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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 issues for consideration by the Working Group and 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 previous sessions.

II. Issues for consideration by the Working Group

A. Negotiable cargo documents as collateral only

2. Draft article 3 (*Issuance of a negotiable cargo document*), paragraphs 2–4 of the preliminary draft provisions for a new instrument on negotiable cargo documents (see annex) currently envisages that a negotiable cargo document could be issued through three means: (a) annotating an existing transport document that contains information set out in draft article 4, paragraph 1 (as a default rule); (b) issuing a separate document if the transport document is non-negotiable (as a fallback rule); and (c) issuing a separate document where no transport document has been issued (as another fallback rule). The second option was prepared to accommodate the situation when domestic laws prohibited the transport document to function as a negotiable document (for instance, article 6.5 of the Uniform Rules concerning the Contract of International Carriage of Goods by Rail 2016 (CIM Uniform Rules)).

3. During the forty-fourth session of the Working Group, diverging views were expressed on the relationship between the draft instrument and existing conventions governing the carriage of goods, particularly in the context of draft article 7 concerning the rights of the holder of negotiable cargo documents. The importance of draft article 7 was emphasized since it explicitly provided that the holder would acquire all rights under the transport contract and any entitlement to such rights conferred upon the consignor or the consignee should extinguish. Such a mechanism would function as an assignment of rights by the consignor to the holder. The consent of the consignor to assign all rights under the transport contract to the holder would be implied when the consignor requests the transport operator to issue a negotiable cargo document or negotiable electronic cargo record.

4. Concerns were, however, expressed that some existing transport conventions might not allow their Contracting parties to derogate from the provisions of those conventions, including provisions relating to the rights of the consignor and the consignee. For example, it was noted that the CIM Uniform Rules were mandatory and that article 4, paragraph 1, provided very limited scope for derogation. In response, it was noted that limitations on the ability of Contracting parties to CIM-COTIF to modify the provisions of the CIM Uniform Rules by a subsequent agreement might not be the only angle to examine the assignment of rights under a railway consignment note. In that connection, a question was raised as to whether article 18 of the CIM Uniform Rules which provided that “[t]he consignor shall be entitled to dispose of the goods and to modify the contract of carriage by giving subsequent orders” might be interpreted as allowing some degree of party autonomy as to the assignment of rights (see A/CN.9/1170, para. 15).

5. As an alternative option to adequately address any potential conflicts with existing transport law conventions, the Working Group may wish to consider limiting the function of the negotiable cargo document issued separately from the transport

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

document pursuant to draft article 3, paragraph 3, to serve as a means for creating a security interest in the goods (“cargo pledge bond”). A cargo pledge bond would be a paper document or an electronic record issued by the transport operator which the consignor or any subsequent holder could use to evidence the creation of a security right in the goods covered by the transport contract under a separate security agreement and to the benefit of a party that finances the underlying sales transaction, such as a bank issuing a letter of credit. Unlike a holder of a negotiable cargo document, a holder of a cargo pledge bond would not acquire any rights or obligations under the transport contract and would not be able to exercise the right of disposal under the transport contract.

6. The objective of a cargo pledge bond is to perform part of the functions of a negotiable cargo document, namely, facilitating trade finance. To achieve that objective, two rules will need to be introduced to give the security right described in a cargo pledge bond similar legal effects as a security right created over a maritime bill of lading. Firstly, the security right over the goods shall be made effective against third parties by the secured creditor’s possession of the cargo pledge bond and shall have priority over a competing security right made effective against third parties by any other method.² Secondly, when a cargo pledge bond is issued, the transport operator would deliver the goods in accordance with the transport contract but subject to surrender of the cargo pledge bond. In case of circumstances preventing delivery, the transport operator shall act in accordance with the transport contract, except that delivery of the goods must be subject to the surrender of the cargo pledge bond. The holder of a cargo pledge bond may enforce its security right over the goods covered by the transport contract in accordance with applicable law. It should be noted that article 7.3 of the CIM Uniform Rules seems to offer some flexibility for the parties to agree on additional conditions for delivery.³

7. As regards the relationship between a negotiable cargo document and a cargo pledge bond, it should be clarified that the transport operator who issues a cargo pledge bond shall not issue a negotiable cargo document, negotiable electronic cargo record or negotiable transport document in respect of the same goods to which the cargo pledge bond relates, and 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 cargo pledge bond relates. In addition, the transport operator shall acknowledge the issuance of a cargo pledge bond by inserting a corresponding conspicuous annotation in the non-negotiable transport document.

8. In light of the foregoing, the Working Group may wish to consider the following provisions as a new standalone chapter for cargo pledge bonds in the preliminary draft provisions for a new instrument on negotiable cargo documents. The Working Group may also wish to consider deleting the second option of issuing a negotiable cargo document as a separate document when the transport document is non-negotiable under draft article 3, paragraph 3, so as to eliminate the risk of documentary inconsistency.

“CHAPTER X. CARGO PLEDGE BONDS

Article X. Issuance and contents of a cargo pledge bond

XX. “Cargo pledge bond” means a paper document or an electronic record signed and issued by the transport operator that evidences the creation of a security right in the goods covered by the transport contract to the benefit of the holder of the cargo pledge bond.

² UNCITRAL Model Law on Secured Transactions, article 49 (1) provides that “Subject to paragraph 2, a security right in a tangible asset made effective against third parties by possession of the negotiable document covering that asset has priority over a competing security right made effective against third parties by any other method.”

³ Article 7 (3) of the CIM Uniform Rules provides that “The parties to the contract may enter on the consignment note any other particulars they consider useful.”

XX. If so agreed between the transport operator and the consignor, the transport operator shall issue a cargo pledge bond when or after the goods are taken in charge by the transport operator. The transport operator shall acknowledge the issuance of such cargo pledge bond by inserting a corresponding conspicuous annotation in the non-negotiable transport document.

XX. The cargo pledge bond shall indicate:

- (a) The name and address of the transport operator;*
- (b) The name and address of the secured creditor, when known;*
- (c) A description of the goods to be encumbered and their apparent order and condition as taken in charge by the transport operator;*
- (d) A description of the secured obligation [and maximum amount for which the security right may be enforced], when known; and*
- (e) The place and date of issuance of the cargo pledge bond.*

XX. The cargo pledge bond may also indicate:

- (a) The name and address of the consignee, if required by the law applicable to the transport contract for inclusion in the transport document or provided by the consignor;*
- (b) The name and address of the consignor;*
- (c) The place and date of taking in charge of the goods by the transport operator; and*
- (d) The place of delivery of the goods.*

Article X. Use and legal effects of a cargo pledge bond

XX. The security right over the goods shall be made effective against third parties by the secured creditor's possession of the cargo pledge bond and has priority over a competing security right made effective against third parties by any other method.

XX. When the transport operator issues a cargo pledge bond, it shall deliver the goods in accordance with the transport contract but subject to the surrender of the cargo pledge bond.

XX. The holder of a cargo pledge bond may enforce its security right over the goods covered by the transport contract in accordance with applicable law.

XX. The transport operator who issues a cargo pledge bond shall not issue a negotiable cargo document, negotiable electronic cargo record or negotiable transport document in respect of the same goods to which the cargo pledge bond relates, and 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 cargo pledge bond relates.”

B. Scope of the negotiable cargo document

9. During consultations with commodity traders, it was noted that the usefulness of negotiable cargo documents could be further increased if such documents would extend to the period of storage of goods. It was explained that in practice it was common for commodities to be stored in warehouses before or after carriage. Considering that different parties may be involved and different terms and conditions are included in transport contracts and storage agreements, extending the scope of negotiable cargo documents to the period of storage of goods may be easily achieved when the transport operator concludes one single service contract (such as a freight-forwarding agreement) for the performance of carriage and storage of the

same goods. It was noted that such service contracts were already common in the Central Asia region.

10. The Working Group may wish to consider the desirability of including the following provision as a new paragraph in draft article 3 (*Issuance of a negotiable cargo document*) of the preliminary draft provisions for a new instrument on negotiable cargo documents:

“XX. When the transport operator assumes responsibility under the transport contract for the storage of the goods before or after carriage, the negotiable cargo document or negotiable electronic cargo record issued as a separate document or record shall cover the entire period in which the goods have been taken in charge by the transport operator, including both carriage and storage.”

III. Organization of future work

11. 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-fifth 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-sixth session, scheduled to be held in New York from 17 to 21 March 2025.

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 or negotiable electronic cargo record [that contains a conspicuous annotation with reference to this Convention]¹ in connection with the international transport of goods² [by one or more than one mode of transport]³ 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.⁴

2. This Convention does not affect the application of any international convention or national law relating to the regulation and control of transport operations.⁵

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.⁶

¹ The Working Group considered at length a suggestion to define a negotiable cargo document as an instrument that made express reference “to this Convention” or used a similar wording. Noting the widely diverging views on the matter, the Working Group requested the secretariat to reflect three options in the next version of the working paper for its further consideration. Option 1 is to limit the scope of application to the issuance, transfer and legal effects of those negotiable cargo documents that contain a conspicuous annotation with reference to the draft new instrument. Option 2 is to address this issue in the definition of negotiable cargo document in draft article 2, paragraph 4, as being a mandatory requirement. Option 3 is to include a reference to the draft new instrument along the required content of the negotiable cargo document in draft article 4, paragraph 1, so that the inadvertent absence of the reference would not invalidate the negotiable cargo document (A/CN.9/1170, paras. 80–83).

² 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).

³ The secretariat has added the phrase for clarity.

⁴ 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.

⁵ 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).

⁶ 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).

*Article 2. Definitions*⁷

For the purposes of this Convention:

1. “Consignor” means any person with whom the transport operator has concluded a transport contract.⁸
2. “Consignee” means the person named in the transport contract as the person entitled to take delivery of the goods.⁹
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;¹⁰ [or a person who has control of a negotiable electronic cargo record].¹¹
4. “Negotiable cargo document” means a document signed and issued by the transport operator that (a) 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 [or to bearer]^{12,13} [and (b) contains a conspicuous annotation with reference to this Convention].¹⁴
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.¹⁵
6. “Negotiable electronic cargo record” means a negotiable cargo document issued in the form of electronic record.

⁷ The definitions of “actual carrier”, “international transport of goods” and “right of disposal” 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; A/CN.9/1170, para. 85).

⁸ 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).

⁹ 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).

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

¹¹ The Working Group agreed to revisit the phrase within square brackets when considering the revised provisions on negotiable electronic cargo records (A/CN.9/1170, para. 79).

¹² The secretariat added the phrase “or to bearer” to ensure consistency with draft article 3 (6). The Working Group may nevertheless wish to reconsider the desirability of allowing the issuance of bearer documents given the requirement under draft article 8 for the transport operator to seek missing information, instructions or documents from the holder of the negotiable cargo document before proceeding in accordance with the transport contract.

¹³ 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.

¹⁴ This phrase has been added within square brackets as explained in footnote 1 above.

¹⁵ UNCITRAL Model Law on Electronic Transferable Records (MLETR), article 2.

7. [The “transfer” of a negotiable electronic cargo record means the transfer of exclusive control over the record.]¹⁶
8. “Transport contract” means a contract whereby a transport operator undertakes to perform international transport of goods for reward.¹⁷
9. “Transport document” means a document that:
- (a) Evidences or contains the transport contract; and
 - (b) Evidences the taking in charge of the goods for transportation under the transport contract.¹⁸
10. “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. ISSUANCE, CONTENTS AND LEGAL EFFECT OF A NEGOTIABLE CARGO DOCUMENT OR NEGOTIABLE ELECTRONIC CARGO RECORD²⁰

Article 3. Issuance of a negotiable cargo document or negotiable electronic cargo record²¹

1. If so agreed between the transport operator and the consignor, the transport operator shall issue a negotiable cargo document or negotiable electronic cargo record in accordance with the provisions of this Convention when the goods are taken in charge by the transport operator.²² [In respect of paragraph 2 below, the transport

¹⁶ Rotterdam Rules, article 1 (22). The provision has been placed within square brackets for further consideration by the Working Group since draft article 14 addresses a similar issue (A/CN.9/1170, para. 87).

¹⁷ Rotterdam Rules, article 1 (1); MT Convention, article 1 (3). The reference to “freight” was replaced by “reward” since certain transport contracts may include a single price quote for all types of services without specifying freight. For previous deliberations, see A/CN.9/1134, paras. 44–47; A/CN.9/1170, paras. 88–90.

¹⁸ MT Convention, article 1 (4). It was agreed that the draft definition should be as simple as possible and make it explicit that the transport document emanated from the transport contract without entering into details as to who issued the document and what obligations it reflected. For previous deliberations, see A/CN.9/1134, paras. 48–51; A/CN.9/1170, paras. 91–94.

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 title and contents of chapter 2 have been revised to include a reference to the negotiable electronic cargo record in draft article 3, paragraph 1, and all other relevant provisions (A/CN.9/1170, para. 50).

²¹ 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). The Working Group deleted the provision which explicitly stated that the negotiable cargo document issued as a separate document did not substitute any transport document issued under the transport contract and did not preclude the issuance of any other documents relating to transport or other services involved in international transport of goods, on the basis that such provision was unnecessary. 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; A/CN.9/1170, para. 100.

²² 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. Editorial changes were made by the secretariat to avoid the misunderstanding that the provision imposed an obligation on the transport operator to issue a negotiable cargo document. For previous deliberations, see A/CN.9/1127, paras. 14–15; A/CN.9/1134, para. 56; A/CN.9/1164, para. 27.

operator may also issue a negotiable cargo document or negotiable electronic cargo record at a later stage.]²³

2. A transport document that contains information set out in article 4, paragraph 1, shall serve as a negotiable cargo document or negotiable electronic cargo record for the purpose of this Convention if it contains in a conspicuous manner (a) wording such as “to order”, “negotiable” or an equivalent expression and (b) an annotation entered and signed by the transport operator stating that the transport document shall serve as a negotiable cargo document or negotiable electronic cargo record from a specified date and with reference to this Convention.²⁴

3. Notwithstanding paragraph 2 above, where the transport document is not negotiable:

(a) The transport operator shall issue the negotiable cargo document or negotiable electronic cargo record as a separate document, if so agreed between the transport operator and the consignor.²⁵ The negotiable cargo document or negotiable electronic cargo record shall, in such event, reproduce all particulars as stated in the transport document²⁶ and contain a conspicuous annotation with reference to this Convention;²⁷

(b) The transport operator shall acknowledge the issuance of such negotiable cargo document or negotiable electronic cargo record by inserting a corresponding conspicuous annotation in the non-negotiable transport document;²⁸ and

(c) The transport operator shall provide the holder of the negotiable cargo document or negotiable electronic cargo record with a copy of the transport document upon request.²⁹

²³ The secretariat added the sentence to ensure consistency with the Working Group’s decision to retain the presumption rule in draft article 5, paragraph 3. It was noted that the consignor and the transport operator might agree to upgrade a maritime bill of lading into a negotiable cargo document if the mode of transport needed to be changed due to security concerns alongside the route or an unexpected disruption in the supply chain that prevented the use of maritime transportation (A/CN.9/1170, para. 115).

²⁴ 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 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. The paragraph was further revised to clarify that the annotation must be entered by the transport operator and to include the information requirements of a negotiable cargo document as set out in draft article 2, paragraph 4. 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; A/CN.9/1170, paras. 95–97.

²⁵ 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. For previous deliberations, see A/CN.9/1127, paras. 16–18; A/CN.9/1134, paras. 57–64; A/CN.9/1164, paras. 33–37.

²⁶ The requirement to reproduce all particulars as stated in the transport document has been moved from a stand-alone provision in earlier drafts (A/CN.9/1170, para. 113). This requirement 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.

²⁷ 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 (A/CN.9/1164, para. 37).

²⁸ 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; A/CN.9/1170, paras. 98–99.

²⁹ The provision was added to replace the requirement for the simultaneous transfer of the negotiable cargo document and the transport document as a condition for the effectiveness of the transfer, since such requirement might entail a due diligence obligation on the part of banks to

4. [Notwithstanding paragraph 2 above, where no transport document has been issued, the transport operator shall issue a negotiable cargo document or negotiable electronic cargo record that contains a conspicuous annotation with reference to this Convention, if so agreed between the transport operator and the consignor].³⁰

5. The transport operator who issues a negotiable cargo document or negotiable electronic cargo record in accordance with paragraphs 2, 3 or 4 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 or negotiable electronic cargo record relates.³¹

6. A negotiable cargo document or negotiable electronic cargo record may be made out to order, to order of a named person or to bearer.³² [If an annotation inserted in the transport document pursuant to paragraph 2 above fails to state whether the negotiable cargo document or negotiable electronic cargo record is made out to order, to order of a named person or to bearer, the negotiable cargo document or negotiable electronic cargo record shall be deemed to be made out [to order][to the order of the [consignor][consignee]].³³

7. A negotiable cargo document [or negotiable electronic cargo record]³⁴ 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.³⁵

scrutinize both documents (A/CN.9/1170, para. 38).

³⁰ The provision was added at the request of the Working Group for its further consideration. It was noted that not all international conventions governing carriage of goods required the issuance of a transport document for their application or for the validity of the transport contract they governed (A/CN.9/1170, para. 102).

³¹ 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. It was noted that the risk of fraud, as such, concerned all types of negotiable documents and would fall outside the scope of the draft instrument. For previous deliberations, see A/CN.9/1134, para. 61; A/CN.9/1164, paras. 33 and 38; A/CN.9/1170, para. 101.

³² 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.

³³ The Working Group agreed to include a presumption rule to preserve the validity of the negotiable cargo document when the annotations did not contain the words “to order” or “negotiable” (A/CN.9/1170, para. 104). The Working Group may wish to delete the presumption rule in light of the inconsistency between the presumption rule and the definition of negotiable cargo document in draft article 2 which requires the inclusion of the wording “to order” or “negotiable” or an equivalent expression in order for the document to qualify as a negotiable cargo document. This would logically exclude the possibility of an ex post facto transformation of an existing non-negotiable document into a negotiable cargo document.

³⁴ The Working Group may wish to consider whether the new instrument should contemplate the issuance of multimodal originals of negotiable electronic cargo records, as the technology allows immediate presentation of negotiable electronic cargo records and therefore obviates the need for multiple originals, which became customary to address problems caused by loss or delay in transmission of bills of lading issued in paper form. For previous deliberations, see A/CN.9/1170, para. 57.

³⁵ 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; A/CN.9/1170, para. 105.

*Article 4. Contents of the negotiable cargo document or negotiable electronic cargo record*³⁶

1. The negotiable cargo document or the negotiable electronic cargo record shall indicate:³⁷

- (a) The name and address³⁸ 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 provided by the consignor;³⁹
- (c) The name and address of the consignor;⁴⁰
- (d) The general nature of the goods,⁴¹ 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;^{42,43}
- (e) The apparent order and condition of the goods as taken in charge by the transport operator;⁴⁴
- (f) The place and date of taking in charge of the goods by the transport operator;⁴⁵

³⁶ 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).

³⁷ 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. The reference to “signed by the transport operator” was deleted given that the signature requirement is already included in the definition of negotiable cargo document. For previous deliberations, see A/CN.9/1127, paras. 27–30; A/CN.9/1134, para. 76; A/CN.9/1170, para. 108.

³⁸ Rotterdam Rules, article 36 (2)(b). For previous deliberation, see A/CN.9/1127, paras. 31–32.

³⁹ Rotterdam Rules, article 36 (3)(a). For previous deliberation, see A/CN.9/1127, para. 33; A/CN.9/1170, para. 109.

⁴⁰ COTIF/CIM Uniform Rules concerning the Contract of International Carriage of Goods by Rail 2016 (CIM-COTIF), article 7 §1 (b) and the Agreement on International Railway Freight Communications 2020 (SMGS), article 15 §1 (1).

⁴¹ 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.

⁴² Rotterdam Rules, article 36 (1); Convention for the Unification of Certain Rules for International Carriage by Air, 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.

⁴³ 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.

⁴⁴ Rotterdam Rules, articles 36 (2)(a) and 36 (4). 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. The Working Group agreed not to allow the transport operator with no reasonable means of checking the goods to insert a statement to that effect because it should be the transport operator’s obligation to verify the apparent order and condition of the goods. For previous deliberations, see A/CN.9/1134, para. 77; A/CN.9/1164, paras. 52–55; A/CN.9/1170, para. 110.

⁴⁵ 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.

(g) The place and date of issuance of the negotiable cargo document or negotiable electronic cargo record and, if issued separately, of the transport document;⁴⁶

(h) The place of delivery of the goods;⁴⁷

(i) The number of originals of the negotiable cargo document [or negotiable electronic cargo record], when more than one original is issued;⁴⁸

(j) A statement as to whether the freight has been prepaid or an indication as to whether the freight is payable by the consignee;⁴⁹ and

(k) [A conspicuous annotation with reference to this Convention.]⁵⁰

2. The negotiable cargo document or the negotiable electronic cargo record 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;⁵¹

(b) The intended journey route, mode of transport, places of trans-shipment and information enabling tracking of the goods, if known at the time of issuance of the negotiable cargo document or negotiable electronic cargo record;⁵²

(c) The law applicable to the transport contract, in particular any international convention to which the transport contract is subject;⁵³ and

(d) Any other particulars which the consignor and the transport operator may agree to insert in the negotiable cargo document or negotiable electronic cargo record.⁵⁴

⁴⁶ 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 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.

⁴⁷ 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 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.

⁴⁸ 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 7. For previous deliberations, see [A/CN.9/1127](#), paras. 43–45; [A/CN.9/1164](#), paras. 59–60.

⁴⁹ 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).

⁵⁰ This phrase has been added within square brackets as explained in footnote 1 above.

⁵¹ 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).

⁵² 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). The subparagraph was revised to allow for the inclusion of information enabling tracking of the goods, if known at the time of issuance of the negotiable cargo document ([A/CN.9/1170](#), para. 112).

⁵³ 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).

⁵⁴ 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 art. 36 (3)(d)). The Working Group agreed to

*Article 5. Deficiencies in the negotiable cargo document or negotiable electronic cargo record*⁵⁵

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 document or negotiable electronic cargo record provided that it nevertheless falls within the definition of negotiable cargo document or negotiable electronic cargo record as set out in article 2, paragraph 4 or paragraph 6.⁵⁶
2. If the negotiable cargo document or negotiable electronic cargo record includes a date but fails to indicate its significance, the date is deemed to be the date of issuance of the negotiable cargo document or negotiable electronic cargo record. Unless otherwise indicated, a negotiable cargo document or negotiable electronic cargo record issued as a separate document pursuant to article 3, paragraph 3, is deemed to have been issued simultaneously with the transport document.⁵⁷
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 or negotiable electronic cargo record, the transport document is deemed to serve that function from the date of its issuance.⁵⁸
4. If the negotiable cargo document or negotiable electronic cargo record 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 or negotiable electronic cargo record.⁵⁹
5. If the negotiable cargo document or negotiable electronic cargo record 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 or negotiable electronic cargo record 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.⁶⁰

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).

⁵⁵ 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).

⁵⁶ 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.

⁵⁷ 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.

⁵⁸ Divergent views were expressed on whether a transport document could become a negotiable cargo document after its issuance. At its forty-fourth session, the Working Group agreed to retain the current wording given the practical usefulness of a presumption rule, for instance when the need to annotate a transport document pursuant to draft article 3, paragraph 2 arose after its issuance (A/CN.9/1170, para. 115). For previous deliberations, see A/CN.9/1164, paras. 75–78.

⁵⁹ The Working Group agreed to retain the current wording (A/CN.9/1127, paras. 58–61; A/CN.9/1164, para. 79).

⁶⁰ 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; A/CN.9/1170, para. 116.

*Article 6. Evidentiary effect of the negotiable cargo document
or negotiable electronic cargo record*

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 or negotiable electronic cargo record 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.⁶¹

2. Except to the extent that the information furnished by the consignor has been qualified, the negotiable cargo document or negotiable electronic cargo record shall be prima facie evidence of taking in charge of the goods by the transport operator as stated in the negotiable cargo document or negotiable electronic cargo record.⁶²

3. If the negotiable cargo document or negotiable electronic cargo record 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 or negotiable electronic cargo record shall not be admissible against that third party, except to the extent that the information furnished by the consignor has been qualified.⁶³

CHAPTER 3. RIGHTS, OBLIGATIONS AND LIABILITY OF THE HOLDER

*Article 7. Rights of the holder under a negotiable cargo document
or negotiable electronic cargo record*

1. A person who becomes a holder of a negotiable cargo document or negotiable electronic cargo record 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.⁶⁴

⁶¹ 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.

⁶² Rotterdam Rules, article 41 (a); MT Convention, article 10 (a); see also CIM-COTIF, article 12.

⁶³ 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. The secretariat has added the phrase “except to the extent that the information furnished by the consignor has been qualified” for clarity. For previous deliberations, see A/CN.9/1127, paras. 69–70; A/CN.9/1164, paras. 83–87.

⁶⁴ 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.

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]⁶⁵ upon the issuance of a negotiable cargo document or negotiable electronic cargo record.⁶⁶
3. The issuance and transfer of the negotiable cargo document or negotiable electronic cargo record 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.⁶⁷
4. The rights and effect set out in paragraphs 1 and 3 above exist after the issuance of the negotiable cargo document or negotiable electronic cargo record and cease, except for that listed in subparagraph 1 (c), when the negotiable cargo document or negotiable electronic cargo record is surrendered.⁶⁸
5. In order to exercise the rights listed in paragraph 1 above, the holder shall produce the negotiable cargo document or negotiable electronic cargo record to the transport operator and shall identify itself if the negotiable cargo document was made out to the order of a named person.⁶⁹ [If more than one original of the negotiable cargo document [or negotiable electronic cargo record] has been issued]/[If the negotiable cargo document [or negotiable electronic cargo record] states that more than one original has been issued],⁷⁰ all originals shall be produced, failing which the right mentioned in subparagraph 1 (b) cannot be exercised.⁷¹
6. [Any demand, declaration, instruction, request, reservation or other communication relating to the transfer of a negotiable cargo document or negotiable electronic cargo record or the delivery of the goods mentioned in the negotiable cargo

⁶⁵ The Working Group may wish to consider whether the phrase “shall extinguish” should be replaced by “cannot be exercised by the consignor or the consignee that is not the holder” in light of draft article 8 which contemplated the possibility for the consignor or the consignee to give instructions.

⁶⁶ The provision was inserted to reflect that a holder of negotiable cargo document should be given the right 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.

⁶⁷ 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 on the Contract for the Carriage of Goods by Inland Waterway (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.

⁶⁸ 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.

⁶⁹ 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.

⁷⁰ The phrases in two sets of square brackets reflect the different approaches adopted by the Working Group in respect of draft articles 11 (2) and 16 (1)(a).

⁷¹ 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.

document or negotiable electronic cargo record, may be made out by electronic communication [through the channel of communication designated]].⁷²

*Article 8. Missing information, instructions or documents*⁷³

If the transport operator needs information, instructions or documents relating to the goods in order to perform its obligations [under the Convention],⁷⁴ the transport operator shall seek those information, instructions or documents from the holder of the negotiable cargo document or negotiable electronic cargo record. If the transport operator, after reasonable effort, is unable to obtain those instructions within a reasonable time, the transport operator shall proceed in accordance with the transport contract.⁷⁵

Article 9. Liability of holder

1. A holder of the negotiable cargo document or negotiable electronic cargo record 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 solely by reason of being a holder of the negotiable cargo document or negotiable electronic cargo record.⁷⁶

2. A holder that is not the consignor and that exercises the right of disposal in accordance with article 7, paragraph 1 (b) under this Convention assumes any liability that may arise in connection with the exercise of that right under the transport contract.⁷⁷

⁷² 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.

⁷³ 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). The title of the provision has been revised to better reflect its contents ([A/CN.9/1170](#), para. 17).

⁷⁴ Reference is made to the Convention, not the transport contract, to better reflect the scope of the draft instrument ([A/CN.9/1170](#), paras. 13 and 17). The Working Group may wish to consider deleting the phrase “under the Convention” given that the need for the transport operator to seek information, instructions or documents relating to the goods is more likely to arise in relation to the performance of its obligation under the transport contract.

⁷⁵ Reference is made to the transport contract to avoid possible conflicts with existing regimes. The term “transport contract” should be interpreted as including any special agreement between the parties and the law applicable to the transport contract. The provision was revised to include a requirement for the transport operator to make reasonable efforts to seek information, instructions or documents from the holder of the negotiable cargo document. For previous deliberation, see [A/CN.9/1127](#), paras. 87–89; [A/CN.9/1170](#), paras. 14 and 17.

⁷⁶ Rotterdam Rules, article 58 (1). The provision was added at the request of the Working Group ([A/CN.9/1127](#), para. 90). Reference is made to any liability under the transport contract because the draft instrument does not impose any liability on the holder of a negotiable cargo document ([A/CN.9/1170](#), para. 22).

⁷⁷ 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). The reference to “to the extent that such liabilities are incorporated in or ascertainable from the negotiable cargo document” has been deleted, on the grounds that if the holder gave instructions to the carrier it should know that such action would have consequences. For previous deliberations, see [A/CN.9/1170](#), paras. 19–22.

*Article 10. Delivery of the goods*⁷⁸

1. Delivery of the goods may be demanded from the transport operator only against surrender of the negotiable cargo document or negotiable electronic cargo record duly endorsed where necessary and upon the holder identifying itself if the negotiable cargo document or negotiable electronic cargo record was made out to the order of a named person.⁷⁹
2. [If more than one original of the negotiable cargo document [or negotiable electronic cargo record] has been issued]/[If the negotiable cargo document [or negotiable electronic cargo record] states that more than one original has been issued],⁸⁰ the surrender of one original will suffice and the other originals cease to have any effect or validity.⁸¹
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.⁸²

Article 11. Transfer of rights under a negotiable cargo document or negotiable electronic cargo record^{83,84}

1. The holder transfers the rights incorporated in the negotiable cargo document or negotiable electronic cargo record by transferring it to another person:
 - (a) Duly endorsed either to such person or in blank, if an order document; or
 - (b) Without endorsement, if: the negotiable cargo document or negotiable electronic cargo record is (i) made out to the order of a named person and the transfer is between the first holder and the named person; or (ii) a document made out to bearer or endorsed blank.⁸⁵

⁷⁸ The Working Group agreed to delete last paragraph, which provided that “The law applicable to the transport contract shall govern other aspects of delivery of the goods to the holder”, on the understanding that this issue was already addressed in draft articles 1, paragraphs 2 and 3 (A/CN.9/1170, para. 26).

⁷⁹ 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. The Working Group also agreed to delete the word “properly” on the understanding that it was not intended to change the substantive standard to be applied for identification of the holder as contained in article 47 of the Rotterdam Rules. It was noted that an explicit identification requirement for the holder of a negotiable cargo document made out to the order of a named person mirrored the maritime practice as reflected in article 47 of the Rotterdam Rules. For previous deliberation, see A/CN.9/1127, paras. 91–93; A/CN.9/1170, paras. 23–26.

⁸⁰ The phrases in two sets of square brackets reflect the different approaches adopted by the Working Group in respect of draft articles 11 (2) and 16 (1)(a).

⁸¹ 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).

⁸² 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).

⁸³ In order to clarify the interplay between the commercial use of the negotiable cargo document and the legal and regulatory requirements for customs clearance and import/export formalities, 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).

⁸⁴ The Working Group agreed to replace the requirement for the simultaneous transfer of the negotiable cargo document and the transport document with a provision that would give the holder of the negotiable cargo document a right to demand a copy of the transport document (see footnote 26). For previous deliberations, see A/CN.9/1170, paras. 34–38.

⁸⁵ Rotterdam Rules, article 57 (1). For previous deliberations, see A/CN.9/1127, paras. 80–85; A/CN.9/1170, paras. 28–31.

2. If the negotiable cargo document [or negotiable electronic cargo record] states that more than one original has been issued, all originals shall be transferred to the intended holder in order to effect a transfer of rights under a negotiable cargo document [or negotiable electronic cargo record].⁸⁶

CHAPTER 4. SPECIAL CONDITIONS FOR ISSUANCE AND USE OF A NEGOTIABLE ELECTRONIC CARGO RECORD⁸⁷

*Article 12. Electronic signature*⁸⁸

For the purposes of this Convention, a negotiable electronic cargo record or an endorsement thereof are deemed to have been signed if a reliable method is used to identify the signatory and to indicate that person's intention in respect of the information contained in the negotiable electronic cargo record.

*Article 13. Identification, control, assessment of integrity*⁸⁹

1. For the issuance and use of a negotiable electronic cargo record, a reliable method shall be used:

- (a) To identify that electronic record as the negotiable electronic cargo record;
- (b) To render that electronic record capable of being subject to control from its issuance until it ceases to have any effect or validity; and
- (c) To retain the integrity of that electronic record.⁹⁰

2. 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.⁹¹

⁸⁶ The provision was revised to link the transfer of rights of the holder with the physical delivery of the negotiable cargo document. The word "delivered" was subsequently replaced with "transferred" because the latter implied physical delivery plus endorsement when necessary. The provision was further revised to refer to a statement in the negotiable cargo document that more than one original had been issued (A/CN.9/1170, paras. 32–33). For previous deliberations, see [A/CN.9/1127](#), para. 86.

⁸⁷ The Working Group agreed to (i) delete a general provision stating the principle of non-discrimination on the basis that the draft instrument, unlike previous UNCITRAL texts on electronic commerce, created a new type of document and established the conditions for its validity (A/CN.9/1170, paras. 47–49); (ii) delete the provision requiring the consent of the transport operator and the consignor for the issuance and use of negotiable electronic cargo records and include a reference to the negotiable electronic cargo record in draft article 3.1 and all other relevant provisions (A/CN.9/1170, para. 50).

⁸⁸ The Working Group agreed to replace the signature requirement contained in eCMR with a provision based on article 9 of MLETR and article 6, paragraphs 3 and 4 of the UNCITRAL Model Law on Electronic Signatures (2001).

⁸⁹ The provision has been revised to align the texts closer to article 10 of MLETR. For previous deliberations, see A/CN.9/1170, paras. 55–57.

⁹⁰ MLETR, article 10 (1).

⁹¹ MLETR, article 10 (2).

*Article 14. Possession of a negotiable electronic cargo record*⁹²

For the purposes of this Convention,

- (a) A person is deemed to be in possession of a negotiable electronic cargo record if a reliable method is used:
 - (i) To establish exclusive control of that negotiable electronic cargo record by a person; and
 - (ii) To identify that person as the person in control.⁹³
- (b) The possession of a negotiable electronic cargo record is transferred through the transfer of exclusive control over the negotiable electronic cargo record.⁹⁴

Article 15. Endorsement

For the purposes of this Convention, a negotiable electronic cargo record is deemed to have been endorsed if the information required for the endorsement is included in the negotiable electronic cargo record in a manner that makes it accessible so as to be usable for subsequent reference, and that record is signed in accordance with article 12.⁹⁵

*Article 16. Replacement of a negotiable cargo document with a negotiable electronic cargo record and vice versa*⁹⁶

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,⁹⁷ 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, and includes a statement that it replaces the negotiable cargo document,⁹⁸ and
 - (c) A reliable method for such change shall be used.⁹⁹
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:¹⁰⁰
 - (a) The transport operator shall issue to the holder, in place of the negotiable electronic cargo record, a negotiable cargo document that reproduces all information as recorded in the negotiable electronic cargo record, and includes a statement that it replaces the negotiable electronic cargo record; and

⁹² The provision has been revised to align the texts closer to article 11 of MLETR (A/CN.9/1170, para. 55). In light of such revision, the Working Group agreed to delete the provision on transfer of rights under a negotiable electronic cargo record (A/CN.9/1170, para. 65).

⁹³ MLETR, article 11 (1).

⁹⁴ MLETR, article 11 (2).

⁹⁵ The provision has been revised to include the function equivalence rules for writing and signature requirements (A/CN.9/1170, para. 66). For previous deliberations, see [A/CN.9/1134](#), paras. 34–37.

⁹⁶ Rotterdam Rules, article 10; MLETR, articles 17 and 18. The provision has been revised to align the text closer to articles 17 and 18 of MLETR (A/CN.9/1170, para. 70).

⁹⁷ The Working Group did not take up a suggestion to state that the holder must surrender all originals only when the negotiable cargo document stated that more than one original had been issued (A/CN.9/1170, para. 68).

⁹⁸ The provision has been revised to require all information in the negotiable cargo document to be reproduced, including reservations made by the transport operator and a chain of endorsement (A/CN.9/1170, para. 69).

⁹⁹ Rotterdam Rules, article 10 (1); MLETR, articles 17 (1) and 17 (2).

¹⁰⁰ The Working Group agreed to delete the option for a change of medium to be crafted as a right of the holder of a negotiable cargo document (A/CN.9/1170, para. 71).

- (b) A reliable method for such change shall be used.¹⁰¹
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.¹⁰²
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.¹⁰³
5. A change of medium in accordance with paragraphs 1 and 2 shall not affect the rights and obligations of the parties.¹⁰⁴

*Article 17. General reliability standard*¹⁰⁵

For the purposes of articles [12–14 and 16], the method referred to shall be:

- (a) As reliable as appropriate for the fulfilment of the function for which the method is being used, in the light of all relevant circumstances, which may include:
- (i) Any operational rules relevant to the assessment of reliability;
 - (ii) The assurance of data integrity;
 - (iii) The ability to prevent unauthorized access to and use of the system;
 - (iv) The security of hardware and software;
 - (v) The regularity and extent of audit by an independent body;
 - (vi) The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method;
 - (vii) Any applicable industry standard; or¹⁰⁶
- (b) Proven in fact to have fulfilled the function by itself or together with further evidence.¹⁰⁷

¹⁰¹ Rotterdam Rules, article 10 (2); MLETR, articles 18 (1) and 18 (2).

¹⁰² MLETR, article 17 (3).

¹⁰³ MLETR, article 18 (3).

¹⁰⁴ MLETR, articles 17 (4) and 18 (4).

¹⁰⁵ The provision has been revised to align the texts closer to article 12 of MLETR (A/CN.9/1170, para. 60).

¹⁰⁶ MLETR, article 12 (a).

¹⁰⁷ MLETR, article 12 (b).