

Shaping the Future: The Impact of Negotiable Cargo Documents on Trade
Finance, Regional Connectivity and Digital Evolution

The Role of Transport Documents and the Current Efforts towards International Unification

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Overview

- Role and functions of transport documents
- Activities within UNCITRAL
- Draft convention on negotiable cargo documents
- Advantages of the new convention

Role and functions of transport documents

Transport Convention	mode of transport	document	electronic record
CMR	road	consignment note	electronic consignment note
CIM	rail	consignment note	electronic data registration
Montreal Convention	air	air waybill	("Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill." Art. 4 (2))

Role and functions of transport documents

Convention	mode of transport	document	electronic record
CMNI	inland navigation	consignment note bill of lading any other document used in trade	("In writing" includes the transmission of information by electronic means of communication." (Art. 1(8))

Role and functions of transport documents

Convention	mode of transport	document	electronic record
Hague/ Visby Rules	sea	bill of lading or any similar document of title	
Hamburg Rules	sea	bill of lading	("A signature on a bill of lading may be made by electronic means." (Art. 14 (3)))
Rotterdam Rules	sea	non-negotiable transport document, negotiable transport document	non-negotiable electronic transport record negotiable electronic transport record

Role and functions of transport documents

- Consignment note / air waybill / non-negotiable transport document / electronic equivalent
 - Evidentiary function
 - Prima facie evidence
 - receipt of the goods by the carrier
 - art. 9 (1) CMR; art. 6 § 4, art. 12 § 1 CIM; art. 11 (1) MC; art. 11 (3) CMNI; art. 1 (14), art. 41 lit. a RR
 - the making of the contract of carriage and the conditions of the contract
 - art. 9 (1) CMR; art. 12 § 1 CIM; art. 11 (1) MC; art. 11 (3) CMNI; art. 12 (14) lit. b RR

Role and functions of transport documents

- Consignment note / air waybill / non-negotiable transport document / electronic equivalent
 - Evidentiary function
 - *Prima facie evidence*
 - **good condition of the goods and their packaging** when the carrier took them over
 - art. 9 (2) CMR; art. 12 (2); art. 12 § 2, 3 CIM (where the carrier has loaded the goods or has recorded the result of his examination on the consignment note); art. 11 (2) MC; art. 12 (2) CMNI, art. 41 RR
 - **description in the document**
 - art. 11 (3) CMNI
 - **number of packages**, or quantity of goods, volume, marks
 - Art. 9 (2) CMR (only packages, marks); art. 12 (2) CIM, art. 11 (2) MC (not quantity, volume unless checked by the carrier), art. 41 RR

Role and functions of transport documents

- Consignment note / air waybill / non-negotiable transport document / electronic equivalent
 - Evidentiary function
 - *no proof to the contrary against a consignee in good faith*
 - art. 41 RR

Role and functions of transport documents

- Consignment note / air waybill / non-negotiable transport document / electronic equivalent
 - **blocking function**, i.e. need to present document in order to exercise a right
 - right to dispose of the goods
 - art. 12 (5) lit. a CMR; art. 19 § 1 CIM; art. 12 (3) MC; art. 15 CMNI; art. 51 (2) RR (only if the document indicates that it shall be surrendered in order to obtain delivery)
 - right to take delivery
 - art. 46 RR: only if the document requires its surrender

Role and functions of transport documents

- Bill of lading / negotiable transport document / electronic equivalent
 - negotiable
 - indication, by wording such as “to order” or “negotiable” or other appropriate wording, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer
 - art . 1 (7) HHR, art. 1 (15) RR
 - document of title
 - handing over the bill of lading to a person entitled thereby to receive the goods has the same effects as the handing over of the goods as far as the acquisition of rights to the goods is concerned, provided that the goods are taken over by the carrier
 - art. 13 (3) CMNI

Role and functions of transport documents

- Bill of lading / negotiable transport document / electronic equivalent
 - position of holder
 - bill of lading alone shall determine the relations between the carrier and the consignee; the conditions of the contract of carriage shall continue to determine the relations between carrier and shipper
 - art. 11 (4) CMNI

Role and functions of transport documents

- Bill of lading / negotiable transport document / electronic equivalent
 - evidentiary function
 - *prima facie* evidence
 - evidence of the **receipt of the goods** by the carrier
 - art. 4 (1) HVR, art. 1 (7), art. 16 (3) HHR; art. 1 (14) RR
 - **contract of carriage**
 - art. 1 (7) HHR, Art. 1 (14) lit. b RR
 - **description of the goods** relating to their **condition**
 - art. 3 (4) HVR
 - **number of packages** or pieces, quantity, weight, leading marks,
 - art. 3 (4) HVR
 - *no proof to the contrary against a consignee in good faith*
 - art. 3 (4) HVR; art. 11 (4), art. 13 (4) CMNI, art. 41 RR

Role and functions of transport documents

- Bill of lading / negotiable transport document / electronic equivalent
 - blocking function
 - exercise of the **right of disposal** only if all originals have been submitted/produced
 - art. 15 lit. a CMNI; art. 51 (3) lit. c RR
 - **delivery** only against surrender of the document
 - art. 13 (2) CMNI; art. 1 (7) HHR, art. 47 (1) RR

Role and functions of transport documents

- **Economic significance**
 - **Consignment note** / air waybill / non-negotiable transport document / electronic equivalent
 - proof document
 - blocking function
 - **Bill of lading** / negotiable transport document / electronic equivalent
 - proof document
 - blocking function – protection of the parties to the contract
 - document of title
 - transferring ownership in goods in transit
 - collateral in trade finance

Activities within UNCITRAL

- 2019: Proposal of the Chinese delegation:

*In recent years ... **international railway transportation** has been developing rapidly ... [An] international railway consignment note ... cannot be used for the **settlement and financing of letter of credit (L/C)** as an ocean bill of lading (B/L) does, thus limiting the ability of banks and other institutions to provide financing services, and increasing the financial pressure on importers and the risk of payment collection for exporters. Specifically, ... it cannot be **transferred or pledged**, and it is impossible for the holder to claim the right to possession and disposal of cargo by virtue of a consignment note.*

Activities within UNCITRAL

- Studies of the UNCITRAL Secretariat
 - 11 May 2020 (A/CN.9/1034): Possible future work on railway consignment notes
 - *“... there seems to be a demand for negotiable transport documents that could cover carriage by other modes than sea carriage, in particular by railway”*
 - 4 May 2021 (A/CN.9/1061): Results of the preparatory work ... towards the development of a new international instrument on negotiable multimodal transport documents
 - *“... the primary purpose of a new international instrument could be to ensure legal recognition of a medium neutral negotiable transport document in different modes of transport.”*

Activities within UNCITRAL

- Studies of the UNCITRAL Secretariat
 - 6 May 2022 (A/CN.9/1101): Results of the preparatory work ... towards the development of a new international instrument on negotiable multimodal transport documents
 - *“... a proper coordination and interface between TD and NCD (and its electronic equivalent) and applicable legal regimes, including on liability aspects, would need to be achieved. As most of those issues ... also involve policy choices ..., the secretariat believes that such work should be entrusted to a working group for intergovernmental negotiation.”*

Activities within UNCITRAL

- since December 2022: Working Group VI
- March 2025: final discussion of Working Group VI on a draft convention on negotiable cargo documents
 - “... The Working Group requested the secretariat ... to transmit the revised draft to the Commission for consideration and possible approval at its fifty-eighth session....”
- July 2025: UNCITRAL will discuss draft convention (A/CN.9/1213)

Draft Convention on Negotiable Cargo Documents

- **Convention**
 - Entry into force after ratification of 3 states
- **Scope of application (art. 1 (1))**
 - negotiable cargo documents (paper/electronic) with reference to the convention (opt in)
 - issued in connection with international transport of goods
 - place of taking in charge or place of delivery must be located in a State Party

Draft Convention on Negotiable Cargo Documents

- Substantive scope (art. 1 (1))
 - Issuance, transfer and legal effects of NCD; not rights and obligations of the parties to a contract for the carriage of goods
- Relationship with existing Conventions (art. 1 (2) and (3))
 - Priority of conventions or national law relating to the regulation and control of transport operations
 - Dual track approach:
 - Existing conventions on carriage of goods shall remain unaffected
 - Exception: holder acquires rights incorporated in the NCD

Draft Convention on Negotiable Cargo Documents

- **Definition of NCD**

- document signed and issued by the transport operator in connection with an international transport of goods
 - art. 1, 2 (5)
- paper document or electronic record
 - art. 2 (5)
- order document
 - art. 2 (5), 3 (6)

Draft Convention on Negotiable Cargo Documents

- NCD as transferrable document
 - Transfer of rights incorporated in the NCD
 - by endorsement to another person or blank and transfer of ownership of NCD
 - by mere transfer of ownership of the NCD, if it is a document endorsed in blank
 - art. 11
 - Function as document of title
 - transfer of possession of the NCD shall have the same effect, for the purpose of acquisition of rights to the goods, as a physical handing over of the goods
 - art. 7 (4)

Draft Convention on Negotiable Cargo Documents

- Issuance of an NCD (art. 3)
 - agreement between transport operator and consignor
 - on the application of the convention (opt-in)
 - on method
 - entering an **annotation** on existing transport document stating that such document shall serve as NCD
 - issuance of a **standalone NCD**
 - time of issuance
 - when the goods are **taken in charge** by the transport operator
 - at a **later** time, if
 - an existing transport document is annotated
 - an existing transport document exists already, but a standalone NCD is issued after “cancelling” the existing transport document

Draft Convention on Negotiable Cargo Documents

- **Holder**

- acquires the rights under the transport contract to the extent that these rights are incorporated in the NCD
 - art. 7 (1) – (3)
- exercises of the rights acquired
 - as the only one
 - exception: transport operator is unable to obtain necessary information, instructions or documents from the holder
 - art. 8
- assumes liability for exercising any right acquired
 - art. 9

Draft Convention on Negotiable Cargo Documents

- Protection of transport operator (blocking function)
 - Holder has to produce the NCD
 - to demand delivery
 - to exercise the right of disposal
 - to bring a claim against the transport operator
 - art. 7 (1)

Draft Convention on Negotiable Cargo Documents

- Evidentiary effect of an NCD
 - *Prima facie evidence*
 - taking in charge of the goods by the transport operator
 - description in the NCD
 - art. 6 (2)
 - no proof to the contrary against a third party in *good faith*
 - art. 6 (3)

Draft Convention on Negotiable Cargo Documents

- **Electronic NCD**

- Requirement of a reliable method (art. 12)
- Accessibility of information to be contained in the NCD (art. 13)
- Possession requirements (art. 14)
- Endorsement requirements (art. 15)
- Change of medium (art. 16)

Advantages of the new convention

- Creates an NCD for all modes of transport, including multimodal transport
- Unifies the key elements of a negotiable transport document
- Regulates electronic NCD
- Leaves the existing conventions unaffected

Thank you for your
attention!