¹⁰⁰ In the consultations held by the secretariat, some experts noted the need to add a provision that explicitly required all the information contained in a negotiable cargo document (see article 4) to be accurately reflected in a negotiable electronic cargo record and vice versa when carrying out a change of medium. Support was expressed as such a requirement would be appealing to the banking industry, especially considering the difficulty for banks to check and ensure the completeness and accuracy of the information. However, in the view of some other experts, “mirroring” the content of the previous document or record in the converted one was not considered necessary but preserving the minimum required contents as stipulated in article 4 was considered essential. The Working Group may wish to consider which approach is more appropriate.

¹⁰¹ Rotterdam Rules, article 10 (1); MLETR, articles 17 (1) and 17 (2).

holder may request the transport operator to replace that negotiable electronic cargo record by a negotiable cargo document]:¹⁰²

(a) The transport operator shall issue to the holder, in place of the negotiable electronic cargo record, a negotiable cargo document that reproduces information as recorded in the negotiable electronic cargo record, consistent with article 4, paragraph 1 and includes a statement that it replaces the negotiable electronic cargo record; and

(b) For the change of medium to take effect, a reliable method for such change shall be used.¹⁰³

3. Upon issuance of the negotiable electronic cargo record in accordance with paragraph 1, the negotiable cargo document shall be made inoperative and ceases to have any effect or validity.¹⁰⁴

4. Upon issuance of the negotiable cargo document in accordance with paragraph 2, the negotiable electronic cargo record shall be made inoperative and ceases to have any effect or validity.¹⁰⁵

5. A change of medium in accordance with paragraphs 1 and 2 shall not affect the rights and obligations of the parties.¹⁰⁶

¹⁰² The Working Group may also wish to note that current commercial practice would require the use of a paper document in some circumstances, and consider whether it would be preferable to ensure that the holder of a negotiable electronic cargo record has the right to require the change of medium instead of seeking an agreement with the transport operator.

¹⁰³ Rotterdam Rules, article 10 (2); MLETR, articles 18 (1) and 18 (2).

¹⁰⁴ MLETR, article 17 (3).

¹⁰⁵ MLETR, article 18 (3).

¹⁰⁶ MLETR, articles 17 (4) and 18 (4).