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**United Nations Commission on  
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## **Interaction between draft convention on negotiable cargo documents and existing international transport law conventions**

### **Note by the Secretariat**

This Note provides an overview of how various international transport law conventions address the legal effect of negotiable transport documents as documents of title and the rights, obligations and liability of the holder of such documents, which helps illustrate the possible interaction between draft convention on negotiable cargo documents and existing international transport law conventions.

Table 1 (part I and part II) lists existing international transport law conventions addressing both negotiable and non-negotiable transport documents. Table 2 lists existing international transport law conventions addressing only non-negotiable transport documents.



## Introduction

1. The draft convention on negotiable cargo documents creates a new type of negotiable document of title (the NCD) and establishes a legal framework for the recognition and use of NCDs (in paper and electronic forms). In its current form ([A/CN.9/WG.VI/WP.114](#)) the draft convention provides that:

(a) as a default rule – an NCD is not issued as a separate document, but rather by simply annotating an existing (negotiable or non-negotiable) transport document that meets certain minimum information requirements (article 3(2)); and

(b) as a fallback rule – an NCD is issued as a separate document if either (i) the transport document is not negotiable (article 3(3)), or (ii) no transport document is issued (article 3(4)).

2. While the draft convention applies to “annotated” transport documents that meet the conditions set out in article 3(2), it does not affect the legal framework for the recognition or use of negotiable transport documents governed by other international conventions that have entered into force (see Table 1 (part I) below):

(a) maritime bills of lading governed by the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (Hague Rules) or the United Nations Convention on the Carriage of Goods by Sea 1978 (Hamburg Rules);

(b) inland waterway bills of lading governed by the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway 2000 (Budapest Convention).

3. The draft convention also does not affect the legal framework for the recognition or use of negotiable transport documents governed by other international conventions that are not yet in force (see Table 1 (part II) below):

(a) multimodal transport documents governed by the United Nations Convention on International Multimodal Transport of Goods 1980;

(b) maritime bills of lading or multimodal bills of lading involving a maritime leg governed by the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2008 (Rotterdam Rules);

(c) railway consignment bills governed by the Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Conventions 2023 (Unified Railway Law).

4. With respect to the legal frameworks for the recognition or use of non-negotiable transport documents, it is argued that by agreeing to the issuance of an NCD, the consignor and the transport operator (as parties to the transport contract) have contractually agreed on the assignment of all rights under the transport contract to the NCD holder as well as the obligation and liability of the NCD holder (see para. 6 below). The question remains to what extent the parties to the transport contract would be allowed to assign all rights under that transport contract to a third party under these legal frameworks governing the following non-negotiable transport documents (see Table 2 below):

(a) railway consignment notes governed by the COTIF/CIM Uniform Rules concerning the Contract of International Carriage of Goods by Rail 2016 or the Agreement on International Railway Freight Communications 2020 (SMGS);

(b) road consignment notes governed by the Convention on the Contract for the International Carriage of Goods by Road 1956 (CMR);

(c) air waybills governed by the Convention for the Unification of Certain Rules for International Carriage by Air 1999 (Montreal Convention).

5. In case that the parties to the transport contract would not be allowed to assign all rights under that transport contract to a third party under any of the legal

frameworks identified in Table 2, the Working Group may wish to note that, according to the general principle stated in article 30, paragraph 3, of the Vienna Convention on the Law of Treaties (1969), a later treaty prevails over an earlier treaty to the extent of any incompatibility between the two.<sup>1</sup>

6. Before mapping these other international conventions, it is useful to recall the key features of the draft convention, which, unlike existing international transport law conventions, do not focus on the rights and obligations of the transport operator, consignor and consignee and their liability. These key features of the draft convention can be summarized as follows:

- Other than as explicitly provided for in the NCD convention, the 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 (article 1 (3));
- The issuance and transfer of the NCD 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 (article 7 (3));
- A person who becomes an NCD holder shall, by virtue of becoming the holder, have acquired all rights under the transport contract as evidenced in the NCD 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. Any entitlement to the rights referred to 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 upon the issuance of an NCD (article 7 (1) and (2));
- If the transport operator needs information, instructions or documents relating to the goods in order to perform its obligations, the transport operator shall seek those information, instructions or documents from the NCD holder. 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 (article 8);
- An NCD holder 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 an NCD holder. A holder that is not the consignor and that exercises the right of disposal under the NCD convention assumes any liability that may arise in connection with the exercise of that right under the transport contract (article 9); and
- Detailed rules on the special conditions for issuance and use of electronic NCDs in line with the UNCITRAL Model Law on Electronic Transferable Records (chapter 4).

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<sup>1</sup> A similar matter has been addressed in the *United Nations Convention on the International Effects of Judicial Sales of Ships: with Explanatory Note prepared by the UNCITRAL Secretariat*, pp. 223–226.

Table 1 (part I)

**International transport law conventions addressing both negotiable and non-negotiable transport documents**

<i>Topics</i>	<i>Hague Rules</i>	<i>Hamburg Rules</i>	<i>Budapest Convention</i>
* Note: These conventions address both negotiable and non-negotiable transport documents and have entered into force. They regulate the carriage of goods by sea and inland waterway.			
Legal effect of negotiable transport documents as documents of title	No explicit provision. The Rules (e.g. art. 1(b)) imply that a bill of lading is a document of title.	The definition of “bill of lading” provides that it is “document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document.” (art. 1 (7))	The originals of a bill of lading shall be documents of title issued in the name of the consignee, to order or to bearer. (art. 13 (1))  When the goods are taken over by the carrier, handing over the bill of lading to a person entitled thereby to receive the goods has the same effects as the handing over of the goods as far as the acquisition of rights to the goods is concerned. (art. 13 (3))
Rights, obligation and liability of holders of negotiable transport documents	N/A	The definition of “bill of lading” implies that the holder has the right to demand delivery of the goods.	It is implied that the holder has the right to demand delivery of the goods. (art. 13 (2))
Electronic documents	N/A	A signature on a bill of lading may be made by electronic means. (art. 14 (3))	“In writing” includes the transmission of information by electronic means of communication. (Art. 1(8))  The signature on the transport document may be made by electronic means. (art. 11(2))

Table 1 (part II)

**International transport law conventions addressing both negotiable and non-negotiable transport documents**

<i>Topics</i>	<i>United Nations Convention on Multimodal Transport</i>	<i>Rotterdam Rules</i>	<i>Unified Railway Law</i>
<p>* Note: These conventions address both negotiable and non-negotiable transport documents and are not yet in force. They regulate the carriage of goods by rail, partly or wholly by sea as well as multimodal transport operations.</p>			
Legal effect of negotiable transport documents as documents of title	N/A	No explicit rule.	The issue and handing over of the consignment bill to the consignee designated therein shall have the same effect, in terms of the acquisition of rights to the goods, as a physical handing over of the goods, provided the carrier is in possession of the goods. The same shall apply to a transfer of the consignment bill to third parties. (art. 38)
Rights, obligation and liability of holders of negotiable transport documents	It is implied that the holder of a negotiable multimodal transport document has the right to demand delivery of the goods. (art. 6 (2))	<p>The term “holder” is defined. (art. 1 (10))</p> <p>The holder has the right to demand delivery of the goods (art. 47) and the right to exercise the right of control (arts. 50 and 51 (3)).</p> <p>The holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder. A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document. (art. 58)</p>	<p>The term “bearer” is defined. (art. 2 (o))</p> <p>The holder has the right to demand delivery of the goods (arts. 33 (1) and 35), the right of disposal (art. 36 (1)) and the right to bring a claim (art. 34 (3)).</p>
Electronic documents	The signature on the multimodal transport document may be made by electronic means. (art. 5 (3))	<p>Negotiable electronic transport record may be used subject to certain procedures. (arts. 8 and 9)</p> <p>Negotiable transport documents may be replaced by negotiable electronic transport records and vice versa. (art. 10)</p>	“Electronic consignment bill” means a consignment bill established in the form of electronic data registration whose authenticity and integrity are assured at all times and which has the same functions as the consignment bill. (art. 2 (n))

Table 2

**Existing international transport law conventions addressing only non-negotiable transport documents**

<i>Topics</i>	<i>CMR Convention</i>	<i>COTIF/CIM Uniform Rules</i>	<i>SMGS Rules</i>	<i>Montreal Convention</i>
<p>* Note: These conventions do not address negotiable transport documents. They regulate the carriage of goods by road, rail and air.</p> <p>Since 2020, the Ad Hoc Working Group on the Issues of Negotiable Document of Title within the Commission on Transport Law of the Organization for Cooperation between Railways (OSJD) has been preparing draft supplements and amendments to SMGS related to negotiable document of title. The main concept prescribes issuance of the document of title in addition to an SMGS consignment note and development of appropriate provisions as an annex to SMGS regulating the procedure for transporting goods under the SMGS consignment note while using the SMGS negotiable document of title.</p> <p>In late 2024, the Intergovernmental Organisation for International Carriage by Rail (OTIF) launched a public consultation to identify potential revisions to COTIF and its contractual appendices (which include appendix B and the CIM Uniform Rules). It is expected that responses to the consultation will be presented to OTIF's Ad hoc Committee on Legal Affairs and International Cooperation for potential inclusion in and progression through its work programme for 2025–2027.</p>				
Legal effect of negotiable transport documents as documents of title; rights, obligations and liability of holders of negotiable transport documents	Any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void, except for those envisaged under article 40 in the context of successive carriers. (art. 41)	Unless provided otherwise in these Uniform Rules, any stipulation which, directly or indirectly, would derogate from these Uniform Rules shall be null and void. (Art. 5)  The consignment note shall not have effect as a bill of lading. (art. 6§5)	Any condition of a contract of carriage directly or indirectly contravening the conditions laid down in this Agreement shall be null and void and of no legal force, except as expressly provided in this Agreement. (art. 6)	No explicit rule on the validity of contractual deviations other than those concerning liability limits. (art. 47)  In case of non-compliance with documentary requirements, the contract of carriage shall be subject of the Convention including those relating to limitation of liability. (art. 9)
Electronic documents	Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road concerning the Electronic Consignment Note	The consignment note and its duplicate may be established in the form of electronic data registration. The procedure used for the registration and treatment of data must be equivalent from the functional point of view, particularly so far as concerns the evidential value of the consignment note represented by those data. (art. 6§9)	The consignment note may be completed as an electronic consignment note. (art. 15 (4)) The definition of electronic document includes a requirement for representing the same set of data in the paper form. (art. 2)	Any other means which preserves a record of carriage to be performed may be substituted for the delivery of an air waybill, which includes electronic documents. (art. 4 (2))