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Report of Working Group VI (Negotiable Cargo Documents) on the work of its forty-seventh session (Vienna, 15–19 December 2025)

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I. Introduction

1. At its fifty-fifth session in 2022, the Commission assigned the topic of negotiable multimodal transport documents to Working Group VI.[1] From its forty-first to forty-fourth sessions, the Working Group commenced and continued its deliberations on the basis of draft provisions for an instrument on negotiable cargo documents prepared by the secretariat. Given that the instrument on negotiable cargo documents may apply to both multimodal and unimodal transport contexts, the title of the Working Group was revised to "negotiable cargo documents" to avoid confusion.[2]

2. At its fifty-sixth session in 2023, the Commission took note of the decision of the Working Group to postpone its consideration of draft provisions on electronic aspects and revisit them after finalizing the substantive provisions concerning negotiability.[3] The Commission expressed its satisfaction with the progress made by Working Group VI and the support provided by the secretariat.[4]

3. At its fifty-seventh session in 2024, the Commission noted that the Working Group heard presentations on the issuance and use of non-negotiable transport documents under existing transport conventions, with a view to identifying possible conflicts between the draft instrument and existing transport law conventions.[5] The need to adequately address any potential conflicts with existing transport law conventions was emphasized.[6] The Commission was also informed that the Working Group had completed its review of draft chapter 3 on negotiable electronic cargo records and requested the secretariat to align draft provisions more closely with the Model Law on Electronic Transferable Records (MLETR).[7] The Working Group had also agreed to follow the approach to electronic aspects adopted in the draft joint UNCITRAL-UNIDROIT model law on warehouse receipts.[8] The Commission emphasized the need to avoid duplication of work and to ensure consistency with existing UNCITRAL texts on electronic commerce, in particular the MLETR.[9]

4. At its fifty-eighth session in 2025, the Commission considered the revised draft convention on negotiable cargo documents (A/CN.9/1213) and a compilation of comments submitted by States and international organizations (A/CN.9/1214 and A/CN.9/1214/Add.1). The Commission approved the draft convention on negotiable cargo documents, recommending it for adoption by the United Nations General Assembly.[10] In addition, the Commission requested the secretariat to prepare a draft explanatory note on the convention for consideration by Working Group VI at its forty-seventh session.

5. At its forty-seventh session, the Working Group is expected to review the draft explanatory note on the convention as requested by the Commission.

II. Organization of the session

6. The Working Group, which was composed of all States members of the Commission, held its forty-seventh session in Vienna from 15 to 19 December 2025.

7. The session was attended by representatives of the following States members of the Working Group: Argentina, Austria, Belarus, Brazil, Canada, Chile, China,

[1] *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17* (A/77/17), paras. 22 (h) and 202.
[2] Ibid., *Seventy-eighth Session, Supplement No. 17* (A/78/17), para. 174 (f).
[3] Ibid., para. 168.
[4] Ibid., para. 171.
[5] Ibid., *Seventy-ninth Session, Supplement No. 17* (A/79/17), para. 259.
[6] Ibid., para. 261.
[7] Ibid., para. 258.
[8] Ibid.
[9] Ibid., para. 261.
[10] *Official Records of the General Assembly, Eightieth Session, Supplement No. 17* (A/80/17), para. 128.

Colombia, Côte d'Ivoire, Czechia, Dominican Republic, El Salvador, France, Germany, Ghana, Greece, Iran (Islamic Republic of), Iraq, Japan, Kuwait, Malaysia, Nigeria, Panama, Philippines, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, South Africa, Spain, Switzerland, Türkiye, United States of America and Viet Nam.

8. The session was attended by observers from the following States: Algeria, Cambodia, Guatemala, Honduras, Indonesia, Jordan, Malta, Mozambique, Myanmar, Paraguay, Senegal, Slovakia and United Republic of Tanzania.

9. The session was attended by observers from the following international organizations:

(a) *United Nations system*: International Civil Aviation Organization (ICAO);

(b) *Intergovernmental organizations*: Eurasian Economic Commission (EEC), Gulf Cooperation Council (GCC), and Intergovernmental Organisation for International Carriage by Rail (OTIF);

(c) *International non-governmental organizations*: Center for International Legal Studies (CILS), China Maritime Arbitration Commission (CMAC), Global Shippers Forum (GSF), Greater Caspian Association (GCA), International Chamber of Commerce (ICC), International Chamber of Shipping (ICS), International Federation of Freight Forwarders Associations (FIATA), International Group of Protection and Indemnity Clubs (IG P&I Clubs), International Rail Transport Committee (CIT), International Union of Railways (UIC), International and Comparative Law Research Center (ICLRC), Shanghai International Arbitration Center (SHIAC), and Union Internationale des Avocats (UIA).

10. The Working Group elected the following officers:

Chair: Ms. Beate CZERWENKA (Germany)

Rapporteur: Ms. Nak Hee HYUN (Republic of Korea)

11. The Working Group had before it the following documents:

(a) An annotated provisional agenda (A/CN.9/WG.VI/WP.117);

(b) A note by the Secretariat entitled "Draft explanatory note on the convention on negotiable cargo documents" (A/CN.9/WG.VI/WP.118);

(c) A note by the Secretariat entitled "Compilation of comments from organizations" (A/CN.9/WG.VI/WP.119/Rev.1) (English only); and

(d) Draft resolution entitled "United Nations Convention on Negotiable Cargo Documents" (A/C.6/80/L.8).

12. The Working Group adopted the following agenda:

1. Opening of the session and scheduling of meetings.
2. Election of officers.
3. Adoption of the agenda.
4. Future instrument on negotiable cargo documents.
5. Adoption of the report.

III. Deliberations

13. The Working Group continued its consideration of the topic on the basis of a Note by the Secretariat (A/CN.9/WG.VI/WP.118) containing the draft explanatory note on the convention on negotiable cargo documents. The Working Group celebrated the adoption of the Convention by the General Assembly, on 15 December 2025. It was recalled that the explanatory note did not serve as an official commentary on the convention and would be published as a secretariat document for information

purposes, following established practice at UNCITRAL. The secretariat expressed its appreciation to those organizations which had submitted comments on the draft explanatory note in advance. The summary of deliberations of the Working Group may be found in chapter IV below.

IV. Explanatory note

A. Overview of the Convention

1. Objective

14. There was broad support for a suggestion to delete the final two sentences of paragraph 2, noting that the explanatory note should avoid commenting on the operation of other treaty regimes.

15. It was suggested to include a general statement about the mandatory application of the Convention, particularly as other conventions prepared by UNCITRAL allowed the parties to exclude their application or to derogate from their provisions. In response, it was observed that such a statement was unnecessary as the mandatory application of the convention followed from general principles of treaty law. It was also queried whether it was appropriate for the explanatory note to comment on a provision that was not included in the Convention. Nevertheless, it was acknowledged that the Convention recognized the principle of party autonomy insofar as a negotiable cargo document (NCD) would only be issued – and the legal regime under the Convention would thus only apply – where agreed by the transport operator and consignor. It was therefore suggested that the explanatory note could state that the Convention effectively allowed the parties to determine whether the Convention applied, but not to determine how it applied.

16. There was broad support to insert a reference to national law in the final sentence of paragraph 4. A suggestion also to refer to practices was not taken up, although it was acknowledged that national law may give legal effect to those practices. It was also suggested to reformulate the statement in terms of a general rule regarding the intention of the Convention not to interfere, so as not to pre-empt article 1(3).

2. Outline

17. The Working Group requested the secretariat to replace “detailed rules” in paragraph 7 with “the necessary rules” and to replace the reference to article 3 in paragraph 8 with article 3(2).

18. There was broad support for a suggestion to replace “aligned with” in paragraph 9 with “drafted with reference to” the MLETR. It was noted that, by necessity, the rules in chapter IV of the convention were adapted to the Convention, and therefore it was doubtful that they could be said to be “aligned with” the MLETR. It was stressed that the compatibility of those rules with the MLETR was a separate issue that was best addressed in the remarks on chapter IV.

19. It was noted that the Convention did not include an interpretation clause found in article 2 of the Rotterdam Rules and other UNCITRAL texts. It was observed that it would be useful for the explanatory note to include a statement emphasizing the need for the terms of the Convention to be interpreted “autonomously” so as to promote uniformity in its application, rather than solely by reference to national law concepts. It was noted that such an understanding already followed from general principles of treaty interpretation, although it was added that it was worth reiterating in the explanatory note.

20. It was suggested to include a statement that the provisions of the Convention were inspired by maritime conventions and practice. It was added that such statement was all the more important as the Convention applied to maritime transport, noting

too that the explanatory note no longer referred to maritime conventions following the deletion of the final two sentences of paragraph 2 (para. 14 above). While the reference to maritime practice was questioned, there was broad support to include a statement that at least some of the provisions of the convention were inspired not only by maritime conventions but also by other transport law conventions. It was acknowledged that such a statement was linked to the statement regarding the interpretation of the Convention, and the secretariat was asked to find an appropriate place to insert both statements, noting that it could be under the heading "drafting history".

B. Article-by-article remarks

1. Article 1. Scope of application

(a) General remarks

21. The Working Group requested the secretariat to explain the meaning of "conspicuous" along the lines of paragraph 56 of A/80/17.

22. The Working Group requested the secretariat to delete the word "negotiable" in the second sentence of paragraph 12, given that the Convention would not apply to any transport document governed by existing transport law conventions unless a clearly visible reference to the Convention was included.

23. The Working Group requested the secretariat to delete the word "unimodal" in the second sentence of paragraph 13 and to clarify that the international character of the transport of goods was to be determined as at the time of issuance of the NCD, regardless of subsequent changes in the place of delivery.

(b) Geographic scope

24. The Working Group did not take up a suggestion to include a statement that the Convention would not apply to transport operators (e.g. rail carriers) operating in a non-State party. Such a statement could be regarded as inconsistent with article 1(1) of the Convention, noting that the location of the transport operator was not among the connecting factors used to determine the Convention's scope of application.

25. The Working Group requested the secretariat to rephrase the final sentence of paragraph 16 in positive terms, reflecting the Working Group's deliberations on this matter. It was emphasized that the Working Group had previously decided to leave questions of agency to national laws and asked the secretariat to include a note of this decision in the explanatory note.

26. Another concern was expressed about potential conflicts between legal regimes given the broad scope of application of the Convention under article 1(1).

(c) Substantive scope

27. The Working Group requested the secretariat to avoid the term "complement" in the first sentence of paragraph 19 as the Convention was on a different level to laws regulating transport operations.

28. In paragraph 20, the Working Group requested the secretariat to delete the phrase "not those traditionally associated with negotiable transport documents under applicable international conventions or national laws" in the final sentence and to further refine the remainder of the sentence. It was explained that the final sentence was intended to reflect the understanding that, once the transport operator and the consignor agreed to issue an NCD through annotating a maritime bill of lading, the document issued would carry the distinct legal features of an NCD under the Convention. It was added that the rights and liability of the holder would be governed by articles 7 and 9 of the Convention.

2. Article 2. Definitions

29. The Working Group requested the secretariat to remove quotation marks from terms not defined in the convention, such as negotiability and document of title.

(a) "Consignee"

30. A concern was raised that, read alone, the first sentence of paragraph 24 could be misunderstood, given that the right to demand delivery was always vested in the holder of the NCD. It was noted that, while this point was made in the second sentence, there was merit in the secretariat revisiting both sentences to avoid any misunderstanding.

(b) "Electronic record"

31. It was observed that an electronic record may be – but need not be – of a composite nature. Broad support was expressed for amending paragraph 26 accordingly.

(c) "Negotiable cargo document"

32. Broad support was expressed to replace "identical requirements" with "the same set of requirements" in paragraph 31 to avoid implying two sets of requirements. It was noted that the paragraph was concerned with the requirements of the definition, not the substantive requirements of the Convention regarding the issuance and use of the NCD.

33. Regarding paragraph 32, it was noted that issuance marked the moment when the NCD became legally effective (not "operative"). It was added that the final sentence reflected the negotiability of the NCD, not its document of title function. The secretariat was requested to revise the paragraph accordingly.

(d) "Transport contract"

34. It was observed that the concept of a "freight forwarder" might not be known in all jurisdictions and thus it was suggested that the example given in the second sentence of paragraph 36 should refer generally to "a person". It was also suggested to avoid referring to that person acting as an "agent", recalling that the Convention did not address questions of agency, including the ability of an agent to bind the principal, which were matters left to applicable law. It was also observed that an undertaking to perform the international transport of goods could include an undertaking to organize that transport. It was therefore suggested that the example refer to the person merely undertaking to organize the transport. Broad support was expressed for that suggestion.

(e) "Transport document"

35. The Working Group requested the secretariat to delete the phrase "are typically not issued by the transport operator" in paragraph 38. It was noted that non-negotiable sea waybills would also be issued by the transport operator. In addition, the need to distinguish between the act of completing and issuing a document was highlighted.

(f) "Transport operator"

36. For the reasons given above (para. 34), it was suggested to replace "freight forwarders" with "persons" in paragraph 39 and to avoid referring to "agent". While it was questioned whether non-vessel operating carriers was the best example, broad support was expressed for retaining the final sentence.

3. Article 3. Issuance of a negotiable cargo document

(a) Condition for issuance

37. The Working Group requested the secretariat to refer instead to a third party identified as the consignor in the NCD in the second sentence of paragraph 43. The example was given of a Free on Board (FOB) contract, under which the buyer arranged transportation and the seller delivered the goods to the transport operator, in which case the NCD might be issued to the seller identifying the seller as the consignor, even though the buyer qualified as the consignor under the Convention by concluding the transport contract with the transport operator. It was also pointed out that the definition of "holder" contained a reference to the person identified as the consignor in the NCD.

(b) Method of issuance

38. The Working Group requested the secretariat to delete the final sentence of paragraph 44 in its entirety to avoid implying that an NCD could not be issued alongside an existing transport document, which would be contrary to the chapeau of article 3(2). The Working Group expressed a preference for the explanatory note to remain silent on this method of issuance, while noting that, in practice, before agreeing to issue an NCD alongside an existing transport document, issuers would conduct their own due diligence as to the compatibility of that method with the law applicable to the transport contract.

39. The Working Group requested the secretariat to reflect in paragraph 47 that, when issuing an NCD under paragraph 2(a) of article 3, the annotation would need to be signed separately from the transport document, as previously requested (A/80/17, para. 60). The Working Group emphasized that such annotation should include all elements contained in the definition of an NCD, as well as a statement that the transport document was to serve as an NCD from a specified date. For that reason, it was considered unlikely for transport documents to feature a pre-printed annotation. Conversely, it was acknowledged that pre-printed templates (such as the FIATA multimodal bill of lading) may well be used for issuing a stand-alone NCD under paragraph 2(b).

40. The Working Group did not take up a suggestion to include an explicit reference to the sales contract in the explanatory note, noting that the Convention addressed only the transport contract and not the sales contract, and that it could be applied where goods were transported other than under a sales contract.

41. It was observed that paragraph 48 referred to an obligation to annotate "each original" of the transport document when issuing the NCD under paragraph 2(a) of article 3, which prompted a discussion within the Working Group of (i) the legal consequences of annotating a single original of a transport document issued in multiplicate, and (ii) the notion of an "original". It was observed that neither issue had been discussed during the development of the Convention:

(a) The general view was expressed that an NCD would not be invalid on grounds alone that not all originals of the transport document were annotated. It was observed that, in practice, the originals might be held by different parties when the request to issue an NCD is made. It was emphasized that paragraph 2 did not prescribe the conditions for a valid NCD. It was also observed that there was no obligation for the NCD to be issued by the method contemplated in paragraph 2(a) and that any liability for not annotating the other originals would be a matter for national law. In that regard, it was pointed out that the legal consequences may vary depending on whether the transport document indicated that it was issued in multiplicate. It was also noted that there may be legal and technical difficulties to annotating the transport document, in which case another method of issuance could be used; and

(b) A distinction was drawn between the "original" of the transport document and references in other provisions to the "original" of the NCD. The view was

expressed that what constituted an original of the transport document was a matter for the applicable transport law convention or national law.

42. The secretariat was invited to revise the explanatory note on account of the discussion (see para. 41 above).

43. It was suggested to avoid referring to "converting" the existing transport document when issuing the NCD under paragraph 2(a) as the Convention did not govern the continued legal status of the document. It was also noted that the Convention did not govern the cancellation of the document when issuing the NCD under paragraph 2(b), which was a matter for other law. The Working Group heard that cancelling a transport document was common practice in some transport sectors but not in others. The secretariat was invited to revise paragraph 51 to reflect that after a maritime bill of lading has been issued, if the parties wish to use a negotiable cargo document to facilitate the movement of goods via inland transport due to unforeseen circumstances, it was recommended to cancel in such case the issued maritime bill of lading and to issue a stand-alone NCD. It was noted that the explanatory note should not be seen to advise on the application of other law governing cancellation.

(c) Safeguard against multiple negotiable documents

44. Support was expressed to replace the phrase "that right" in the final sentence of paragraph 55 with "the right to request a negotiable bill of lading once it has issued an NCD" for improved clarity.

4. Article 4. Contents of the negotiable cargo document

(a) Mandatory list

45. A concern was raised that referring to article 4(1) in terms of a "mandatory list" of particulars might be misinterpreted in some language versions as implying that the requirement to indicate those particulars in the NCD had overriding effect notwithstanding article 5(1). It was therefore suggested to consider whether an alternative term could be used that better reflected the obligatory nature of the particulars. In a similar vein, it was suggested to refer to the particulars listed in article 4(2) as "optional" or possibly even "recommended".

46. The Working Group requested the secretariat to avoid the phrase "establishing contractual responsibility" and to revise paragraph 63 to state that the name and address of the transport operator was important information for third parties relying on the NCD.

47. It was observed that it would be opportune to clarify in paragraph 65 that nothing in the Convention prevented the parties from agreeing to identify as the consignor in the NCD a third party other than the original consignor. The secretariat was requested to revise the paragraph accordingly. The secretariat was also requested to replace the word "essential" with "helpful".

48. The Working Group requested the secretariat to include in paragraph 69 a reference to the sales contract as another important reason for including information on the place and date of taking in charge.

49. The Working Group requested the secretariat to revise the second sentence in paragraph 71 to clarify that the place of issuance "may be relevant" for determining jurisdiction and applicable law. It also requested the secretariat to include a similar statement in paragraph 77.

50. The Working Group discussed the reference in paragraph 75 to the holder "assuming any liabilities that arise from their actions" (in connection with the exercise of their rights as a holder). On the one hand, it was queried whether it was appropriate to refer to the holder "assuming" liabilities. On the other hand, it was suggested that the reference should be expanded to cover obligations and costs. It was clarified that, in some jurisdictions, transport contracts could encompass

administrative provisions. The distinction between obligations and liabilities in civil law systems was highlighted. It was suggested that these observations could be addressed by including a cross reference to article 1(2), which was intended to cover administration provisions that regulated or controlled transport operations, and inserting a reference to obligations (in addition to liabilities).

51. The Working Group requested the secretariat to replace the phrase "when its communication with the holder is insufficient" with "in the circumstances set out in article 8" in paragraph 76.

52. The Working Group did not take up the suggestion to delete the last two sentences of paragraph 77, which had been made to address concerns that the destination might also be changed in liner transport. Instead, the secretariat was requested to redraft those two sentences in more general terms, without reference to any specific mode or type of transport.

53. The Working Group also did not take up the suggestion to include in paragraph 77 a requirement that the NCD be updated to reflect a new place of delivery. A view was expressed that information on the original place of delivery should be retained for the purpose of determining the scope of application of the Convention. It was further noted that, as the Convention does not require instructions from the holder to the transport operator to be recorded, there was no reason to require the new place of delivery to be updated.

(b) Non-mandatory list

54. It was suggested to clarify in paragraphs 86 and 87 that the indication of the law applicable to the transport contract should be treated as information only and not as a choice-of-law clause. In response, a concern was raised that the explanatory note should not interfere with the application of other laws when determining which circumstances are relevant to the choice-of-law analysis. It was emphasized that the NCD should reflect the information contained in the transport contract, and that the choice of law is a matter for the transport contract itself.

5. Article 5. Deficiencies in the negotiable cargo document

55. It was suggested that paragraph 92 should refer to the preservation of negotiability and "validity" to align with paragraph 90. Referring to wording in that paragraph, it was suggested that, to avoid confusion, the explanatory note should avoid calling a person a "carrier" if they were actually acting as "transport operator" within the meaning of the Convention. It was further suggested that the explanatory note clarify that the various references to "applicable law" (or "law applicable") covered both international conventions and national laws. The secretariat was requested to revise the paragraph accordingly.

56. It was observed that article 5(3) to article 5(6) did not establish presumptions but rather constituted "deeming provisions". It was explained that the inclusion of certain information in the NCD by virtue of those provisions was not rebuttable and that it was incorrect to refer to those provisions as "presumption rules". In the case of article 5(6), it was clarified that the inclusion of the statement (that the goods were in apparent good order and condition) did not preclude the holder from submitting evidence that the goods were not in such order or condition at the time they were taken in charge. The secretariat was requested to revise terminology in the explanatory note accordingly.

57. Broad support was expressed to delete the third sentence in paragraph 95 on the understanding that the intention of article 5(6) was not to "relieve" the transport operator from the obligation under article 4(1)(c), which remained a mandatory particular, even though that might be said to be the practical effect of the deeming provision. It was noted that paragraph 95 should be expanded to clarify that it reflected a rule already existing in other transport law conventions.

6. Article 6. Evidentiary effect of the negotiable cargo document

(a) Conditions for qualification

58. The Working Group did not take up a suggestion to amend the second sentence in paragraph 100 to refer to the transport operator taking a high risk for being liable for loss or damage caused by the inaccuracy of the information, as opposed to liability for loss or damage to the goods. In response, it was observed that the amendment would imply an obligation to qualify information where none existed. It was, however, noted that the liability that the transport operator was concerned to avoid by including a qualification might extend beyond loss or damage to the goods themselves to include liability for consequential damage and costs related to dangerous goods. It was noted that existing transport law conventions for rail and air transport expressly provided that the carrier was not liable for inaccuracy of the consignor's information. The secretariat was requested to revise the paragraph to reflect these additional observations.

59. The secretariat was also requested to revise the final sentence of paragraph 100 to avoid referring to the transport operator "disclaiming" responsibility.

60. A suggestion was made that the phrase "reasonable means" in paragraph 100 should be interpreted in light of the specific mode of transport and the relevant industry.

61. The secretariat was requested to expand paragraph 101 to clarify that the transport operator was not required to specify the grounds for making the qualification (see A/80/17, paras. 74 and 75).

(b) Evidentiary function

62. The Working Group requested the secretariat to reorganize paragraph 102 so that it would begin by stating the need for the NCD, as a document of title, to constitute prima facie evidence of its contents and then to proceed with explaining that this was subject to exceptions ("unless qualified under the considerations set out in paragraph 1").

(c) Protection of third parties acting in good faith

63. The Working Group requested the secretariat to remove the reference to "acquire better title than the original transferor" in paragraph 105, noting that article 6(3) does not address issues of title. However, a view was expressed that the sentence was intended to reflect the principle that, once transferred to a third party, the NCD would constitute conclusive rather than prima facie evidence. It was added that a third party acting in good faith and relying on the NCD's contents would enjoy a better legal position than the original transferor.

64. It was queried whether it was appropriate for the final sentence of paragraph 105 to venture a definition of "good faith", which would be exceptional for UNCITRAL texts. In response, it was said that the indicators were particularly useful in emphasizing that the notion of "good faith" in the Convention was to be interpreted autonomously rather than solely by reference to national law concepts. At the same time, it was agreed that the indicators should be presented not as a definition but as examples of circumstances in which the third party could be regarded as acting in good faith. The secretariat was requested to redraft the final sentence accordingly. Support was also expressed to clarify that the point in time at which the good faith requirement applied was the time of acquiring the NCD.

7. Article 7. Rights of the holder of a negotiable cargo document

65. It was noted that the different approaches outlined in paragraph 107 between civil and common law systems concerned the rights of the holder of a bill of lading as reflected in articles 7(1) and 7(2), not the rights in goods represented by a document of title. The secretariat was requested to revise paragraph 107 accordingly.

66. Support was expressed for revising the first sentence in paragraph 110 to state more affirmatively that article 7(4) gave the NCD the attribute of a document of title.

67. Similarly, it was requested to supplement the first sentence in paragraph 111 with a clarification that the Convention did not deal with the legal effect of physically handing over the goods, only that transfer of the NCD had that same effect, whether it be ownership or otherwise. The secretariat was also requested to amend the final sentence to refer to the UNCITRAL Model Law on Secured Transactions as an example.

68. A concern was raised about the phrase "legitimize itself" in paragraph 112, which might be linked to the concept of legitimate holder under national laws. It was noted that the holder of a blank endorsed NCD should not be required to legitimize itself. The Working Group requested the secretariat to rephrase the paragraph to state that article 7(5) required the holder to present the document to the transport operator.

(a) Rights acquired by the holder other than the consignor

69. The Working Group heard several suggestions to amend paragraph 116:

(a) It was observed that the final sentence raised more questions than it answered, given that certain holders may in fact need to rely on the transport contract to enforce certain rights. It was suggested to replace it with a statement to the effect that, while the terms of the contract might not ordinarily be relevant to a party acquiring the NCD to take security in the goods, the party might need to enforce its rights against the carrier in the event of default or loss or damage to the goods. Another suggestion was to retain the final sentence but supplement it with a statement acknowledging that banks and other holders needed to be aware that they might need to rely on the transport contract to exercise certain rights conferred by the NCD. Broad support was expressed to delete the final sentence and include a statement acknowledging the potential relevance of the contract to the effective enforcement of the holder's rights; and

(b) It was observed that, while the holder enjoyed exclusive exercise of the rights conferred by the NCD, the transfer of the NCD did not mean that the consignor lost all of its pre-existing rights under the transport contract. The example was given of a case in which three containers were taken in charge but only two containers were indicated in the NCD; while the subsequent holder might acquire no rights with respect to the additional container, the consignor could still have a right to bring a claim against the transport operator in respect of that container. There was broad support for describing the example in the explanatory note.

70. The Working Group heard a suggestion for paragraphs 117 and 118 to refer to both the NCD and the transport contract in light of the linkage between article 7(1) and article 7(2) as well as several suggestions to amend paragraph 118:

(a) It was observed that the second sentence could be misinterpreted as suggesting that an arbitration or choice of court clause in the transport contract could be enforced by or against a subsequent holder. While the holder might have standing to bring a claim by virtue of the Convention, whether the claim could be referred to arbitration or submitted to chosen court was another matter that was subject to applicable law. Broad support was expressed for retaining the sentence but to reframe it in less emphatic terms (e.g. "it may allow") and to include a reference to applicable law;

(b) It was observed that the reference in the third sentence to the holder bringing the claim "directly" could be misinterpreted as suggesting that, but for article 7(2), the holder might be able to bring a claim "indirectly" (e.g. by subrogation). There was broad support to delete "directly";

(c) It was also observed that the right of the holder to bring a claim was the very essence of negotiability, and that it was not accurate to state that, by ensuring that right, the Convention would "enhance the negotiability of the NCD". Rather, it

was observed that it enhanced the attractiveness or acceptability of NCDs. The secretariat was requested to revise the statement accordingly; and

(d) It was suggested that the final sentence could benefit from additional clarity. It was observed that the concept of an NCD "circulat[ing] freely in trade and finance" was not clear, and that the right of the holder to bring a claim could not be said to be "independent" of the original transport contract given that there was always a connection with the contract, as indicated in the first sentence and in paragraph 117. Broad support was expressed to delete the words "independently of the original contract between the consignor and the transport operator".

71. It was observed that the second sentence of paragraph 120 gave the impression that the right of disposal was not available under existing regimes for goods carried by sea, whereas in fact the right was generally found in national law not international conventions. The secretariat was requested to revise the sentence to clarify.

72. There was broad support to include a reference to article 9(2) in paragraph 121 and to the remarks thereon in paragraphs 141 to 143. A question was raised as to why the paragraph referred to the 2008 Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road but not to the 1978 Protocol thereto. Broad support was expressed to refer generally to the Convention "as amended" or words to similar effect.

73. The secretariat was asked to replace the term "statutory rights" with "rights" in paragraphs 122 and 123 to encompass other rights not derived from statutes, which was particularly relevant for common law systems.

74. The Working Group took up a suggestion to revise the second sentence in paragraph 123 along the following lines: "These legal regimes may confer additional rights and obligations on parties to the contract, such as rights to, or limitations on, compensation for delay, loss, or damage as well as procedural rights or requirements related to claims, limitation periods, or burden of proof."

(b) Protection against inconsistent contract terms

75. A concern was raised about the reference to "good faith" in the first sentence of paragraph 125, noting that article 7(3) was not predicated on good faith acquisition. The secretariat was requested to delete the reference.

76. Support was expressed for including a new sentence at the end of paragraph 126 along the following lines: "Importantly, paragraph 3 does not prevent the holder from exercising any rights not expressly stated in the NCD, in accordance with paragraphs 1 and 2 of article 7." A suggestion was made to avoid the reference to "hidden" clauses in the second sentence. The secretariat was requested to revise the paragraph accordingly.

(c) Document of title function

77. It was observed that paragraph 127 did not sufficiently acknowledge that the transport operator might possess certain residual rights in respect of the goods owing to it having taken them into its charge (e.g. a possessory lien or a right to request the holder to pay freight). It was therefore suggested to insert the following sentence at the end of the paragraph: "The transport operator may still have physical possession of the goods until it in fact releases or delivers the goods." It was, however, noted that the transport operator might not be the actual carrier and would therefore not have physical possession of the goods up to the point of delivering or releasing the goods. It was added that the term "possession" in some legal systems had a specific meaning and that a more neutral term should be used. After discussion, broad support emerged for a compromise solution to state that nothing in article 7(4) affected the rights of the carrier under applicable law, the term "carrier" being purposefully chosen to cover circumstances where the transport operator was not the actual carrier. The secretariat was further requested to delete the phrase "central to the concept of negotiability" in

the final sentence, given that article 7(4) addressed the document of title function of the NCD, rather than its negotiability.

78. A concern was raised that the phrase "endorsement or delivery" in the final sentence in paragraph 128 did not accurately reflect the procedure in article 11. The secretariat was asked to replace that phrase with "endorsement and/or transfer of possession in line with article 11".

79. Support was expressed for revising the second sentence in paragraph 129 along the following lines:

> At the same time, the provision does not speak to the transfer of ownership or risk of loss. This decision was made to accommodate 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 other law.

8. Article 9. Liability of the holder

80. The Working Group did not take up a suggestion to refer to the concept of "obligations and liability" in the first sentence in paragraph 137 and the final sentence in paragraph 138, drawing on earlier deliberations on paragraph 87. It was reasoned that article 9 only dealt with the liability of the holder and therefore that the insertion was unnecessary in the least. Separately, a general drafting suggestion was made to standardize the use of the term "third party holder" and "holder that is not the consignor". The phrase "exercise rights under the transport contract" could also be used instead of the terms "take action" or "make use of".

81. A suggestion was made to relocate the reference to the Rotterdam Rules within paragraph 139 so as to make the paragraph more accessible to those not involved in the carriage of goods by sea. Another suggestion was to replace the phrase "banks, investors, or intermediaries" with "banks, financiers, traders or intermediaries". The secretariat was requested to revise the paragraph accordingly.

82. The Working Group requested the secretariat:

(a) To amend paragraph 140 by inserting (i) "the potential liabilities under" before "the transport contract"; and (ii) "and to the extent that" after "unless";

(b) To amend paragraph 141 to replace the word "may" with "is" throughout and to delete the words "but only" in the final sentence; and

(c) To clarify that the "obligations" mentioned in paragraph 142 were not limited to statutory obligations but could exist outside the transport contract under applicable law.

83. It also requested the secretariat to revise paragraph 143:

(a) To clarify that the standard of "ascertainable from the NCD" established an objective test, and to avoid the word "flexibility". It was noted that liability might be inferred from the NCD even if not explicitly stated in the NCD;

(b) To remove the example provided in the final sentence as it did not reflect how the standard was understood; and

(c) To clarify that the standard would ensure that banks, insurers or buyers who received the NCD were readily aware of any potential liabilities which might accompany the exercise of rights under the transport contract.

9. Article 10. Delivery of the goods

84. The Working Group requested the secretariat:

(a) To consider adding the Rotterdam Rules, Hamburg Rules, and Budapest Convention – as amended and as appropriate – in paragraph 145;

(b) To delete "formalistic" in paragraph 152; and

(c) To delete “innocent” in paragraph 153 and to replace “acquire an original” with “acquire one original of the NCD”; a suggestion to remove “good faith” was not taken up, given its reference in article 6(3).

10. Article 11. Transfer of rights of the holder

85. The Working Group requested the secretariat:

(a) To open paragraph 154 with a general statement that the purpose of article 11 was to indicate how a person became a holder, and to mention article 57 of the Rotterdam Rules;

(b) To replace “legal title” in the final sentence of paragraph 155 with a reference to rights in the NCD and to clarify that “control” in that sentence referred to control of the NCD, not of the goods;

(c) To replace the second sentence of paragraph 156 with an explanation about the practice of blank endorsement that was previously shared within the Working Group (A/CN.9/1199, para. 54); and

(d) To insert the words “in accordance with paragraphs 1 and 2 of article 7” at the end of the first sentence of paragraph 158, and to insert after the fourth sentence a general statement about the operation of article 9.

11. Chapter IV. Special conditions for electronic negotiable cargo documents

86. The Working Group requested the secretariat:

(a) To insert a general statement in paragraph 160 about the Convention applying a technological neutral approach and that this encompassed the concept of system neutrality;

(b) To clarify in the second sentence of paragraph 162 that the functional equivalence approach applied only to formal requirements in the Convention itself;

(c) To insert a sentence at the end of paragraph 163 along the following lines: “For the same reasons, the use of new technologies that may be developed in the future would also have recognition under the Convention, provided they meet the requirement of reliability threshold”;

(d) To delete “to ensure that an eNCD may do so” in the final sentence of paragraph 167 to avoid the impression that the rules in Chapter 4 were insufficient to support the use of eNCDs;

(e) To delete “or an NCD in both paper and electronic form” in the third sentence of paragraph 172 to avoid endorsing practices that might complicate the application of the Convention or even be inconsistent with article 17, and to replace “multiplicate” with “multiple originals”;

(f) To review paragraphs 176 and 177 to clarify that the point in time for assessing integrity for additional information that may be included in the eNCD under the Convention (e.g. for endorsement) was the moment the information was included;

(g) To acknowledge in paragraph 186 that different techniques could be used to establish control of the eNCD, including through the chronological ordering of data recording dealings in the electronic record;

(h) To amend the fourth sentence of paragraph 188 by (i) deleting the word “like possession”; (ii) clarifying that the sentence was concerned with “exclusive” control; and (iii) clarifying that concurrent control would always need to be exclusive of other persons;

(i) To amend paragraph 189 by (i) deleting the final sentence to avoid a suggestion that eNCDs could be used in complete anonymity; and (ii) including an acknowledgment that the eNCD could contain additional information, such as information mentioned in the second sentence that is needed to satisfy the requirement to identify the person in control;

(j) To mention in paragraph 195 that a change in medium might also be prompted by customs authorities not accepting eNCDs;

(k) To replace "potential buyer" with "potential subsequent holder" in paragraph 197 and to clarify that the requirement in article 17(1) for the transport operator and holder to agree could be met where the NCD states that the holder may request a change of medium and the holder makes the request; and

(l) To insert words in paragraph 201 to clarify that making the NCD inoperable renders it incapable of being used or transferred after the change of medium.

12. Chapter V. Final clauses

87. It was observed that a reservation made under article 24 had effect only in the reserving State and that that effect did not depend on a conflict of laws analysis. The Working Group heard views as to whether the explanatory note should provide additional commentary on the effect of a reservation. It was pointed out that the legal effects of a reservation were governed by international law, including the Vienna Convention on the Law of Treaties, and it was not appropriate for the explanatory note to pre-empt those effects. Moreover, it was not appropriate to comment on the legal effect of the document under applicable law outside the Convention. At the same, it was said that there was added value to users of the Convention in providing guidance on the practical effect of the reservation.

88. After discussion, the Working Group agreed to insert a statement along the following lines after paragraph 208:

> "Where a State party makes a reservation under article 24, a document purporting to be an NCD may not produce the legal effects under the Convention in that State, but it may still have legal effect as a negotiable bill of lading under applicable law."

89. The Working Group did not take up a suggestion to include a new paragraph encouraging States to consider joining the Rotterdam Rules as an updated, balanced and complementary regime for contracts for the carriage of goods wholly or partly by sea. It was said that it was inappropriate for the explanatory note to comment on these matters.

90. The Working Group agreed to replace paragraph 210 with a more neutral statement along the following lines: "Paragraph 3 reflects a restrictive approach to reservations by limiting reservations to those expressly authorized in this article. This approach aims to support legal certainty by reducing the scope for unilateral divergences".

91. The Working Group welcomed plans for a signing ceremony for the Convention in Accra in the second half of 2026 and heard that, by virtue of article 20(3), it was possible for a State to deposit its instrument of accession at the signing ceremony.