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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 session<sup>1</sup> may be found in the provisional agenda of the forty-third session of the Working Group (A/CN.9/WG.VI/WP.99, paras. 5–8). This note contains a revised annotated set of draft provisions for a new convention on negotiable cargo documents, which have been prepared by the secretariat to reflect the deliberations of the Working Group at its previous sessions.

## II. Organization of future work

2. The Working Group may wish to use the revised draft provisions for a new convention on negotiable cargo documents in the annex to this note as a basis for its deliberations at its forty-sixth session. After conclusion of its deliberations, the Working Group may wish to request the secretariat to prepare a further revised version of the draft provisions for a new convention on negotiable cargo documents for consideration by the Commission at its fifty-eighth session, scheduled to be held in Vienna from 7 to 25 July 2025.

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

## Annex

## Draft convention 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]<sup>1</sup> in connection with the international transport of goods<sup>2</sup> [by one or more than one mode of transport]<sup>3</sup> 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 State Party; or

(b) The place of delivery of the goods by the transport operator as provided for in the transport contract is located in a State Party.<sup>4</sup>

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

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.<sup>6</sup>

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> The secretariat has added the phrase for clarity.

<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> 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<sup>7</sup>*

For the purposes of this Convention:

1. “Consignor” means any person with whom the transport operator has concluded a transport contract.<sup>8</sup>
2. “Consignee” means the person named in the transport contract as the person entitled to take delivery of the goods.<sup>9</sup>
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, is the bearer thereof.<sup>10</sup> [or a person who has control of a negotiable electronic cargo record.]<sup>11</sup>
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;<sup>12</sup> [(b) evidences or contains the transport contract,<sup>13</sup> and (c) contains a conspicuous annotation with reference to this Convention].<sup>14</sup>
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.<sup>15</sup>
6. [“Negotiable electronic cargo record” means a negotiable cargo document issued in the form of an electronic record that complies with the requirements of

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> 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).

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

<sup>11</sup> 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). The secretariat has retained this phrase, which the Working Group may wish to bear in mind when considering article 15 (possession requirements).

<sup>12</sup> 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.

<sup>13</sup> The secretariat added the phrase “evidences or contains the transport contract” within square brackets in light of the Working Group’s decision to stipulate in article 7, paragraph 1 that the holder of a negotiable cargo document would acquire all rights under the transport contract as evidenced by the negotiable cargo document (A/CN.9/1199, para. 23).

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

<sup>15</sup> UNCITRAL Model Law on Electronic Transferable Records (MLETR), article 2.

article 12.][“Electronic negotiable cargo document” means a negotiable cargo document that complies with the requirements of article 12.]<sup>16,17</sup>

7. [The “transfer” of a negotiable electronic cargo record means the transfer of exclusive control over the record.]<sup>18</sup>

8. “Transport contract” means a contract whereby a transport operator undertakes to perform international transport of goods for reward.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup>

<sup>16</sup> At the forty-fifth session, the Working Group heard a suggestion to avoid referring to “negotiable electronic cargo records” alongside “negotiable cargo documents” and agreed to address the issue when considering the definitions of those terms in article 2 (A/CN.9/1199, para. 13). One option to do so is to extend the definition of “negotiable cargo document” to include the electronic form, thus giving the term “negotiable cargo document” a medium-neutral meaning. This approach is taken in recent texts developed by the Commission, notably the United Nations Convention on the International Effects of Judicial Sales of Ships (“JSS Convention”) (with respect to certificates of judicial sale: see *United Nations Convention on the International Effects of Judicial Sales of Ships: with Explanatory Note prepared by the UNCITRAL Secretariat* (United Nations publication, Sales No. E.23.V.7), para. 164) and the UNCITRAL-UNIDROIT Model Law on Warehouse Receipts (which declares in article 1(2) that a “warehouse receipt” can be an electronic record or a paper document). While earlier work at UNCITRAL on negotiable transport documents in electronic form shied away from referring to “electronic document” and similar terms such as “electronic bill of lading” due to the association of the term “document” with the paper form (see e.g. A/CN.9/390, para. 46; A/CN.9/387, para. 31; A/CN.9/WG.IV/WP.69, para. 87), these terms would appear to have gained greater acceptance in the intervening period. On this approach, the term “negotiable electronic cargo record” can be replaced with “electronic negotiable cargo document” (or “eNCD”). Another option is to retain the term “negotiable electronic cargo record” but insert an interpretation clause (e.g. as an additional paragraph to article 2) that declares that, for convenience, references to “negotiable cargo documents” include “negotiable electronic cargo records”.

<sup>17</sup> The words “that complies with the requirements of article 12” have been added to align with the approach taken in the definition of “electronic transferable record” in article 2 of the MLETR.

<sup>18</sup> Rotterdam Rules, article 1 (22). The provision has been placed within square brackets for further consideration by the Working Group since draft article 15 addresses a similar issue (A/CN.9/1170, para. 87).

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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).

## CHAPTER 2. ISSUANCE, CONTENTS AND LEGAL EFFECT OF A NEGOTIABLE CARGO DOCUMENT OR NEGOTIABLE ELECTRONIC CARGO RECORD<sup>22</sup>

### *Article 3. Issuance of a negotiable cargo document or negotiable electronic cargo record<sup>23, 24</sup>*

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.<sup>25</sup> The transport operator may also issue a negotiable cargo document or negotiable electronic cargo record at a later stage through annotating an existing transport document in accordance with paragraph 2 below.<sup>26</sup>

2. Unless otherwise agreed, 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;<sup>27</sup> 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.<sup>28</sup>

<sup>22</sup> 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).

<sup>23</sup> 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 International Federation of Freight Forwarders Associations (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.

<sup>24</sup> The Working Group agreed to delete the last paragraph which set out the requirement for the number of originals to be indicated in case more than one original had been issued as well as the requirement for any copies to be marked as such. The paragraph was considered unnecessary because articles 7(5) and 10(2) already incentivized the transport operator to indicate the number of originals in each negotiable cargo document issued in duplicate. It was also considered unhelpful given that it did not clarify the legal consequences for failing to do so, which in turn could be argued to invalidate the document (A/CN.9/1199, paras. 89–92). 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.

<sup>25</sup> 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. The Working Group did not take up a proposal to specifically oblige the transport operator to issue the negotiable cargo document “to” the consignor since, under certain circumstances, it would be issued to the documentary shipper. For previous deliberations, see A/CN.9/1127, paras. 14–15; A/CN.9/1134, para. 56; A/CN.9/1164, para. 27; A/CN.9/1199, paras. 77–78.

<sup>26</sup> The Working Group agreed to retain the second sentence to ensure consistency with the presumption rule in draft article 5, paragraph 4 and requested the secretariat to refine the drafting. For previous deliberations, see A/CN.9/1170, para. 115; A/CN.9/1199, para. 78.

<sup>27</sup> The Working Group may wish to consider replacing the requirement in letter (a) with a requirement that the transport document shall meet the definition of negotiable cargo document under draft article 2, paragraph 4.

<sup>28</sup> 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

3. 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.<sup>29</sup> [The negotiable cargo document or negotiable electronic cargo record shall contain a conspicuous annotation with reference to this Convention];<sup>30, 31</sup>

(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;<sup>32</sup> 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.<sup>33</sup>

4. Where no transport document is 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.<sup>34</sup>

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.<sup>35</sup>

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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. Editorial changes have been made by the secretariat in paragraphs 2–4 to clarify that paragraph 2 introduced a default rule (A/CN.9/1199, para. 83). 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; A/CN.9/1199, paras. 79–81.

<sup>29</sup> 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.

<sup>30</sup> Working Group agreed (i) to replace the requirement to reproduce all particulars as stated in the transport document with a requirement to contain a clear reference to the transport document; and (ii) to move the new requirement to draft article 4, paragraph 1 concerning the contents of negotiable cargo documents (A/CN.9/1199, paras. 82–83). For previous deliberations, see A/CN.9/1134, para. 75; A/CN.9/1164, paras. 66–68; A/CN.9/1170, para. 113.

<sup>31</sup> 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).

<sup>32</sup> 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.

<sup>33</sup> 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 scrutinize both documents (A/CN.9/1170, para. 38).

<sup>34</sup> The Working Group agreed to retain the paragraph without square brackets (A/CN.9/1199, para. 84). 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).

<sup>35</sup> 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; A/CN.9/1199, paras. 85–87.



6. A negotiable cargo document or negotiable electronic cargo record may be made out to order or to order of a named person.<sup>36</sup> If a negotiable cargo document or negotiable electronic cargo record fails to specify whether it is made out to order or to order of a named person, it shall be deemed to be made out to the order of the holder.<sup>37</sup>

*Article 4. Contents of the negotiable cargo document or negotiable electronic cargo record*<sup>38</sup>

1. The negotiable cargo document or the negotiable electronic cargo record shall indicate:<sup>39</sup>

(a) The name and address<sup>40</sup> of the transport operator;

(b) The name and address of the consignor;<sup>41</sup>

(c) The general nature of the goods, 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;<sup>42,43</sup>

(d) The apparent order and condition of the goods as taken in charge by the transport operator;<sup>44</sup>

(e) The place and date of taking in charge of the goods by the transport operator;<sup>45</sup>

<sup>36</sup> 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 agreed not to accommodate the issuance of bearer documents in light of possible abuse and the risk of money-laundering (A/CN.9/1199, paras. 53–54). For previous deliberations, see A/CN.9/1127, paras. 23–24; A/CN.9/1134, para. 73; A/CN.9/1164, paras. 41–44.

<sup>37</sup> The Working Group agreed to include a presumption rule to facilitate the interpretation of a negotiable cargo document that did not specify whether it was made out to order or to order of a named person (A/CN.9/1199, para. 88).

<sup>38</sup> 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).

<sup>39</sup> 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. The Working Group agreed to delete the reference to the name and address of the consignee as such requirement would likely affect the negotiability of negotiable cargo documents, even if the requirement only applied “if required... or provided” (A/CN.9/1199, paras. 98–99). For previous deliberations, see A/CN.9/1127, paras. 27–30, 33; A/CN.9/1134, para. 76; A/CN.9/1170, paras. 108 and 109.

<sup>40</sup> Rotterdam Rules, article 36 (2)(b). For previous deliberation, see A/CN.9/1127, paras. 31–32.

<sup>41</sup> 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).

<sup>42</sup> 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.

<sup>43</sup> 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.

<sup>44</sup> Rotterdam Rules, articles 36 (2)(a) and 36 (4). For previous deliberations, see A/CN.9/1134, para. 77; A/CN.9/1164, paras. 52–55; A/CN.9/1170, para. 110.

<sup>45</sup> 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

- (f) The place and date of issuance of the negotiable cargo document or negotiable electronic cargo record and, if issued separately, of the transport document;<sup>46</sup>
- (g) If issued separately, a conspicuous reference to the transport document;<sup>47</sup>
- (h) The place of delivery of the goods;<sup>48</sup>
- (i) The number of originals of the negotiable cargo document or negotiable electronic cargo record;<sup>49</sup>
- (j) A statement as to whether the freight has been prepaid or an indication as to whether the freight is payable by the consignee;<sup>50</sup> and
- (k) [A conspicuous annotation with reference to this Convention.]<sup>51</sup>
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;<sup>52</sup>
- (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;<sup>53</sup>
- (c) The law applicable to the transport contract, in particular any international convention to which the transport contract is subject;<sup>54</sup> and

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came from the International Chamber of Commerce (ICC) Incoterms which might not be necessary in this context. For previous deliberations, see [A/CN.9/1127](#), paras. 36–37.

<sup>46</sup> 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.

<sup>47</sup> See footnote 30 above.

<sup>48</sup> 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.

<sup>49</sup> Rotterdam Rules, article 36 (2)(d). The Working Group agreed to delete the phrase “when more than one original is issued” since it was equally important for the transport operator to indicate the number of originals when only a single document was issued ([A/CN.9/1199](#), para. 101). For previous deliberations, see [A/CN.9/1127](#), paras. 43–45; [A/CN.9/1164](#), paras. 59–60.

<sup>50</sup> 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. For previous deliberations, see [A/CN.9/1127](#), para. 47; [A/CN.9/1199](#), para. 102.

<sup>51</sup> This phrase has been added within square brackets as explained in footnote 1 above.

<sup>52</sup> 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).

<sup>53</sup> 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).

<sup>54</sup> 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).

(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.<sup>55</sup>

*Article 5. Deficiencies in the negotiable cargo document or negotiable electronic cargo record*<sup>56</sup>

1. The absence of one or more of the particulars referred to in article 4, paragraph 1 does not of itself affect the legal effect or validity 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.<sup>57</sup>

2. Nothing in paragraph 1 above affects the liability of the transport operator under other law for any deficiency in the negotiable cargo document or negotiable electronic cargo record.<sup>58</sup>

3. 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.<sup>59</sup>

4. If the annotation as referred to in article 3, paragraph 2, does not state the date from which the transport document shall serve as a negotiable cargo document or negotiable electronic cargo record, the transport document is deemed to serve that function from the date of its issuance.<sup>60</sup>

5. 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.<sup>61</sup>

6. 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

<sup>55</sup> 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 delete the law of the country where the negotiable cargo document was issued, as such references would be unnecessary and confusing. For previous deliberations, see [A/CN.9/1164](#), paras. 62–65; [A/CN.9/1199](#), para. 104.

<sup>56</sup> 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).

<sup>57</sup> 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. The Working Group requested the secretariat to replace the term “legal character” with “legal effect” or “validity” ([A/CN.9/1199](#), para. 105). For previous deliberations, see [A/CN.9/1127](#), paras. 53–57; [A/CN.9/1164](#), paras. 70–74.

<sup>58</sup> The Working Group agreed to insert an additional provision to clarify that paragraph 1 did not affect other legal consequences of non-compliance with the content requirements in article 4 ([A/CN.9/1199](#), para. 105).

<sup>59</sup> 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 deliberations, see [A/CN.9/1127](#), paras. 58–61.

<sup>60</sup> 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.

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

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.<sup>62</sup>

*Article 6. Evidentiary effect of the negotiable cargo document  
or negotiable electronic cargo record<sup>63</sup>*

1. The transport operator may qualify any of the information referred to in article 4, paragraph 1 (c), as furnished by the consignor and contained in the negotiable cargo document or negotiable electronic cargo record to indicate that the transport operator does not assume responsibility for the accuracy of such information if:

(a) The transport operator 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.<sup>64</sup>

2. Except to the extent that the information furnished by the consignor has been qualified in the manner set out in paragraph 1, 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.<sup>65</sup>

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 any information<sup>66</sup> 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 in the manner set out in paragraph 1.<sup>67</sup>

<sup>62</sup> 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.

<sup>63</sup> The Working Group agreed to clarify that the exceptions in paragraphs 2 and 3 applied only to qualifications that were made under paragraph 1 ([A/CN.9/1199](#), para. 17). The phrase “in the manner set out in paragraph 1” has been inserted accordingly.

<sup>64</sup> 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. The Working Group agreed to move the reference to the transport operator disclaiming responsibility from subparagraph (a) to the chapeau of paragraph 1 on the understanding that such effect would be applicable to both subparagraphs ([A/CN.9/1199](#), para. 14). For previous deliberations, see [A/CN.9/1127](#), paras. 67–68; [A/CN.9/1164](#), para. 81.

<sup>65</sup> Rotterdam Rules, article 41 (a); MT Convention, article 10 (a); see also CIM-COTIF, article 12.

<sup>66</sup> The Working Group heard a concern that paragraph 3 referred to reliance on the “description of the goods” in the negotiable cargo document but resulted in the inadmissibility of evidence in respect of “any information” in the negotiable cargo document. The Working Group agreed that paragraph 3 should, in both instances, refer to any information in the negotiable cargo document, which would promote negotiability as it would allow the holder to rely exclusively on the information contained therein ([A/CN.9/1199](#), para. 18).

<sup>67</sup> 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.

## 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<sup>68</sup>*

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 evidenced in the negotiable cargo document or negotiable electronic cargo record<sup>69</sup> 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.<sup>70</sup>
2. Any entitlement to the rights referred to in paragraph 1 above that is conferred upon the consignor or the consignee, as applicable, cannot be exercised by the consignor or the consignee that is not the holder<sup>71</sup> upon the issuance of a negotiable cargo document or negotiable electronic cargo record.<sup>72</sup>
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.<sup>73</sup>
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.<sup>74</sup>

<sup>68</sup> The Working Group agreed to delete a provision stating that communications relating to the transfer of negotiable cargo documents or delivery of goods might be made out by electronic communication on the understanding that the manner of communication was a matter of party autonomy and applicable law (A/CN.9/1199, para. 43). For previous deliberations, see A/CN.9/1127, para. 79; A/CN.9/1164, paras. 96–97.

<sup>69</sup> The Working Group heard a concern that a reference to the transport contract might imply a requirement to review the transport contract, which could impose an unreasonable burden on the holder. The Working Group agreed to reinforce the link between the rights of the holder and the transport contract by expressly acknowledging that the transport contract was evidenced by the negotiable cargo document (A/CN.9/1199, paras. 19–23).

<sup>70</sup> 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.

<sup>71</sup> The Working Group agreed to replace the phrase “shall extinguish” with “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 (A/CN.9/1199, para. 27).

<sup>72</sup> 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 deliberations, see A/CN.9/1164, para. 91.

<sup>73</sup> 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 agreed to delete the phrase “provided that the transport operator is in possession of the goods” on the basis that a negotiable cargo document would only be issued once the goods were taken in charge by the transport operator under article 3. It was noted that such proviso might be interpreted as imposing an additional burden on the holder to verify that the transport operator was in possession of the goods (A/CN.9/1199, paras. 30–31). For previous deliberations, see A/CN.9/1127, para. 75; A/CN.9/1164, para. 93.

<sup>74</sup> 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

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 or negotiable electronic cargo record was made out to the order of a named person.<sup>75</sup> If the negotiable cargo document or negotiable electronic cargo record<sup>76</sup> states that more than one original has been issued,<sup>77</sup> all originals shall be produced, failing which the right mentioned in subparagraph 1 (b) cannot be exercised.<sup>78</sup>

*Article 8. Missing information, instructions or documents*<sup>79</sup>

If the transport operator needs information, instructions or documents relating to the goods in order to perform its obligations,<sup>80</sup> 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 information, instructions or documents within a reasonable time, the transport operator shall proceed in accordance with the transport contract.<sup>81</sup>

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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.

<sup>75</sup> 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 deliberations, see A/CN.9/1127, paras. 76–77.

<sup>76</sup> The Working Group agreed that the instrument should accommodate the issuance of multiple “originals” of negotiable electronic cargo record as there might be a business case to do so (A/CN.9/1199, paras. 40–42).

<sup>77</sup> The Working Group adopted a formalistic approach for paragraph 5 to apply only where the negotiable cargo document stated that more than one original had been issued. It was explained that the transport operator should bear the risk for failing to state the number of originals in the negotiable cargo document. The need to protect the interests of third-party holders acting in good faith, who would not know the number of originals, was highlighted (A/CN.9/1199, para. 37).

<sup>78</sup> 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. The Working Group did not take up a suggestion to require all originals to be produced in order to exercise any rights other than the right of disposal. It was explained that a holder could bring a claim against the transport operator without needing to produce all originals (A/CN.9/1199, para. 38).

<sup>79</sup> 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). It was noted that some traders and banks might not be interested in the transportation and preferred not to identify themselves due to confidentiality concerns. It was added that, in practice, holders were not required to notify the transport operator unless they were interested in taking delivery of the goods (A/CN.9/1199, para. 45).

<sup>80</sup> The Working Group agreed to delete the phrase “under the Convention” given that the need for the transport operator to seek information, instructions or documents relating to the goods would more likely arise in relation to the performance of its obligation under the transport contract (A/CN.9/1199, para. 44).

<sup>81</sup> 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 deliberations, see A/CN.9/1127, paras. 87–89; A/CN.9/1170, paras. 14 and 17.

*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.<sup>82</sup>
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.<sup>83</sup>

*Article 10. Delivery of the goods*<sup>84</sup>

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.<sup>85</sup>
2. If more than one original of the negotiable cargo document or negotiable electronic cargo record has been issued, delivery of the goods may be demanded against surrender of one original. If the negotiable cargo document or negotiable electronic cargo record states that more than one original has been issued, the other originals will cease to have any effect or validity after the surrender of one original.<sup>86</sup>

<sup>82</sup> 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. For previous deliberations, see A/CN.9/1170, para. 22; A/CN.9/1199, para. 46.

<sup>83</sup> 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; A/CN.9/1199, para. 47.

<sup>84</sup> 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). For the same reason, the Working Group also agreed to delete the paragraph stating that “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” (A/CN.9/1199, para. 52).

<sup>85</sup> 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.

<sup>86</sup> Rotterdam Rules, article 47 (1)(c). The provision reflects the practice in the maritime sector to issue a 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). The Working Group was invited to choose between a factual approach and a formalistic approach to give effect to a requirement that the holder of a negotiable cargo document issued in multiple would surrender only one original when demanding delivery of the goods. Support was expressed for a proposal to split the paragraph into two separate sentences: the first sentence stating that, for negotiable cargo documents issued in multiple, the surrender of one original would suffice; the second sentence stating that the surrender of one original would only affect the validity of the other originals if the negotiable cargo document stated that more than one original had been issued. The secretariat was requested to revise paragraph 2 in line with the proposal for further consideration by the Working Group (A/CN.9/1199, paras. 49–51).

*Article 11. Transfer of rights under a negotiable cargo document or negotiable electronic cargo record*<sup>87,88</sup>

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; 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 endorsed blank.<sup>89</sup>

## CHAPTER 4. SPECIAL CONDITIONS FOR ISSUANCE AND USE OF A NEGOTIABLE ELECTRONIC CARGO RECORD<sup>90</sup>

*Article 12. Requirements for a negotiable electronic cargo record*<sup>91</sup>

1. For the purposes of this Convention, a negotiable cargo document may be [issued and used]<sup>92</sup> in the form of an electronic record provided that a reliable method is used:<sup>93</sup>

<sup>87</sup> 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.

<sup>88</sup> The Working Group agreed to delete the requirement that all originals shall be transferred to the intended holder in order to effect a transfer of rights under a negotiable cargo document. The purpose of such requirement was questioned given that issues concerning the exercise of rights were adequately addressed in articles 7(5) and 10(2). It was noted that the payment terms in the sales contract would ordinarily address how many originals needed to be transferred to the buyer ([A/CN.9/1199](#), paras. 55–57). For previous deliberations, see [A/CN.9/1127](#), para. 86; [A/CN.9/1170](#), paras. 32–33.

<sup>89</sup> Rotterdam Rules, article 57 (1). For previous deliberations, see [A/CN.9/1127](#), paras. 80–85; [A/CN.9/1170](#), paras. 28–31.

<sup>90</sup> Chapter 4 has been revised to reflect the deliberations of the Working Group at its forty-fifth session ([A/CN.9/1199](#), paras. 58–76). Its provisions have been revised (i) to employ the standard formulation of the functional equivalence rules in UNCITRAL texts on electronic commerce with adaptations to reflect the fact that the substantive law requirements to be met are contained in the convention itself (but see note 93 below), and (ii) to ensure consistency with the MLETR (*ibid.*, paras. 59–60).

<sup>91</sup> Article 12 reproduces article 13 of the previous version with revisions agreed by the Working Group at its forty-fifth session ([A/CN.9/1199](#), paras. 58–60 and 64–67). The chapeau of paragraph 1 has been further revised, as described in note 92 below. The Working Group may wish to consider complementing paragraph 1 by inserting a new paragraph 3 along the following lines: “A negotiable electronic cargo record shall not be denied effect or validity on the sole ground that it is in electronic form”. This new paragraph, which reflects article 7(1) of the MLETR, effectively reintroduces the second part of article 12 of an earlier version of the draft ([A/CN.9/WG.VI/WP.103](#)), which the Working Group considered at its forty-fourth session ([A/CN.9/1170](#), paras. 47–49). While the Working Group agreed to delete the article in its entirety, it was pointed out that the second part of that article served a purpose of addressing the legal recognition of negotiable electronic cargo record and bridged the gap with negotiable cargo documents issued in paper.

<sup>92</sup> At its forty-fifth session, attention was drawn to the fact that paragraph 1 of article 12 (article 13 of the previous version) applied not only to the issuance but also to the use of negotiable cargo documents in electronic form. The corresponding rule in article 10(1) of the MLETR does not refer to the concepts of “issuance” or “use” of an electronic transferable record (see also article 5(6) of the JSS Convention). The words “issued and used” have been placed within square brackets to invite the Working Group to consider if it is necessary or desirable to include them, or alternatively whether it is sufficient to recognize that a negotiable cargo document may “be” in the form of an electronic record (i.e. that it can subsist in electronic form).

<sup>93</sup> As the Convention establishes the requirements for a negotiable cargo document, the chapeau of paragraph 1 has been formulated as a legislative statement recognizing that a negotiable cargo document may be in electronic form, along the lines of article 5(6) of the JSS Convention, and not employing the standard formulation for functional equivalence rules used in articles 13–16.



- (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 creation until it ceases to have any effect or validity; and
- (c) To retain the integrity of that electronic record.

2. The criterion for assessing integrity shall be whether information contained 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.

*Article 13. Content requirements*<sup>94</sup>

For the purposes of article 2, paragraph 4, and articles 3 and 4, the requirement for information to be contained in a negotiable electronic cargo record is met if the information contained therein is accessible so as to be usable for subsequent reference.

*Article 14. Signature requirements*<sup>95</sup>

For the purposes of article 2, paragraph 4, the requirement for a negotiable electronic cargo record to be signed is met 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 15. Possession requirements*<sup>96,97</sup>

1. For the purposes of article 2, paragraph 3, the requirement for a negotiable electronic cargo record to be possessed is met 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.<sup>98</sup>

2. For the purposes of article 11, the requirement to transfer a negotiable electronic cargo record is met through the transfer of control over the negotiable electronic cargo record.<sup>99</sup>

*Article 16. Endorsement requirements*

For the purposes of article 2, paragraph 3, article 10, paragraph 1, and article 11, the requirement for a negotiable electronic cargo record to be endorsed is met if the information required for the endorsement is included in the negotiable electronic

<sup>94</sup> Article 13 is new and applies the functional equivalence rule in article 8 of the MLETR to negotiable electronic cargo records, as requested by the Working Group at its forty-fifth session (A/CN.9/1199, para. 66).

<sup>95</sup> Article 14 reproduces article 12 of the previous version with revisions agreed by the Working Group at its forty-fifth session (A/CN.9/1199, paras. 58–60 and 62–63).

<sup>96</sup> 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).

<sup>97</sup> At the forty-fifth session, the Working Group was invited to consider whether additional functional equivalent rules might be desirable for other requirements, such as the requirement for the holder to “produce” a negotiable electronic cargo record and to “identify itself” when doing so (A/CN.9/1199, para. 61). A functional equivalence rule for “producing” a negotiable cargo document could read along the following lines, drawing on article 8 of the UNCITRAL Model Law on Electronic Commerce: “For the purposes of article 7, paragraph 5, the requirement for a negotiable electronic cargo record to be produced is met if the information contained therein is capable of being displayed to the person to whom the negotiable electronic cargo record is to be produced, or made available.”

<sup>98</sup> MLETR, article 11 (1).

<sup>99</sup> MLETR, article 11 (2).

cargo record and that information is compliant with the requirements set forth in articles 13 and 14.<sup>100</sup>

*Article 17. Change of medium*<sup>101</sup>

1. A negotiable electronic cargo record may replace a negotiable cargo document if:
  - (a) A reliable method for the change of medium is used; and
  - (b) The transport operator and the holder agree to the change of medium.
2. For the change of medium to take effect:
  - (a) The holder shall surrender to the transport operator all originals of the negotiable cargo document;
  - (b) The negotiable electronic cargo record shall reproduce all information contained in the negotiable cargo document, and include a statement that it replaces the negotiable cargo document.
3. Upon issuance of the negotiable electronic cargo record in accordance with paragraphs 1 and 2, all originals of the negotiable cargo document shall be made inoperative and cease to have any effect or validity.
4. A negotiable cargo document may replace a negotiable electronic cargo record if:
  - (a) A reliable method for the change of medium is used; and
  - (b) The transport operator and the holder agree to the change in medium.<sup>102</sup>
5. For the change of medium to take effect:
  - [(a) The holder shall surrender to the transport operator all originals of the negotiable electronic cargo record; and
  - (b)] The negotiable cargo document shall reproduce all information contained in the negotiable electronic cargo record, and shall include a statement that it replaces the negotiable electronic cargo record.
6. Upon issuance of the negotiable cargo document in accordance with paragraphs 4 and 5, the negotiable electronic cargo record shall be made inoperative and ceases to have any effect or validity.<sup>103</sup>
7. A change of medium in accordance with this article shall not affect the rights and obligations of the parties.<sup>104</sup>

*Article 18. General reliability standard*<sup>105</sup>

For the purposes of this chapter, 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;

<sup>100</sup> Article 16 reproduces article 15 of the previous version with revisions agreed by the Working Group at its forty-fifth session (A/CN.9/1199, paras. 58–60 and 69). For previous deliberations, see A/CN.9/1134, paras. 34–37.

<sup>101</sup> Rotterdam Rules, article 10; MLETR, articles 17 and 18. The provision has been revised to align the text more closely to articles 17 and 18 of MLETR and to reflect the other revisions agreed by the Working Group at its forty-fifth session (A/CN.9/1199, paras. 70–74). For previous deliberations, see A/CN.9/1170, para. 70.

<sup>102</sup> 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).

<sup>103</sup> MLETR, article 18 (3).

<sup>104</sup> MLETR, articles 17 (4) and 18 (4).

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

- (ii) The assurance of data integrity;
  - (iii) The ability to prevent unauthorized access to and use of the system used to implement the method;<sup>106</sup>
  - (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; or<sup>107</sup>
- (b) Proven in fact to have fulfilled the function by itself or together with further evidence.<sup>108</sup>

## CHAPTER 5. FINAL CLAUSES<sup>109</sup>

### *Article 19. Depositary*

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

### *Article 20. Signature, ratification, acceptance, approval, accession*

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

### *Article 21. Participation by regional economic integration organizations*

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a State Party, to the extent that that organization has competence over matters governed by this Convention. For the purposes of articles 24 and 25, an instrument deposited by a regional economic integration organization shall not be counted in addition to the instruments deposited by its member States.
2. The regional economic integration organization shall make a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the

<sup>106</sup> The words “used to implement the method” have been inserted to make express what is implicit in article 12 of the MLETR: see paragraph 122 of the explanatory note to the MLETR in *UNCITRAL Model Law on Electronic Transferable Records* (United Nations publication, Sales No. E.17.V.5).

<sup>107</sup> MLETR, article 12 (a).

<sup>108</sup> MLETR, article 12 (b).

<sup>109</sup> The final clauses in chapter 5 have been inserted by the secretariat at the request of the Working Group at its forty-fifth session (A/CN.9/1199, para. 106). They are mainly drawn from the final clauses of the United Nations Convention on the International Effects of Judicial Sales of Ships, with necessary revisions. The Working Group may wish to note that the current draft final clauses have benefited from the preliminary consultation with the Treaty Section of the Office of Legal Affairs of the United Nations.

distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “State”, “States”, “State Party” or “States Parties” in this Convention applies equally to a regional economic integration organization where the context so requires.

*Article 22. Non-unified legal systems*

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may declare that this Convention shall extend to all its territorial units or only to one or more of them.

2. Declarations under this article shall state expressly the territorial units to which this Convention extends.

3. If a State makes a declaration under paragraph 1 that this Convention shall extend to one or more but not all its territorial units, a place located in a territorial unit to which this Convention does not extend is not considered to be in a State Party for the purposes of this Convention.

4. If a State makes no declaration under paragraph 1, this Convention shall extend to all territorial units of that State.

5. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, any reference to the law of the State shall be construed as referring, where appropriate, to the law in force in the relevant territorial unit.

*Article 23. Procedure and effects of declarations*

1. Declarations under article 21, paragraph 2, and article 22, paragraph 1, shall be made at the time of signature, ratification, acceptance, approval or accession. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and their confirmations shall be in writing and formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned.

4. Any State that makes a declaration under article 21, paragraph 2, and article 22, paragraph 1, may modify or withdraw it at any time by a formal notification in writing addressed to the depositary. The modification or withdrawal shall take effect 180 days after the date of the receipt of the notification by the depositary. If the depositary receives the notification of the modification or withdrawal before entry into force of this Convention in respect of the State concerned, the modification or withdrawal shall take effect simultaneously with the entry into force of this Convention in respect of that State.

*Article 24. Entry into force*

1. This Convention shall enter into force 180 days after the date of the deposit of the [third] instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the [third] instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State 180 days after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3. This Convention shall apply only to negotiable cargo documents and negotiable electronic cargo records that are issued after its entry into force.

*Article 25. Amendment*

1. Any State Party may propose an amendment to this Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within 120 days from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.
2. The conference of States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the conference. For the purposes of this paragraph, the vote of a regional economic integration organization shall not be counted.
3. An adopted amendment shall be submitted by the depositary to all States Parties for ratification, acceptance or approval.
4. An adopted amendment shall enter into force 180 days after the date of deposit of the [third] instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those States Parties that have expressed consent to be bound by it.
5. When a State Party ratifies, accepts or approves an amendment following the deposit of the [third] instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that State Party 180 days after the date of the deposit of its instrument of ratification, acceptance or approval.

*Article 26. Denunciation*

1. A State Party may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.
2. The denunciation shall take effect 365 days after the date of the receipt of the notification by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date of the receipt of the notification by the depositary.

DONE in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

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