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Compilation of comments from organizations

Note by the Secretariat

Contents

I. Introduction

1. This document reproduces comments received from organizations on the draft explanatory note on the convention on negotiable cargo documents as contained in document A/CN.9/WG.VI/WP.118. The comments are reproduced in the order in which they were received.

II. Comments received from organizations

A. Comité Maritime International

[Original: English]
[24 November 2025]

2. The Explanatory Note should provide a more extensive explanation of the intended effect of Article 1(3). It should be more emphatic regarding the fact that the NCD Convention is intended to work alongside existent international (unimodal) transport conventions, giving targeted cross-references. In paragraph 20, the Explanatory Note should not just say that the Convention does not modify rights and obligations but also that the Convention *is not intended to affect the mandatory application of these laws*, in circumstances where they would have applied mandatorily had a different document been issued to cover the rights and liabilities of carrier and cargo interests.

3. While the United Nations Convention on Contracts for the Carriage of Goods Wholly or Partly by Sea, 2008 (the Rotterdam Rules or RR) is not yet in force, in light of the fact that it is the most recent international instrument on maritime transport, the application of which extends also to non-sea legs, the CMI considers that it would be helpful to States who may in future want to consider ratifying both Conventions, for the Explanatory Note to the NCD Convention to give more guidance on how the two interact. Some more specific suggestions are found below:

a. A number of provisions in the NCD Convention are modelled on provisions in the Rotterdam Rules, with the Working Group frequently making reference to the Rotterdam Rules for drafting purposes. This connection should be highlighted as it speaks to the uniformity between the two instruments and their ability to co-exist as part of the same domestic law. For example, there are strong similarities between the definition provisions in the two instruments (NCD (Article 2) and Rotterdam Rules (Article 1)). Examples are such terms as Contract of carriage (RR) and Transport contract (NCD); Carrier and Performing party (RR), Transport operator (NCD); Shipper (RR) and Consignor (NCD); Holder (RR and NCD); Consignee (RR and NCD); Negotiable transport document (RR and NCD); Electronic Communication and Electronic Transport Record (RR) and Electronic Record (NCD). Annex 1 to this document provides a list of places where the Explanatory Note can better highlight the relevant connections and compatibilities between the two instruments.

b. In places the Explanatory Note should do more to distinguish the RR from other transport conventions and highlight the extent to which the RR overlaps with the NCD Convention and complements it. For example, the text to footnote 3 in the second paragraph on page 2 refers to “a more recent transport law convention … although not all such aspects are comprehensively covered”. This text should be amended to emphasise that the RR is the “most comprehensive Convention dealing with maritime bills of lading”. The footnote should refer to the other texts as being “not so comprehensive.”

c. Further guidance should be provided regarding the “right of disposal” or, in RR terms, the “right of control” with examples of what the features of this right are in the different conventions where it appears. Paragraph 120 of the Explanatory Note rightfully points out that this right does not always exist. The

Explanatory Note should give some guidance regarding the implications for the NCD holder's constructive possession of the goods (discussed in paragraph 128) if this right of disposal/ control is absent. For example, should in such case a national legislator, when implementing the NCD convention, make provision for a right of disposal/ control in its own law? Or would this not be necessary for the holder to have constructive possession of the goods during carriage?

4. The Explanatory Note should make clear and indeed emphasise that the NCD was intended to work similarly to a maritime bill of lading, which is in ubiquitous use and universally accepted for the purposes of international sale contracts and trade finance arrangements. We propose that the Explanatory Note indicate that the NCD Convention can be read by adjudicators, where there are no explicit conflicts, in line with established bill of lading law and practice, to avoid uncertainties and frictions, and that any lack of clarity or gap in the Convention (likely the result of compromise) may be filled by reference to rules governing bills of lading. It is important for the Explanatory Note to make this point as it will indicate to States that established bill of lading law may be referred to where necessary to apply the Convention's provisions to practical situations. It will also give sellers, buyers, banks and financers some reassurance that they can deal with NCDs in the same way as they do bills of lading, which they handle on a regular basis. In short it may alleviate the perception of the legal risks involved in transacting using NCDs. The CMI considers that this point would be best made after the first sentence of Paragraph 2 or immediately after footnote reference 3. There are places where the Explanatory Note downplays the importance of the bill of lading as a document of title or suggests that the NCD is intended to work differently. These passages should be reconsidered. A list may be found in Annex 2 below.

5. The Explanatory Note should give much more comprehensive guidance regarding the Reservation clause and the reasons why States requested its inclusion in the instrument. In particular the difficulties that would be created in the event of any significant conflict between the NCD Convention and established domestic law on bills of lading might have a severe destabilising effect on the delicately balanced allocation of risk in respect of goods normally covered by a bill of lading, an allocation which is reflected both in domestic laws (including laws governing not just the carriage of goods by sea but also the sale of goods, mercantile agency and trade financing) and in established insurance arrangements. Should such conflicts be identified by States considering whether to ratify the NCD Convention, it is important that they have the option to exclude goods carried by sea and normally covered by a bill of lading from its application. The effect of making the reservation should also be explained more fully. The courts of a State that makes such a reservation would not be obliged to apply (and would not apply) the NCD convention, as part of their national law, to documents issued under a contract for the carriage of goods wholly by sea when the contract is subject to another international convention. This basically means that an NCD cannot be issued for maritime cargos to which the law of a ratifying State that adopts the reservation applies, where such State is also a party to Hague, Hague-Visby, Hamburg Rules, or eventually the Rotterdam Rules. If an NCD were issued in respect of such a maritime cargo, it would not be regulated by the NCD Convention but rather by that State's bill of lading laws.

Annex 1

NCD Provisions and the RR

Footnote 3 on page 2 should refer to the RR, especially referring to the definitions of Transport Document and Negotiable Transport Document at Article 1.14 and 1.15 of RR.

Paragraph 28 deals with the Definition of "Holder" and specifically refers to the RR. It should identify Article 1.10 of RR and the rights thereof at Articles 50 and 51.

Paragraph 37 could usefully refer to the definition of Transport Document in RR Article 1.14, which is substantially the same as that found in the NCD convention, although the RR definition refers to "receipt of the goods", rather than to "taking in charge" of the goods as does the definition Transport Document in Article 2.6 of the NCD Convention.

Paragraph 39 could draw attention to the similarity of definition between Transport operator in NCD (2.8) and Carrier and Performing party in RR Article 1.5 and 1.6.

Paragraph 55 refers to the Hague Rules requirement that a bill of lading must be issued by the carrier at the shipper's request. It should also refer to the equivalent provision in RR Article 35.

Paragraph 61 deals with Article 4 NCD Convention (Contents of the negotiable cargo document) and sets out the required contents of the cargo document. The Explanatory Note should flag that the list is very similar to the requirements in Article 36 (Contract particulars) of the RR.

Paragraphs 63 and 64 (the latter referencing "the maritime context") dealing with Article 4 (Contents of the negotiable cargo document) is based on RR Article 36.2 (b), and much more detail appears in RR Article 37 (Identity of carrier).

Paragraph 77 could likewise refer to the equivalent place of delivery provisions in RR (Article 36.3, and Articles 43-49). The final two sentences ("In non-liner maritime transport (tramp trade), goods are often sold during transit, and their final destination may change. However, the place of delivery – the discharge port – is generally known at the time of issuing maritime bills of lading.") should be deleted. The last sentence in particular is inaccurate. The place of discharge or delivery in maritime bills of lading can be expressed as a range of ports or places of delivery and even where a specific port or place is named, the ship may be rerouted and a switch bill of lading may have to be issued.

Paragraph 79 envisages more than one copy of a transport document being issued and refers to maritime transport. A reference to RR Article 36.2 (d), which requires the number of original negotiable transport documents to be identified in the contract particulars, might be appropriate.

Paragraph 89 deals with the topic of "Deficiencies in the negotiable cargo document" and has its equivalent in RR Article 39 (Deficiencies in the contract particulars).

Paragraphs 93 and 95 deal with statements being made about the "apparent good order and condition of the goods". The equivalent provisions in RR should be referred to: Articles 36.2(a), and 36.4.

Paragraph 97 deals with Article 6 (Evidentiary effect of the negotiable cargo document) and is based on RR Article 41 (Evidentiary effect of the contract particulars).

Paragraphs 100, 101, 102, 103 and 104 on the same topic (as to the condition of the goods) have their origins in RR Articles 39.3, 40 and 41.

Paragraphs 120 and 121 dealing with Article 7 (Rights of the holder of a negotiable cargo document) refer to the right of disposal. Para 120 specifies a distinction between the NCD Convention and the Rotterdam Rules. Further explanation would be helpful here, referring to the RR provisions dealing with the right of disposal (RR Article 48 (Goods remaining undelivered) and Article 49 (Right of retention)), perhaps in the latter paragraph 121. This might also be the place to refer to the Rotterdam Rules provisions which give priority in a door-to-door shipment to any other Convention relating to road, rail, inland waterways, and air transport that might apply, (Article 82) and Article 26 (dealing expressly with claims relating to delay occurring before the sea carriage.)

Paragraph 123 dealing with Article 7 (Rights and liability of the holder) could reference the RR provisions dealing with the topics referred to: “Compensation for delay: Articles 21 and 22; loss or damage and burden of proof: Article 17; claims limitation amounts: Articles 59-61; limitation periods: Articles 23, 62, 63.

Paragraph 137 deals with Article 9 (Liability of the holder) which is based on the equivalent provision in RR Article 58 (Liability of holder). The compatibility should be highlighted.

Paragraph 139 makes specific reference to Rotterdam Rules Article 58(1) (Liability of holder) in the context of Article 9(1) of NCD being derived from it. But Paragraph 141 fails to mention that Article 9 (2) is similarly derived from Article 58.2 of RR. The compatibility should be highlighted.

Paragraphs 144 to 153 deal with Article 10 (Delivery of the goods) and are based on Articles 43-49 (Chapter 9 Delivery of the goods) in RR. The compatibility should be highlighted.

Paragraphs 154 to 158 deal with Article 11 (Transfer of rights of the holder) and derive from Articles 57 of RR (Transfer of rights). The compatibility should be highlighted.

Annex 2

Compatibility with Bill of Lading Law and Practice

In paragraph 2, the current reference to bills of lading is inaccurate. The bill of lading is indeed widely used by traders as a document of title, but it is also universally recognised by domestic laws as such, and this is what gives it its legal force.

In paragraph 54 (regarding Article 3.5) it should be noted that the right of shippers of goods by sea to demand the issue of a bill of lading from the maritime carrier under the H(V)R cannot be overridden by the NCD Convention, so the risk referred to in that paragraph is not really minimized. It is unlikely (or at least seriously uncertain) whether by issuing an NCD a maritime carrier or transport operator would have complied with this requirement. So Article 3(5) only partly addresses the relevant risk. The Explanatory Note should indicate that it is advisable for NCDs to include a provision saying that the NCD must be surrendered back to the issuer if the issue of a maritime bill of lading is demanded by the consignor under the H(V)R subsequent to the NCD’s issue, as they are intended to perform the same function.

Paragraph 100 on Article 6(1) should be seriously reconsidered. In bill of lading practice there is a difference between disclaiming knowledge and clausing the bill. The latter makes the bill of lading “unclean” for the purposes of the Uniform Customs and Practices on Documentary Credits, applied by banks worldwide, the former does not. This paragraph appears to suggest that they have the same effect in the case of an NCD. This would make NCDs less marketable than bills of lading as the presence of the disclaimer might lead to their rejection by banks. In practice

disclaimers are very commonplace, so this could be disastrous for the acceptability of NCDs. Some clarification in the Explanatory Note that there is no intention to depart from bill of lading practice, and that it is not intended that disclaimers amount to clausing of the NCD would be essential here.

The Explanatory Note should provide a bit more explanation of Article 7.4 in light of current law and practice relating to bills of lading. This provision is intended to make a difference when applied in the context of other rules on the creation or transfer of rights in rem over the goods. It would be useful to provide some explanation of how the provision is intended to interact with such rules (highlighting that it is meant to function similarly to a bill of lading).

Article 11 (discussed in paragraphs 5 and 154 et seq.) does not actually provide that the transfer of the document makes the transferee the holder of the NCD, only that the transferee receives rights under the NCD. A reference to the intended similarity with bill of lading law in the Explanatory Note may help to alleviate the difficulties caused by this shortcoming in text. The penultimate sentence in Paragraph 158 may be misleading. Article 9(2) envisages that by virtue of exercising certain rights as a holder, liabilities are assumed. Therefore, the transfer *does* create the potential for the transferee to assume liabilities if they exercise certain rights as holder, in accordance with Article 9(2). They also assume the implied obligations under Article 8 (and not just rights).

A synthesis of the provisions relating to the situation where more than one original is issued would be useful. The Explanatory Note refers to this issue in places, and it makes cross-references between paragraphs that deal with this issue several times. It may be a good idea to include an overview of all provisions dealing with multiple originals so that all consequences of their issuance are seen at once. A comparison with bill of lading practice may also be useful.

B. International Group of Protection and Indemnity Clubs, the Baltic and International Maritime Council and the International Chamber of Shipping

[Original: English]
[28 November 2025]

I. Introduction

1. The International Group of Protection and Indemnity Clubs (IG),[1] the Baltic and International Maritime Council (BIMCO),[2] and the International Chamber of Shipping (ICS)[3] would like to express our appreciation to the UNCITRAL Secretariat for preparing the draft Explanatory Note accompanying the Convention on Negotiable Cargo Documents (NCD Convention). We have followed the development of the NCD Convention closely over the course of Working Group VI deliberations and during the subsequent consideration of the text at the Commission session in July 2025. Over the course of these discussions, we have on multiple occasions – both orally during the Working Group VI and Commission sessions,

[1] The International Group of Protection and Indemnity Clubs (IG) comprises 12 mutual P&I Clubs that provide third party liability (P&I) cover relating to the use and operation of ships, including for cargo loss and damage. Collectively, the IG provide P&I cover to approximately 90% of the world's ocean-going tonnage.

[2] The Baltic and International Maritime Council (BIMCO) is an organisation and global shipping community of over 2,000 members in 130 countries. BIMCO members cover 64% of the world's tonnage and consist of local, global, small, and large companies.

[3] The International Chamber of Shipping (ICS) is the global trade association representing national shipowners' associations from Asia, Africa, the Americas and Europe and more than 80% of the world merchant fleet.

and in our written submissions to Working Group VI (Document A/CN.9/WG.VI/WP.116/Rev.1) and the Commission (Document A/CN.9/1214/Add.1) – raised concerns regarding the potential impact of several provisions of the NCD Convention, including Article 1(3) of the Convention, particularly with respect to its potential disrupting implications for the application of existing maritime regimes when an NCD is issued for carriage involving a sea leg.

II. Comments in relation to Paragraph 20 of the Draft Explanatory Note

2. In line with these previously expressed concerns, we wish to comment specifically on paragraph 20 of the draft Explanatory Note, which states as follows:

"*Once the transport operator and the consignor agree to issue an NCD, the document issued will carry the distinct legal features of an NCD under the Convention – not those traditionally associated with negotiable transport documents under applicable international conventions or national law*".

3. Article 1 (3) of the Convention was intended to reaffirm that the NCD Convention does not alter the substantive rights and liabilities under other applicable regimes. Rather, its purpose is narrowly to give the NCD Convention precedence only where certain carriage of goods regimes – such as those for rail and road – do not themselves provide for negotiable documents (Document A/80/17). However, we are concerned that the statement in paragraph 20 of the Explanatory Note may unintentionally amplify the risks associated with Article 1(3) that we have previously identified, giving rise to interpretations that extend beyond the text of the Convention and may in fact be contradictory to it.

4. In particular the IG, BIMCO, and ICS wish to highlight the real risk that this statement may be interpreted as that the NCD is **not** a document of title for the purpose of international conventions and/or national laws for the carriage of goods by sea, and therefore that such conventions and/or national laws could not apply to an NCD. This was an issue raised on several occasions during negotiations. Although no agreement was reached on including specific wording in the text of the Convention, there was nevertheless a clear consensus among the UNCITRAL Secretariat, State Delegations and Observers that an NCD could be regarded as a similar document of title - for example a bill of lading - thus allowing for the mandatory application of applicable international conventions and national laws, where relevant, to the carriage.

III. Proposal

5. In light of these concerns, we respectfully request that Working Group VI consider deleting this sentence from paragraph 20 of the draft Explanatory Note.

6. IG, BIMCO, and ICS thank the UNCITRAL Secretariat and Working Group VI for their continued work on this matter and for considering these comments. We remain available to continue cooperating constructively with the UNCITRAL Secretariat, Working Group VI, State Delegations and other Observer Organisations as work on the NCD Convention and its accompanying materials progresses.

For easy reference

Article 1

3. Except as otherwise provided for herein, this Convention does not modify the rights and obligations of the transport operator, consignor or consignee or their liability under applicable international conventions or national law governing the transport contract.