

United Nations Convention on Negotiable Cargo Documents

with an Explanatory Note prepared
by the UNCITRAL Secretariat



**United
Nations**

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

United Nations Convention on Negotiable Cargo Documents

with an Explanatory Note prepared by the
UNCITRAL Secretariat



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Resolution adopted by the General Assembly

80/162. United Nations Convention on Negotiable Cargo Documents

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Conscious of the important role played by negotiable transport documents in facilitating trade finance and the sale of goods in transit,

Convinced of the desirability of establishing uniform rules for negotiable transport documents covering all modes of transport, including multimodal transport, thereby supporting the growth of door-to-door transportation,

Acknowledging that digital transformation in international trade depends on reliable systems and data, which in turn can enhance operational efficiency and support end-to-end digitalization,

Convinced that certainty with regard to the legal effect of negotiable cargo documents, as well as the rights and liability of the holder, will encourage the acceptance of such documents by banks, financial institutions and other stakeholders, thereby fostering international trade and contributing to economic growth,

Convinced also that a sound legal framework will reduce the costs of trade along inland routes and will assist both landlocked countries and countries with large mainland territories in integrating more effectively into global supply chains,

Convinced further that such a framework will support interested countries, including coastal countries, in the digitization of negotiable transport documents,

Noting that the preparation of the draft convention on negotiable cargo documents was the subject of due deliberation in the Commission and that the draft convention benefited from consultations with Governments and interested intergovernmental and international non-governmental organizations,

Expressing its appreciation to the International Civil Aviation Organization, the Intergovernmental Organization for International Carriage by Rail and the Organization for Cooperation between Railways for their contributions to the development of the draft convention,

Taking note of the decision of the Commission at its fifty-eighth session to submit the draft convention to the General Assembly for its consideration,¹

Taking note with satisfaction of the draft convention approved by the Commission,²

Expressing its appreciation to the Government of Ghana for its offer to host a signing ceremony for the Convention in Accra,

1. *Commends* the United Nations Commission on International Trade Law for preparing the draft convention on negotiable cargo documents;

2. *Adopts* the United Nations Convention on Negotiable Cargo Documents, contained in the annex to the present resolution;

3. *Authorizes* a ceremony for the opening for signature of the Convention to be held as soon as practicable in the second half of 2026 in Accra, upon which occasion the Convention will be open for signature, and recommends that the Convention be known as the Accra Convention on Negotiable Cargo Documents;

4. *Calls upon* those Governments and regional economic integration organizations that wish to modernize their legal frameworks on negotiable transport documents to consider becoming Parties to the Convention.

*64th plenary meeting
15 December 2025*

¹ *Official Records of the General Assembly, Eightieth Session, Supplement No. 17 (A/80/17)*, para. 128.

² *Ibid.*, annex I.

United Nations Convention on Negotiable Cargo Documents

The States Parties to this Convention,

Reaffirming their belief that international trade on the basis of equality and mutual benefit is a key factor in promoting friendly relations among States,

Conscious of the important role played by negotiable transport documents in facilitating trade finance and the sale of goods in transit,

Convinced of the desirability of establishing uniform rules for negotiable transport documents covering all modes of transport, including multimodal transport, thereby supporting the growth of door-to-door transportation,

Acknowledging that digital transformation in international trade depends on reliable systems and data, which in turn can enhance operational efficiency and support end-to-end digitalization,

Convinced that certainty with regard to the legal effect of negotiable cargo documents, as well as the rights and liability of the holder, will encourage the acceptance of such documents by banks, financial institutions and other stakeholders, thereby fostering international trade and contributing to economic growth,

Convinced also that a sound legal framework could help to reduce the costs of trade along inland routes and will assist both landlocked countries and countries with large mainland territories in integrating more effectively into global supply chains,

Have agreed as follows:

Chapter I. General provisions

Article 1. Scope of application

1. This Convention applies to the issuance, transfer and legal effects of a negotiable cargo document that contains a conspicuous reference to this Convention in connection with the international transport of goods by one or more than one mode of transport if:

(a) The place of taking in charge of the goods by the transport operator as indicated in the negotiable cargo document is located in a State Party;

(b) The place of delivery of the goods by the transport operator as indicated in the negotiable cargo document is located in a State Party; or

(c) The place of issuance of the negotiable cargo document as indicated in the negotiable cargo document is located in a State Party.

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

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

Article 2. Definitions

For the purposes of this Convention:

1. “Consignor” means a person with which the transport operator has concluded a transport contract.

2. “Consignee” means a person named in the transport contract as the person entitled to take delivery of the goods.

3. “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.
4. “Holder” means a person that is in possession of a negotiable cargo document and is identified in it as the consignor, as the person to whose order it is issued or as the person to which the document is duly endorsed, or, if the document is an order document endorsed in blank, is the bearer thereof.
5. “Negotiable cargo document” means a paper document or an electronic record signed and issued by the transport operator that 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.
6. “Transport contract” means a contract whereby the transport operator undertakes to perform international transport of goods for reward.
7. “Transport document” means a document that:
 - (a) Evidences or contains the transport contract; and
 - (b) Evidences the taking in charge of the goods for transport under the transport contract.
8. “Transport operator” means a person that concludes a transport contract with the consignor and that assumes responsibility for the performance of the contract, irrespective of whether or not that person performs the transport itself.

Chapter II. Issuance, content and legal effect of negotiable cargo documents

Article 3. Issuance of a negotiable cargo document

1. If so agreed between the transport operator and the consignor, the transport operator shall issue a negotiable cargo document, in the medium agreed upon, that contains a conspicuous reference to this Convention.
2. The transport operator and the consignor shall agree on the method of issuing a negotiable cargo document, which may include:
 - (a) Entering an annotation signed by the transport operator in each original of the transport document; or
 - (b) Issuing a stand-alone negotiable cargo document where no transport document has been issued or where a transport document has been issued and cancelled.
3. Where the parties have agreed on the method described in paragraph 2(a) of this article, the annotation shall contain, in a conspicuous manner, the indication set out in article 2, paragraph 5, as well as a statement indicating that the transport document is to serve as a negotiable cargo document from a specified date.
4. The negotiable cargo document shall be issued when the goods are taken in charge by the transport operator. If so agreed between the transport operator and the consignor, where a transport document has been issued, the transport operator may issue the negotiable cargo document at a later stage.
5. The transport operator that issues a negotiable cargo document shall not request the issuance of a negotiable transport document in respect of the goods to which the negotiable cargo document relates.
6. The negotiable cargo document may be made out to order or to the order of a named person. If the negotiable cargo document fails to name the person to whose order it is made out, it shall be deemed to be made out to the order of the consignor.

Article 4. Contents of the negotiable cargo document

1. The negotiable cargo document shall indicate:
 - (a) The name and address of the transport operator;
 - (b) The name and address of the consignor;
 - (c) The following particulars as furnished by the consignor:
 - (i) the general nature of the goods;
 - (ii) the leading marks necessary for identification of the goods;
 - (iii) an express statement, if applicable, as to the dangerous character of the goods;
 - (iv) the number of packages or pieces; and
 - (v) the gross weight of the goods or their quantity otherwise expressed;
 - (d) The apparent order and condition of the goods as taken in charge by the transport operator;
 - (e) The place and date of taking in charge of the goods by the transport operator;
 - (f) The place and date of issuance of the negotiable cargo document;
 - (g) The terms of the transport contract, if issued as a stand-alone negotiable cargo document;
 - (h) The place of delivery of the goods;
 - (i) The number of originals of the negotiable cargo document; and
 - (j) A statement as to whether the freight has been prepaid or an indication as to whether the freight is payable at destination.
2. The negotiable cargo document 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;
 - (b) The intended journey route, mode of transport, places of trans-shipment and information enabling tracking of the goods;
 - (c) The law applicable to the transport contract, in particular any international convention to which the transport contract is subject; and
 - (d) Any other particulars that the consignor and the transport operator agree to insert in the negotiable cargo document.

Article 5. Deficiencies in the negotiable cargo document

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 provided that the document nevertheless falls within the definition of negotiable cargo document as set out in article 2, paragraph 5.
2. Nothing in paragraph 1 affects the liability of the transport operator under applicable law for any deficiency in the negotiable cargo document.
3. If the negotiable cargo document includes a date but fails to indicate the significance of that date, the date is deemed to be the date of issuance of the negotiable cargo document.
4. If the annotation referred to in article 3, paragraph 3, does not state the date from which the transport document is to serve as a negotiable cargo document, the transport document is deemed to serve that function from the date of its issuance.
5. If the negotiable cargo document 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.
6. If the negotiable cargo document fails to state the apparent order and condition of the goods at the time the transport operator takes them in charge, it shall be deemed to state that the goods were in apparent good order and condition at the time the transport operator took them in charge.

Article 6. Evidentiary effect of the negotiable cargo document

1. The transport operator may qualify any of the information in the negotiable cargo document furnished by the consignor and referred to in article 4, paragraph 1(c), to indicate that the transport operator does not assume responsibility for the accuracy of such information if it has:
 - (a) Either actual knowledge or reasonable grounds to believe that any such information is false or misleading; or
 - (b) No reasonable means of checking such information.

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 shall constitute prima facie evidence of the taking in charge of the goods by the transport operator as stated in the negotiable cargo document.

3. If the negotiable cargo document has been transferred to a third party acting in good faith in reliance on any of the information therein, proof to the contrary by the transport operator in respect of any information in the negotiable cargo document 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.

Chapter III. Rights and liability of the holder

Article 7. Rights of the holder of a negotiable cargo document

1. Upon the issuance of a negotiable cargo document, the rights provided for in the negotiable cargo document can be exercised only by the holder, which shall include the right to demand delivery of the goods at destination.
2. A person other than the consignor that becomes a holder of the negotiable cargo document shall, by virtue of becoming the holder, have acquired the right to bring a claim against the transport operator and, where applicable, the right of disposal under the transport contract, as well as those rights provided for in the law applicable to the transport contract, as if it were a party to that contract.
3. The transport operator may not invoke against a holder that is not the consignor any terms of the transport contract that are inconsistent with the express terms of the negotiable cargo document.
4. The issuance and initial transfer of possession of a negotiable cargo document, as well as any subsequent transfers, to the holder shall have the same effect, for the purpose of acquisition of rights to the goods, as the physical handing over of the goods.
5. In order to exercise its rights, the holder shall present the negotiable cargo document to the transport operator. If the negotiable cargo document states that more than one original has been issued, the holder shall present all originals to exercise the right of disposal.

Article 8. Missing information, instructions or documents

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

Article 9. Liability of the holder

1. A holder of the negotiable cargo document that is not the consignor and that does not exercise any right in accordance with article 7 does not assume any liability under the transport contract solely by reason of being a holder of the negotiable cargo document.

2. A holder of the negotiable cargo document that is not the consignor and that exercises a right in accordance with article 7 assumes any liability:

(a) Attributable to the person exercising such a right under the law applicable to the transport contract; or

(b) That arises from the exercise of that right under the transport contract to the extent that such liability is ascertainable from the negotiable cargo document;

as if it were a party to the transport contract.

Article 10. Delivery of the goods

1. Delivery of the goods may be demanded from the transport operator only against surrender of the negotiable cargo document by the holder.

2. If more than one original of the negotiable cargo document has been issued, delivery of the goods may be demanded against surrender of one original. If the negotiable cargo document 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.

Article 11. Transfer of rights of the holder

A holder transfers the rights provided for in the negotiable cargo document to another person:

(a) By endorsement either to such person or in blank and by the transfer of possession of the negotiable cargo document to that person; or

(b) By mere transfer of possession of the negotiable cargo document to that person, if the last endorsement is in blank.

Chapter IV. Special conditions for electronic negotiable cargo documents

Article 12. Requirements for an electronic negotiable cargo document

1. A negotiable cargo document may be in the form of an electronic record provided that a reliable method is used:
 - (a) To identify that electronic record as the negotiable cargo document;
 - (b) To render that electronic record capable of being subject to control from its issuance until it ceases to have any effect or validity; and
 - (c) To retain the integrity of that electronic record.
2. The criterion for assessing integrity shall be whether information contained in the negotiable cargo document, including any authorized change that arises from its issuance 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

For the purposes of this Convention, a requirement for information to be contained in a negotiable cargo document is met with respect to an electronic record if the information contained therein is accessible so as to be usable for subsequent reference.

Article 14. Signature requirements

For the purposes of this Convention, a requirement for a negotiable cargo document to be signed is met with respect to an electronic record 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 electronic record.

Article 15. Possession requirements

1. For the purposes of this Convention, a requirement for a negotiable cargo document to be possessed is met with respect to an electronic record if a reliable method is used:
 - (a) To establish exclusive control of that electronic record by a person; and
 - (b) To identify that person as the person in control.
2. A requirement to transfer possession of a negotiable cargo document is met with respect to an electronic record through the transfer of control over the electronic record.

Article 16. Endorsement requirements

For the purposes of this Convention, a requirement for a negotiable cargo document to be endorsed is met if the information required for the endorsement is included in the electronic record and that information is compliant with the requirements set forth in articles 13 and 14.

Article 17. Change of medium

1. If so agreed between the transport operator and the holder, the transport operator shall change the medium of the negotiable cargo document from a paper document to an electronic record or from an electronic record to a paper document provided that a reliable method for the change of medium is used.
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 in its previous medium; and
 - (b) The negotiable cargo document in its new medium shall include a statement that it replaces the negotiable cargo document in its previous medium.
3. Upon a change of medium, all originals of the negotiable cargo document in its previous medium shall be made inoperative and cease to have any effect or validity.
4. A change of medium in accordance with this article shall not affect the rights and obligations of the parties.

Article 18. General reliability standard

The method referred to in this chapter shall be:

(a) As reliable as appropriate for the fulfilment of the function for which the method is being used, in the light of all relevant circumstances, which may include:

- (i) Any operational rules relevant to the assessment of reliability;
- (ii) The assurance of data integrity;
- (iii) The ability to prevent unauthorized access to and use of the system used to implement the method;
- (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

(b) Proven in fact to have fulfilled the function by itself or together with further evidence.

Chapter V. Final clauses

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 signatories.
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 States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to the 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 25 and 26, 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 distribution of competence, including new transfers of competence, specified in the declaration made 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 made 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.

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 made 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 the 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. Reservations

1. A State may declare, at the time of the deposit of its instrument of ratification, acceptance, approval or accession or at any time thereafter, that it will not apply this Convention to any negotiable transport document that evidences or contains a contract for the carriage of goods wholly by sea governed by an international convention to which it is a State Party.
2. Article 23, paragraphs 2 to 4, apply to reservations made under paragraph 1.
3. No reservations are permitted except as expressly authorized in this article.

Article 25. Entry into force

1. This Convention shall enter into force 180 days after the date of the deposit of the tenth instrument of ratification, acceptance, approval or accession.
2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth 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.

Article 26. 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 tenth 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 tenth 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 27. 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.

Explanatory note to the United Nations Convention on Negotiable Cargo Documents¹

I. Overview of the Convention

A. Objective

1. The United Nations Convention on Negotiable Cargo Documents (the “Convention”) establishes a legal framework for negotiable documents of title that represent goods in transit, regardless of the mode of transport. These documents, referred to as “negotiable cargo documents” (“NCDs”), can be issued in either paper or electronic form and are intended for use in both unimodal and multimodal transport. The Convention’s primary objective is to ensure that NCDs, whenever issued upon agreement between the transport operator and the consignor, are recognized across borders by States Parties to the Convention.

2. Traditionally, transport law conventions for rail, road and air transport only envisaged the issuance of “non-negotiable” transport documents.² The Convention extends the concept of “negotiable” documents of title beyond maritime transport to other modes of transport. It establishes uniform rules on the issuance and use of NCDs, including their legal effect, as well as on the rights and liability of NCD holders. These rules are designed to encourage the acceptance of NCDs by banks and other financial institutions as a credit enhancement tool, thereby increasing liquidity for businesses – especially micro-, small and medium-sized enterprises and those

¹ This explanatory note was prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for information purposes. It is not an official commentary on the Convention.

² The following instruments do not envisage the issuance of negotiable transport documents: Uniform Rules concerning the Contract of International Carriage of Goods by Rail, 2016; Agreement on International Railway Freight Communications, 2020; Convention on the Contract for the International Carriage of Goods by Road, 1956, as amended by the Additional Protocol of 2008; and Convention for the Unification of Certain Rules for International Carriage by Air, 1999 (Montreal Convention). 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 (pending entry into force) envisages the issuance of negotiable railway consignment bills. See the note by the Secretariat on the interaction between the draft convention on negotiable cargo documents and existing international transport law conventions ([A/CN.9/WG.VI/WP.115](#)).

businesses in landlocked regions – and accelerating trade flows. They are also designed to facilitate the sale of goods in transit, which is particularly relevant for commodity trade. The Convention further aims to promote the development of door-to-door transportation by enabling the use of a single NCD covering the entire journey. While both paper NCDs and electronic NCDs (referred to as “eNCDs”) could help streamline documentation, improve operational efficiency and facilitate customs clearance, eNCDs offer the added benefit of supporting the digital transformation of global trade.

3. The Convention focuses on the issuance and use of NCDs rather than on the rights and obligations of the parties to the underlying transport contract. This approach helps ensure that the Convention does not interfere with existing legal regimes governing carrier liability under applicable transport law conventions and national laws but instead complements and operates alongside these established frameworks.

4. To promote uniformity in its application, the provisions of the Convention should be interpreted autonomously in light of the international character of the instrument rather than by reference to national law concepts.³

B. Outline

5. Under the Convention, the negotiability of an NCD is established by providing that the rights provided for in the NCD can be exercised only by the holder (art. 7(1)) and are transferred together with the transfer of the NCD (art. 11). In this context, the Convention specifies that an NCD may be transferred either by endorsement and transfer of possession or by mere transfer of possession, if the last endorsement is in blank (art. 11).

6. The Convention also establishes the document of title function of NCDs. The issuance and initial transfer of possession of an NCD, as well as any subsequent transfers, to the holder shall have the same effect, for the purpose of acquisition of rights to the goods, as the physical handing over of the goods (art. 7(4)).

7. To enhance the acceptability of NCDs, the Convention provides the necessary rules on the rights of the holder, which include the right to demand delivery of the goods at destination (arts. 7 and 10). In addition, it provides for the protection of a third party relying on information in the NCD (art. 6(3)).

8. Based on the principle of party autonomy, the Convention envisages the issuance of an NCD only where agreed by the transport operator and the consignor (art. 3(1)). While the Convention allows the parties to determine whether it applies, it does not

³ A/CN.9/1245, para. 19.

allow them to determine how it applies, except where this is expressly permitted. To guide the parties on how to issue NCDs, the Convention lists two methods as examples: (a) converting an existing transport document – such as a consignment note – into an NCD; and (b) issuing a stand-alone NCD where a transport document has not been issued or has been cancelled after issuance (art. 3(2)). In addition, the Convention sets out rules on content requirements for an NCD (art. 4) and prescribes rules to address deficiencies in the NCD as a result of missing information (art. 5).

9. The Convention contains detailed rules to support the use of eNCDs (arts. 12–18). These rules have been drafted with reference to the UNCITRAL Model Law on Electronic Transferable Records⁴ and other legislative texts on electronic commerce prepared by UNCITRAL, including the United Nations Convention on the Use of Electronic Communications in International Contracts (2005)⁵ (the “Electronic Communications Convention”).

C. Drafting history

10. The Convention was prepared by the United Nations Commission on International Trade Law (“UNCITRAL” or the “Commission”) and the provisions therein were inspired by maritime law conventions⁶ and practice, as well as other transport law conventions.⁷

11. The work on NCDs originated in a proposal by the Government of China at the fifty-second session of the Commission (Vienna, 8–19 July 2019) (A/CN.9/998). The proposal highlighted the limited legal and financial function of railway consignment notes, especially when compared with maritime bills of lading, and emphasized the need for a uniform legal instrument to support the use of negotiable documents in multimodal transport. It noted that such an instrument would facilitate trade finance and reduce risks for exporters and importers, particularly in the Euro-Asian transport corridor. At that session, the Commission agreed to include the topic in its work programme and requested the secretariat to conduct exploratory work by researching legal issues related to the use of railway or other consignment notes in international trade.⁸

⁴ See *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17 (A/72/17)*, annex I.

⁵ General Assembly resolution 60/21, annex.

⁶ International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 (the “Hague Rules”), as amended by the Protocol of 1968 and the Protocol of 1979; United Nations Convention on the Carriage of Goods by Sea, 1978 (the “Hamburg Rules”); and United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008 (the “Rotterdam Rules”) (pending entry into force).

⁷ United Nations Convention on International Multimodal Transport of Goods, 1980 (pending entry into force); Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, 2000; and Convention on the contract for international carriage of goods by rail as a first Convention of a system of Unified Railway Law Conventions, 2023 (pending entry into force).

⁸ A/74/17, para. 219.

12. At its fifty-third session (Vienna/online, 14–18 September 2020), the Commission requested its secretariat to start preparatory work towards the development of a new international instrument on negotiable multimodal transport documents.⁹ Subsequently, at its fifty-fourth session (Vienna, 28 June–16 July 2021), the Commission welcomed the preparatory work done by the secretariat and agreed to give high priority to the project for assignment to the next available working group.¹⁰

13. At its fifty-fifth session (New York, 27 June–15 July 2022), the Commission assigned the topic of negotiable multimodal transport documents to Working Group VI.¹¹ The Commission agreed that it was not advisable to limit the mandate of the Working Group or provide detailed instructions on the approach it should adopt, while the deliberations of the Working Group should avoid interference with existing liability regimes for the international carriage of goods.¹² Beyond the expected impact on trade and finance facilitation, it was noted that an additional benefit would be the incentive it provided for the digitalization of transport documents.¹³

14. At its forty-first session (Vienna, 28 November–2 December 2022), the Working Group commenced its consideration of the topic on the basis of document A/CN.9/WG.VI/WP.96, containing preliminary draft provisions on negotiable multimodal transport documents. It agreed to focus on draft provisions concerning negotiability (the “negotiability provisions”) (A/CN.9/1127, para. 9). At its forty-second session (New York, 8–12 May 2023), the Working Group continued its work on the basis of document A/CN.9/WG.VI/WP.98 and completed the first reading of the negotiability provisions. At its fifty-sixth session (Vienna, 3–21 July 2023), the Commission welcomed the progress made by Working Group VI and renamed it “Negotiable Cargo Documents” to reflect the expanded scope of its work beyond multimodal transport to cover unimodal transport.¹⁴

15. At its forty-third session (Vienna, 27 November–1 December 2023), the Working Group continued its work on the basis of document A/CN.9/WG.VI/WP.100. It reviewed draft article 1 on the scope of application and began the second reading of the negotiability provisions (A/CN.9/1164). At its forty-fourth session (New York, 6–10 May 2024), the Working Group continued its work on the basis of document A/CN.9/WG.VI/WP.103 and a submission from the Government of Singapore (A/CN.9/WG.VI/WP.104). It completed the first reading of the provisions on special conditions for eNCDs (the “electronic provisions”) and the second reading of the negotiability provisions (A/CN.9/1170). At its fifty-seventh session

⁹ A/75/17, part two, para. 82.

¹⁰ A/76/17, para. 224.

¹¹ A/77/17, para. 202.

¹² *Ibid.*, para. 201.

¹³ *Ibid.*, para. 200.

¹⁴ A/78/17, paras. 171 and 174(f).

(New York, 24 June–12 July 2024), the Commission welcomed the progress made by the Working Group.¹⁵

16. At its forty-fifth session (Vienna, 9–13 December 2024), the Working Group continued its work on the basis of document [A/CN.9/WG.VI/WP.107](#) and submissions from international organizations ([A/CN.9/WG.VI/WP.108](#), [A/CN.9/WG.VI/WP.109](#), [A/CN.9/WG.VI/WP.110](#) and [A/CN.9/WG.VI/WP.111](#)). It completed the second reading of the electronic provisions and the third reading of the negotiability provisions ([A/CN.9/1199](#)). Broad support was expressed for proceeding on the basis that the final instrument would take the form of a convention ([A/CN.9/1199](#), para. 106).

17. At its forty-sixth session (New York, 17–21 March 2025), the Working Group continued its work on the basis of document [A/CN.9/WG.VI/WP.114](#). It also considered a note on the interaction between the draft convention on negotiable cargo documents and existing international transport law conventions ([A/CN.9/WG.VI/WP.115](#)) and a compilation of comments submitted by international organizations ([A/CN.9/WG.VI/WP.116/Rev.1](#)). The Working Group completed its review of the final clauses, the third reading of the electronic provisions and the fourth reading of the negotiability provisions ([A/CN.9/1205](#)). It requested the secretariat to revise and transmit the draft convention to the Commission for approval at its fifty-eighth session. It also requested the secretariat to circulate the revised draft to all Governments and relevant international organizations for comments, and to compile the comments received for consideration by the Commission ([A/CN.9/1205](#), para. 107).

18. At its fifty-eighth session (Vienna, 7–23 July 2025), the Commission considered the draft convention contained in document [A/CN.9/1213](#) and a compilation of comments submitted by States and international organizations ([A/CN.9/1214](#) and [A/CN.9/1214/Add.1](#)). The Commission finalized the text and, on 11 July 2025, recommended that the draft convention be submitted to the General Assembly for adoption.¹⁶ The General Assembly adopted the Convention on 15 December 2025 by its resolution [80/162](#).

19. At its forty-seventh session (Vienna, 15–19 December 2025), upon request by the Commission¹⁷ the Working Group reviewed the draft explanatory note prepared by the secretariat contained in document [A/CN.9/WG.VI/WP.118](#) ([A/CN.9/1245](#)).

¹⁵ [A/79/17](#), paras. 261 and 262.

¹⁶ [A/80/17](#), para. 128.

¹⁷ *Ibid.*, para. 187.

II. Article-by-article remarks

20. Chapter II of the present explanatory note contains article-by-article remarks on the Convention.

A. Preamble

21. The preamble recites the objective of the Convention and the considerations that led to its adoption. It also illustrates the connection between the Convention and the work of UNCITRAL, under whose auspices the Convention was prepared.

B. Chapter I. General provisions

1. Article 1. Scope of application

(a) General remarks (art. 1(1), chapeau)

22. Article 1 defines the scope of the Convention, confirming its application to the issuance, transfer and legal effects of NCDs that contain a conspicuous reference to the Convention. The term “conspicuous” means that the reference to the Convention is explicit and visible and that it is not hidden among the general conditions. The scope of the Convention does not extend to transport documents governed by existing transport law conventions and national laws unless a clearly visible reference to the Convention is included in those documents.

23. The chapeau of paragraph 1 clarifies that the Convention only applies to NCDs issued in connection with the international transport of goods. The international character of transport requires the goods to pass through different States, which is to be determined at the time of issuance of the NCD, regardless of subsequent changes to the place of delivery.

24. The chapeau further establishes that the Convention applies to NCDs issued for the international transport of goods by one or more modes of transport. This means that the Convention applies regardless of the specific mode(s) used and to both unimodal and multimodal transport.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 38 and 55
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 15, 22 and 25
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 13–20
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 40–45 and 56
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 21–23

(b) Geographical scope (art. 1(1)(a)–(c))

25. Article 1(1) requires there to be a connection with a State Party to the Convention (referred to as a “State Party”). Given that the issuance of an NCD is subject to the agreement of the transport operator and the consignor (art. 3(1)), the word “or” is deliberately used to ensure a broad scope and to avoid unduly limiting the geographic scope of the Convention.

26. Pursuant to subparagraph (a), the Convention applies when the place of taking in charge of the goods by the transport operator, as indicated in the NCD, is located in a State Party. The term “taking in charge” appears in the United Nations Convention on International Multimodal Transport of Goods and the United Nations Conference on Trade and Development/International Chamber of Commerce Rules for Multimodal Transport Documents. It covers situations where the transport operator assumes responsibility for the goods even without their physical receipt. The Convention, however, does not address questions of agency and legal representation.

27. Pursuant to subparagraph (b), the Convention applies when the place of delivery of the goods by the transport operator, as indicated in the NCD, is located in a State Party. The place of delivery of the goods is relevant because the buyer and its bank are likely to be located there. Even if the actual place of delivery changes following an instruction from the holder, the Convention continues to apply when the place of delivery as indicated in the NCD is located in a State Party.

28. Pursuant to subparagraph (c), the Convention applies when the place of issuance of the NCD, as indicated in the NCD, is located in a State Party. Given the practical difficulty of identifying the place of issuance in an electronic context, paragraph 1(c) refers to the place of issuance as indicated in the NCD. This formulation is not intended to allow parties to artificially designate a place that has no real connection with the underlying transaction merely to trigger the application of the Convention.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , para. 41
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 16–21
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 21 and 22
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 33–35
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 24–26

(c) Substantive scope (art. 1(2) and (3))

29. Paragraph 2 clarifies that the Convention does not override existing legal regimes relating to the regulation and control of transport operations. For example, customs clearance requirements, which are governed by national customs laws and international instruments, such as the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures¹⁸ (the “revised Kyoto Convention”), remain fully applicable.

30. Given that the Convention applies to the issuance, transfer and legal effects of NCDs, paragraph 3 affirms that the Convention does not modify the rights and obligations of the transport operator, consignor or consignee or their liability under applicable international conventions and national laws governing transport contracts. The provision is subject to the proviso “except as otherwise provided for [in the Convention]”. This clarifies that where the negotiability of the NCD is concerned, the rights of the holder need to be respected regardless of deviating provisions in the applicable international convention or national law granting specific rights to the consignor or the consignee. Once the transport operator and the consignor agree to issue an NCD, the document issued will carry the distinct legal features of an NCD under the Convention, including its document of title function (art. 7(4)), and the rights and liability of the holder will be governed by articles 7 and 9 of the Convention.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 23–26
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 23–26
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 36–39 and 113–115
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 27 and 28

¹⁸ United Nations, *Treaty Series*, vol. 2370, No. 13561.

2. Article 2. Definitions

(a) Definition of “consignor”

31. The “consignor” is the person that enters into a transport contract with the transport operator. It excludes any person that merely delivers goods to the transport operator without being a party to the transport contract.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 30 and 31
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 27
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 46

(b) Definition of “consignee”

32. The “consignee” refers to the person named in the transport contract as the person entitled to take delivery of the goods (art. 2(2)). Since a transport contract may exist even without the issuance of a transport document, the definition of “consignee” is not linked to the person named in the transport document.

33. Importantly, under the Convention, the consignee may not always be the person entitled to take delivery of the goods. Once an NCD is issued, the rights provided for in the NCD – including the right to demand delivery of the goods at destination – can be exercised only by its holder (art. 7(1)). Article 10 reinforces this principle by stipulating that the holder could demand delivery of the goods from the transport operator by surrendering the NCD.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 32 and 33
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , para. 75
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 27
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 47
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 30

(c) Definition of “electronic record”

34. The term “electronic record” is used in the definition of “negotiable cargo document” and throughout chapter IV of the Convention.

35. The definition of the term is identical to that in article 2 of the Model Law on Electronic Transferable Records and carries the same meaning. It acknowledges that an electronic record may, though need not, be of a composite nature, potentially encompassing information generated either before or after the record itself is created (e.g. information related to endorsement), provided that such information is logically associated with the other information constituting the record or is otherwise linked together so as to become part of the record. It also recognizes the possibility that, in certain electronic records management systems, various data elements may, taken together, provide the information constituting the electronic record, but with no discrete record constituting in itself an NCD.

36. The reference to information being “logically associated” refers to the linking of data elements by software application. It is therefore concerned with computer logic and not with human logic.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 34
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 48 and 49
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 31

(d) Definition of “holder”

37. The term “holder” is a key concept in the Convention. It is used throughout and its meaning is similar to the definition in article 1(10)(a) of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea¹⁹ (the “Rotterdam Rules”).

38. The “holder” may be a person named in the NCD as the consignor. In that case, the consignor is the first holder of the NCD. If the NCD is transferred to a third person, the holder is the person that is in possession of the NCD and is identified in the NCD as the person to whose order it is issued or as the person to which the NCD is duly endorsed. When in possession of the NCD, the consignee can be the holder if the

¹⁹ General Assembly resolution [63/122](#), annex.

NCD is issued to the order of the consignee or duly endorsed to the consignee. If the NCD is endorsed in blank, the holder is the person that is in possession of that NCD.

39. For “holders” of eNCDs, article 15 sets out a functional equivalence rule for possession (see paras. 191–196 below).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 34–37
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 76–79
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 34, 53 and 54
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 28 and 29
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 50 and 51

(e) Definition of “negotiable cargo document”

40. Adopting a medium-neutral approach, the term “negotiable cargo document” encompasses both paper documents and electronic records, and the same set of requirements apply to each format.

41. The definition contains three elements that must be present in order for a document to qualify as an NCD. The first element is that the document must be signed and issued by the transport operator. The signature reflects the transport operator’s intent to be bound by the terms of the NCD. Issuance marks the moment at which the NCD becomes legally effective. The second element is that the document must contain wording such as “to order” or “negotiable” or an equivalent expression to signal negotiability. Consequently, an NCD is different from a straight bill of lading, which is non-negotiable. The third element is that the document must indicate 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. The second and third elements reflect the negotiability of the NCD.

42. The three elements defining a “negotiable cargo document” carry distinct legal weight compared with the information requirements listed in article 4. While article 4(1) states that an NCD must include certain information, article 5(1) clarifies that the absence of any such information does not undermine the document’s legal effect or validity as an NCD – so long as it otherwise meets the definition of “negotiable cargo document”.

43. Contrary to the definition of “transport document” (art. 2(7)), the definition of “negotiable cargo document” does not include any requirement for it to evidence or contain the transport contract. The link between the NCD and the transport contract is, however, assured through other provisions of the Convention. Pursuant to article 3(2)(a), an NCD may be issued by entering an annotation signed by the transport operator in each original of the transport document. In such a case, an NCD is effectively the same as the transport document, which evidences or contains the transport contract. Under article 3(2)(b), an NCD may also be issued as a stand-alone document, where no transport document has been issued or where a transport document had been issued and cancelled. While article 4(1)(g) requires the terms of the transport contract to be included in a stand-alone NCD, article 5(1) clarifies that the absence of such information does not automatically invalidate the document’s status as an NCD, provided that it still meets the definition set out in article 2(5).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 39–43
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 69 and 74
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 80–83 and 108
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 30–33
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 52 and 53
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 32 and 33

(f) Definition of “transport contract”

44. The term “transport contract” is relevant to the definitions of “consignor”, “consignee”, “transport document” and “transport operator”. The consignor and the transport operator are the parties to the transport contract.

45. According to the definition, a transport contract exists only when the transport operator undertakes to perform international transport of goods for reward. The phrase “undertakes to perform” excludes instances whereby a person merely undertakes to organize the transport. The word “reward” appears in existing international conventions concerning the transport of goods by railway, road and air.²⁰ It is broader in scope than freight charges and captures a single price quote for all types of services in logistics contracts concluded by freight forwarders.

²⁰ See the Uniform Rules concerning the Contract of International Carriage of Goods by Rail (art. 1.1), the Convention on the Contract for the International Carriage of Goods by Road (art. 1.1) and the Montreal Convention (art. 1.1).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 44–47 and 53
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 88–90
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 35
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 54
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 34

(g) Definition of “transport document”

46. The Convention uses the term “transport document” to distinguish an NCD from those documents that have been issued under other transport law conventions or national law. The term “transport document” is defined broadly to ensure that transport documents issued under those other conventions or national law qualify as transport documents under the Convention. This is important because an NCD can be issued by entering an annotation in an existing transport document (see art. 3(2)(a) and (3)).

47. The definition is intended to be as simple as possible and make it explicit that the transport document is issued under the transport contract without entering into details as to who has issued the document, whether or not it has to be signed by both parties to the transport contract and what obligations it reflects. The definition thus takes into account the fact that, for instance, non-negotiable transport documents are made out by the consignor, although they need to be signed by the transport operator in order to obtain evidentiary value.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 48–51
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 91–94
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 35
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 54
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 35

(h) Definition of “transport operator”

48. The definition of “transport operator” is similar to that of “multimodal transport operator” in article 1(2) of the United Nations Convention on International Multimodal Transport of Goods. It is broad in scope and captures the diversity of commercial practice such as non-vessel operating carriers.

49. The definition contains two elements: (a) the transport operator is a person that concludes a transport contract with the consignor; and (b) it is a person that assumes responsibility for the performance of the transport contract. Thus, any person that merely organizes the transport but does not assume responsibility for the performance of the transport contract does not fall under the definition of “transport operator” and thus cannot issue NCDs. The phrase “assumes responsibility for the performance of the contract” does not necessarily mean that the transport operator needs to perform the transport itself, which is clarified by the phrase “irrespective of whether or not that person performs the transport itself”.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 10–14, 46, 52 and 53
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 36–38
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 54
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 36

C. Chapter II. Issuance, content and legal effect of negotiable cargo documents

1. Article 3. Issuance of a negotiable cargo document

50. Article 3 sets out the rules for the issuance of an NCD, which is entirely based on mutual agreement between the transport operator and the consignor. This principle of party autonomy ensures that the issuance of an NCD under the Convention is not imposed but rather is done voluntarily, reflecting the commercial needs and preferences of the parties involved.

(a) Condition for issuance (art. 3(1))

51. Paragraph 1 reflects the principle of party autonomy under which the issuance of an NCD is subject to the agreement of the transport operator and the consignor, as

parties to the transport contract. Such agreement must cover two aspects: (a) whether to issue an NCD that, on the basis of a conspicuous reference to the Convention, falls under the Convention; and (b) the chosen medium for the NCD – either as a paper document or an electronic record. The requirement for a “conspicuous reference” links back to article 1(1), which stipulates that such a reference on the NCD is necessary to trigger the application of the Convention (see para. 22 above).

52. Paragraph 1 does not specify to whom the NCD should be issued. Depending on the circumstances, the NCD may be issued to the consignor or to a third party identified as the consignor in the NCD.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 13 and 14
Report of the forty-second session of Working Group VI	A/CN.9/1134 , para. 56
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 27, 29 and 32
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 77
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 40
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 55–57
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 15 and 37

(b) Method of issuance (art. 3(2) and (3))

53. Paragraphs 2 and 3 address the methods by which NCDs may be issued. The term “shall” in the chapeau of paragraph 2 means that the transport operator and the consignor are required to reach an agreement on the method of issuance. By contrast, the phrase “may include” provides flexibility in the choice of methods. It makes clear that the examples provided in paragraph 2 are illustrative, allowing the parties to adopt any method that suits their operational needs.

Negotiable cargo document in the form of an annotated transport document

54. Paragraph 2(a) provides that an NCD can be issued by entering an annotation signed by the transport operator in each original of the transport document. This means that any transport document (either negotiable or non-negotiable) can be converted into an NCD if so agreed between the transport operator and the consignor, provided that the annotated document meets the definition of “negotiable cargo document” set out in article 2(5).

55. Paragraph 3 provides the rule on the required content of the annotation in order for a transport document to be converted into an NCD. Firstly, paragraph 3 requires the annotation to contain, in a conspicuous manner, the indication set out in the definition of “negotiable cargo document” in article 2(5). That requirement is relevant for situations where the parties wish to convert a non-negotiable transport document into an NCD. In that case, the annotation must contain wording such as “to order” or “negotiable” or an equivalent expression to indicate that the goods as specified in the NCD have been taken in charge by the transport operator and consigned to the order of the holder. This ensures that the annotated transport document is clearly marked as a negotiable document in order for it to be treated as an NCD. Secondly, paragraph 3 requires the annotation to indicate that the transport document (whether negotiable or non-negotiable) is to serve as an NCD from a specified date. If the annotation fails to state the date from which the transport document is to serve as an NCD, the default rule in article 5(4) applies whereby the transport document is deemed to serve that function from the date of its issuance (see para. 102 below).

56. In paragraph 2(a), the phrase “entering an annotation signed by the transport operator” requires the annotation to be signed by the transport operator separately from the transport document. The signature requirement ensures that the transport operator is responsible for the annotation, not the consignor, as might be the case for consignment notes issued under some transport law conventions. It should be read together with article 14, which explains how such a requirement is met with respect to an electronic record.

57. The reference to “each original” imposes an obligation on the transport operator in respect of how annotations should be entered. A failure to annotate all originals of the transport document does not invalidate the NCD, provided that it satisfies the definition in article 2(5). The determination of what constitutes an original transport document is governed by the applicable transport law convention or national law. The Convention does not address the legal consequences of failure to comply with the obligation to enter an annotation in each original of the transport document. However, the transport operator will likely bear the legal consequences of any damages caused under relevant applicable law (including the applicable international convention and national law), which may vary depending on whether the transport document indicates that it is issued in multiple originals.

58. The phrase “each original of the transport document” makes clear that the document to be annotated should not be any transport document, but “the” transport document that evidences or contains the transport contract between the transport operator and the consignor. For instance, in the context of multimodal transport, any person acting as contractual carrier can issue an NCD by annotating a multimodal transport document that evidences or contains the transport contract between that person and the consignor. That person cannot issue an NCD by entering an annotation

in a transport document issued by an actual carrier performing part of the carriage that evidences or contains a separate transport contract between that person and the actual carrier.

Stand-alone negotiable cargo document

59. Paragraph 2(b) contemplates two scenarios for the issuance of a stand-alone NCD independent of any pre-existing transport document. Firstly, a stand-alone NCD can be issued where no transport document has been issued. In some transactions, the parties may agree not to issue a transport document. In some other transactions, the issued transport document may not meet the definition of a transport document under applicable transport law conventions. In any case, the absence of a transport document does not prevent the parties from agreeing to issue an NCD under the Convention. It is envisaged that pre-printed templates (such as multimodal bill of lading templates prepared by industry associations) could be used for issuing stand-alone NCDs.

60. Secondly, a stand-alone NCD can be issued where a transport document has been issued and then cancelled. For example, after a maritime bill of lading has been issued, if the parties wish to use an NCD to facilitate the movement of goods via inland transport due to unforeseen circumstances, the parties can cancel the maritime bill of lading and issue a stand-alone NCD.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 16–22
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 28, 29 and 57–72
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 28–40 and 66–68
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 95–99, 100, 102, 113 and 114
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 79–84
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 42–46 and 52
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 58–62
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 38–43

(c) When to issue (art. 3(4))

61. Paragraph 4 establishes the default rule on when to issue an NCD, namely when the goods are taken in charge by the transport operator. This aligns with the definition of “negotiable cargo document” (see para. 41 above) and standard commercial

practice, where the moment of taking in charge marks the beginning of the transport operator's responsibility.

62. In recognition of the diversity of logistics operations and documentation work-flows, paragraph 4 allows for the later issuance of an NCD if the parties so agree and provided that a transport document has already been issued, which records the condition of the goods at the time of shipment. This flexibility is particularly useful where a non-negotiable transport document is converted into an NCD in accordance with article 3(2)(a). It could also facilitate trade finance arrangements requiring NCDs at a specific milestone.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , para. 15
Report of the forty-second session of Working Group VI	A/CN.9/1134 , para. 56
Report of the forty-third session of Working Group VI	A/CN.9/1164 , para. 79
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 78
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 40 and 41
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 63 and 64

(d) Safeguard against multiple negotiable documents (art. 3(5))

63. Paragraph 5 is intended to avoid situations where multiple negotiable transport documents are issued under different transport contracts in respect of the same goods. Negotiable transport documents may serve as documents of title, enabling the lawful transfer of ownership and/or control over goods in transit. The issuance of more than one negotiable transport document for the same goods creates confusion over rightful ownership and/or control over the goods, the risk of double pledging or fraudulent transfer, as well as legal uncertainty for holders that are not the consignor, for example, banks and insurers.

64. Paragraph 5 establishes a strict prohibition: once a transport operator issues an NCD in respect of certain goods, that transport operator shall not request the issuance of a negotiable transport document in respect of the same goods. For instance, in the context of multimodal transport, where a freight forwarder acts as the contractual carrier, that freight forwarder is prohibited from requesting the issuance of a negotiable transport document, such as a negotiable bill of lading, from any carrier performing part of the carriage if the freight forwarder has issued an NCD with regard to the same goods. This rule addresses a key concern arising under article 3(3) of the International

Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 (the “Hague Rules”), as amended by the Protocol of 1968 and the Protocol of 1979, which obligates maritime carriers to issue a bill of lading upon the shipper’s request. In such cases, the freight forwarder may be considered to be the shipper vis-à-vis the maritime carrier. To prevent the duplication of negotiable documents and the resulting legal uncertainty, paragraph 5 bars the transport operator from exercising the right to request a negotiable bill of lading if it has issued an NCD, thereby preserving the singularity and integrity of negotiable documents throughout the transport chain.

65. Paragraph 5 does not expressly prohibit a transport operator that has issued an NCD from issuing another negotiable transport document for the same goods, as such a scenario is highly improbable. A negotiable transport document serves as evidence that the transport operator has taken charge of the goods and is typically issued against the physical handing over of those goods. Once the goods have been handed over and an NCD has been issued, the same goods cannot be handed over again to justify the issuance of another negotiable transport document by the same transport operator. For the same reason, the risk of any other person (such as the consignor or the holder) requesting the issuance of another negotiable transport document after the goods have been handed over to the transport operator is also highly improbable. Therefore, although not explicitly barred, in practice the issuance of multiple negotiable documents by the same operator for the same goods is effectively precluded by the operational and evidentiary nature of such documents.

66. The Convention does not address the legal consequences of a breach of the obligation set out in paragraph 5, particularly where the transport operator requests the issuance of a negotiable transport document. Concerns such as the double presentation of bills of lading to banks in connection with letters of credit or the circulation of fraudulent duplicates of negotiable instruments are not unique to NCDs. These risks have long existed in international trade and are traditionally addressed under applicable domestic law, including rules governing documentary fraud, title conflicts and banking practices. Accordingly, any future disputes or liabilities arising from such breaches in the context of NCDs will be resolved using the same legal rules that have governed the double presentation of documents and fraudulent document duplication in transport and trade finance settings.

67. Paragraph 5 does not modify or disrupt the existing logistics practice whereby house bills of lading issued by freight forwarders coexist with master bills of lading issued by maritime carriers in respect of the same goods. House bills are typically issued by freight forwarders, which coordinate the entire transport chain and act as contractual carriers vis-à-vis the consignor. These documents may be negotiable, depending on how they are made out. In contrast, master bills of lading are issued by the maritime carrier responsible for the sea leg of the journey and can be made out as straight bills of lading, naming the freight forwarder as the consignee. As such, master

bills are generally non-negotiable, serving primarily to document the carriage and delivery obligations between the maritime carrier and the freight forwarder.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , para. 65
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , para. 101
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 85–87
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 47–49
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 65
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 44

(e) Order document (art. 3(6))

68. Paragraph 6 provides that an NCD shall be an order document. In addition, it outlines the permissible types of order documents: it may be made out either to order or to the order of a named person. If no person is named, the NCD is deemed to be made out to the order of the consignor, thereby maintaining its negotiable nature and ensuring a clear starting point for the chain of title. Notably, paragraph 6 does not permit bearer documents, as they are generally considered high risk due to their transferability without endorsement. However, article 11(b) does allow for blank endorsements, which enable transfer by delivery while preserving the traceability of the document.

69. In practice, this flexibility is particularly important for banks and commodity traders, which may prefer not to have their names appear on the NCD for commercial or confidentiality reasons. By allowing NCDs to be made out to order without naming a specific party, paragraph 6 accommodates such preferences while still supporting the negotiability required for financing and trading operations. This reflects a pragmatic balance between legal certainty, commercial utility and risk management.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 23 and 24
Report of the forty-second session of Working Group VI	A/CN.9/1134 , para. 73
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 41–44
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 103 and 104

<i>Document</i>	<i>Reference</i>
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 53, 54 and 88
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 50 and 51

2. Article 4. Contents of the negotiable cargo document

(a) General remarks

70. Article 4 outlines the content requirements for an NCD, distinguishing between mandatory and optional elements. Article 4(1) lists mandatory elements that the transport operator is expected to include when issuing an NCD. However, the absence of one or more mandatory particulars under article 4(1) does not automatically invalidate the document or affect its legal effect as an NCD – provided that it still meets the definition set out in article 2(5) (art. 5(1)). Such deficiencies may expose the transport operator to liability under applicable domestic law (art. 5(2)).

71. By contrast, article 4(2) lists optional elements. These elements may be included at the discretion of the parties and serve to supplement the document with additional operational or legal information.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 27–30
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 75, 76 and 78

(b) Mandatory content (art. 4(1))

Name and address of the transport operator (art. 4(1)(a))

72. As the transport operator is the person contractually responsible for the transport of goods, the name and address of the transport operator is important information for third parties relying on the NCD.

73. In the maritime context, correctly identifying the carrier is particularly important. Disputes have arisen in practice where carriers operate through agents or intermediaries, leading to uncertainty over who is legally bound by the transport contract. For example, a shipping line may authorize a local agent to issue transport documents or conclude contracts, and the agent's name may appear on the documentation, creating ambiguity about whether the agent or the principal carrier is liable. Including the correct name and address of the transport operator in the NCD helps avoid such

confusion, ensures that claims are directed to the appropriate party and supports the enforceability of contractual obligations.

Name and address of the consignor (art. 4(1)(b))

74. Since the consignor is the person with whom the transport operator has concluded the transport contract, identifying the name and address of the consignor is helpful for clarifying the contractual relationship between the two parties. Parties may agree to identify a party other than the original consignor as the consignor in the NCD.

Description of the goods as furnished by the consignor (art. 4(1)(c))

75. Information describing the goods is essential for identifying them, enabling the NCD to function as a representation of the goods. However, article 6 allows the transport operator to qualify the particulars covered by subparagraph (c) by indicating that it does not assume responsibility for their accuracy under certain circumstances (see paras. 105–113 below). The rationale for this qualification is grounded in the fact that these details are provided by the consignor and are not based on the transport operator's own inspection or assessment.

Apparent order and condition of the goods (art. 4(1)(d))

76. The apparent order and condition of the goods at the time of their taking in charge by the transport operator are critical for establishing the baseline condition of the goods. Unlike the descriptive particulars under subparagraph (c), which are provided by the consignor, the statement of apparent condition is based on the transport operator's own inspection and assessment at the time of taking in charge. It concerns what can be observed externally without opening packages or conducting technical analysis. Because this information is derived from the transport operator's own observations, it is not subject to qualification under article 6.

77. Assessing the apparent order and condition of the goods is an obligation of the transport operator, which is expected to record those details accurately in the NCD. This obligation is reinforced by the rule in article 5(6), which provides that if the NCD fails to state the apparent order and condition of the goods, it shall be deemed to state that the goods were in apparent good order and condition at the time they were taken in charge (see para. 103 below).

Place and date of taking in charge (art. 4(1)(e))

78. The date on which the transport operator takes the goods in charge is essential for establishing when the transport operator's responsibility begins. The place of taking in charge may play a critical role in determining the applicability of the Convention (see para. 26 above). Its accurate inclusion in the NCD ensures that parties can determine whether the Convention governs the document's issuance, transfer and legal effects.

79. Moreover, the date of taking in charge serves as the starting point for the transport operator's obligations and may affect the calculation of delivery deadlines, limitation periods and liability exposure. Such information is also important for assessing the performance of obligations under the relevant sales contract. To preserve legal certainty, article 5(5) provides that if the NCD does not state the date of taking in charge, the goods are deemed to have been taken in charge on the date of issuance of the NCD (see para. 102 below).

Place and date of issuance (art. 4(1)(f))

80. Indicating the place and date of issuance of the NCD serves multiple legal and operational purposes. The place of issuance may be relevant for determining jurisdiction and applicable law. The place of issuance as stated in the NCD is also one of the criteria for triggering the application of the Convention under article 1(1)(c) (see para. 28 above).

81. The date of issuance is equally significant. It provides a reference point for various legal effects, including the commencement of negotiability and the sequencing of endorsements. To ensure legal certainty, article 5(3) and (4) establish two rules that apply respectively when a date is included in the NCD but its significance is unclear, and when a transport document is converted into an NCD with the annotation not specifying the effective date (see para. 102 below).

Terms of the transport contract (art. 4(1)(g))

82. This subparagraph only applies where a stand-alone NCD is issued and functions as the primary written record of the transport contract. In such cases, the NCD is expected to reflect the terms of the transport contract, ensuring that the rights and obligations of the parties to the transport contract are clearly set out in the NCD itself.

83. When an NCD is issued by annotating an existing transport document under article 3(2)(a), the link to the transport contract is reinforced as the "transport document" evidences or contains the transport contract. As contemplated in article 3(2)(b), where a transport document has not been issued or has been cancelled and a stand-alone NCD is issued, the NCD assumes this evidentiary role.

84. The terms of the transport contract are essential in determining the rights and liability of a holder of the NCD that is not the original consignor. Including these terms within the NCD is crucial to help ensure that holders can understand and exercise their rights while also assuming any liabilities and obligations that arise from their actions (including those relating to the regulation and control of transport operations addressed in article 1(2)).

85. When the transport operator requires information, instructions or documents relating to the goods in order to perform its obligations, it must first seek them from the holder under article 8. If the holder fails to provide the necessary input within a reasonable time despite reasonable efforts by the transport operator, the fallback is the transport contract itself. This underscores the transport contract's role not only as the source of the holder's rights and liability but also as the guiding framework for operational decisions made by the transport operator in the circumstances set out in article 8 (see paras. 141–144 below).

Place of delivery (art. 4(1)(h))

86. The place of delivery of the goods being in a State Party is one of the criteria that triggers the application of the Convention under article 1(1)(b) (see para. 27 above) and may be relevant for determining jurisdiction and applicable law. The place of delivery of the goods is the place where the holder can present the NCD and demand delivery of the goods from the transport operator. In practice, goods may be sold while in transit, and their final place of delivery can change. Nevertheless, the place of delivery is ordinarily established at the time the transport document is issued and should thus be indicated in the NCD.

Number of originals (art. 4(1)(i))

87. This subparagraph requires the NCD to indicate the number of originals of the NCD. This applies even when only one original is issued to avoid ambiguity and to confirm that no other originals exist.

88. This reflects established commercial practice, particularly in maritime transport where multiple originals of a bill of lading are commonly issued. The number of originals is especially important in financing arrangements. If multiple originals exist and only one original is held by a bank, there is a risk that another holder could claim the goods. Clearly stating the number of originals helps mitigate the risk of losing control over the goods.

89. This subparagraph complements article 3(2)(a) on the method of issuance, which permits an NCD to be issued by entering an annotation signed by the transport operator in “each original” of the transport document (see para. 57 above). Specifying the number of originals ensures that this annotation process is carried out transparently and consistently across all originals. The requirement also supports article 17, concerning the change of medium of the NCD, which provides that all originals in the previous medium must be surrendered before the change can take effect (see para. 203 below). Clearly stating the number of originals facilitates compliance with this rule and helps prevent uncertainty during the change from paper document to electronic record or vice versa.

90. The indication of the number of originals is closely linked to the holder's exercise of rights. Where multiple originals are issued, the holder must present all originals to exercise the right of disposal (art. 7(5)). However, delivery of the goods may be demanded against the surrender of one original (art. 10) (see paras. 156–159 below).

Freight payment terms (art. 4(1)(j))

91. Freight payment terms indicate whether freight is prepaid or payable at destination and thus provide clarity to all parties involved regarding the financial obligations attached to the goods. For example, the term “freight prepaid” confirms that the transport operator has already received payment and that no further freight charges are due upon delivery. The phrase “freight payable at destination” signals that the freight charges still need to be settled in order for the holder to receive the goods. This information is particularly important for the holder, which may be unaware of the original payment arrangements. It affects the holder's ability to claim delivery and may influence the commercial value of the NCD.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 31–50
Report of the forty-second session of Working Group VI	A/CN.9/1134 , para. 77
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 48–60
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 107–110
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 97–103
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 52 and 53
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 66–69 and 82
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 45–53

(c) Optional content (art. 4(2))

Date or period of delivery (art. 4(2)(a))

92. If the consignor and the transport operator agree on the date or the period within which the delivery will be made, including that date or period in the NCD offers practical benefits for parties relying on the NCD. For the holder, it provides clarity regarding expected delivery timelines, which may influence decisions related to resale, financing or logistics. For banks, it helps with the assessment of the reliability and timing of the underlying trade finance transaction.

Journey, mode of transport and tracking information (art. 4(2)(b))

93. Including journey details and the mode of transport (e.g. maritime, rail, road or air) in the NCD serves several practical purposes. It helps parties anticipate transit times, assess risks and plan downstream logistics. Indicating trans-shipment points provides insight into where the goods may be handled or transferred, which is relevant for assessing potential delays, exposure to damage or customs procedures. Providing tracking details – such as reference numbers, digital access codes or platform links – supports real-time visibility and enhances supply chain coordination.

94. For the holder, such information can be valuable for managing expectations and making informed decisions about resale, financing or inventory planning. For banks, insurers and other third parties, it contributes to risk assessment and operational oversight.

Law applicable to the transport contract (art. 4(2)(c))

95. Transport contracts are often subject to complex legal frameworks, including international conventions and national laws. Including a reference to the applicable law helps clarify the legal regime governing the transport operator's obligations, liability and dispute resolution mechanisms. This is particularly useful in cross-border and multimodal transport.

96. For a holder other than the consignor, knowing which legal regime governs the transport contract is essential for understanding both the scope of its rights and the extent of its potential liability (see arts. 7(2) and 9(2)(a)). For banks, insurers and third parties, it helps with the assessment of legal risk and the determination of the enforceability of claims. These entities often rely on the NCD in the context of trade finance, cargo insurance and commercial transactions, where clarity about the governing legal framework is particularly important.

Any other particulars (art. 4(2)(d))

97. This provision offers flexibility, allowing the NCD to be tailored to the specific needs of the transaction. The other particulars may include specific handling instructions, customs-related information and insurance references.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 51 and 52
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 61–65
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 111 and 112

<i>Document</i>	<i>Reference</i>
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 104
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 54
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 70 and 71
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 54

3. *Article 5. Deficiencies in the negotiable cargo document*

98. Article 5 addresses the legal consequences arising from the absence of content from an NCD, specifically the absence of one or more of the mandatory particulars listed in article 4(1). It provides a balanced approach that preserves the legal effect or validity of the document as an NCD while maintaining accountability for its content.

(a) *Preserving validity despite missing particulars (art. 5(1))*

99. Paragraph 1 clarifies that the absence of one or more of the particulars required under article 4(1) – such as the place of delivery, number of originals or freight payment terms – does not invalidate the document’s status as an NCD, provided that it still meets the definition set out in article 2(5).

100. This rule reflects a functional approach: negotiability depends on the ability of the NCD to confer rights to the holder and to be transferred by endorsement or delivery, rather than on its strict formal completeness. It ensures that omissions or clerical errors do not undermine negotiability or disrupt commercial transactions, especially in fast-paced or high-volume trading environments.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 53–57
Report of the forty-second session of Working Group VI	A/CN.9/1134 , para. 78
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 28 and 70–74
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 105
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 33 and 55

(b) Liability for deficiencies (art. 5(2))

101. Paragraph 2 makes clear that preservation of the negotiability and validity of the NCD in accordance with paragraph 1 does not exempt the transport operator from being liable for any deficiency in the NCD under applicable law, including the applicable transport law convention or national law. If the absence of a required particular results in loss or damage or hinders the holder's ability to exercise its rights, the transport operator may be held liable. This provision reinforces the importance of accurate and complete documentation while ensuring that the Convention does not shield transport operators from consequences arising under international conventions or national law.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 105
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 56
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 55

(c) Deeming provisions (art. 5(3)–(6))

102. Pursuant to paragraph 3, if the NCD includes a date but does not clarify its significance, that date is deemed to be the date of issuance of the NCD. This rule ensures that parties relying on the NCD have a clear reference point for determining when the NCD became effective. In accordance with paragraph 4, if the annotation (which deals with the conversion of a transport document into an NCD) does not specify the date from which the transport document serves as an NCD as required under article 3(3), the transport document is deemed to serve that function from the date of its issuance. In accordance with paragraph 5, if the NCD does not include the date on which the transport operator took the goods in charge, the goods are deemed to have been taken in charge on the date of issuance of the NCD.

103. Paragraph 6 is based on existing rules in other transport law conventions and is closely linked to article 4(1)(d). Where the NCD, contrary to the requirement in article 4(1)(d), fails to state the apparent order and condition of the goods at the time they were taken in charge by the transport operator, the NCD is deemed to state that the goods were in apparent good order and condition at that time. Such a statement does not, however, preclude the holder from submitting evidence that the goods were not in such order or condition at the time they were taken in charge. At the same time, the rule protects the holder's expectation that unless otherwise noted in the NCD, the transport operator has received the goods in acceptable condition. The application of the rule only to the apparent order and condition of the goods takes into account the

fact that the transport operator may discover deficiencies without intrusive inspection. The rule does not extend to hidden defects, thus preserving a fair balance between transport operators' obligations and practical limitations.

104. Paragraphs 3 to 6 reduce ambiguity and help prevent disputes over timing and the apparent order and condition of the goods, which can affect the exercise of rights and the enforceability of claims. By establishing clear rules, the Convention enhances the reliability of the NCD as a legal and commercial instrument, even when the information therein is incomplete or imprecise.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 58–63
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 53 and 75–80
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 115 and 116
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 57
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 72 and 73
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 56 and 57

4. Article 6. Evidentiary effect of the negotiable cargo document

105. Article 6 sets out the rules governing the evidentiary value of an NCD. It addresses how information contained in the NCD may be relied upon by a holder, and under what conditions the transport operator may limit or rebut that evidentiary effect.

(a) Scope of qualifiable information (art. 6(1), chapeau)

106. Article 6(1) concerns particulars typically provided by the consignor, such as the general nature, identification marks, quantity and weight of the goods, as referred to in article 4(1)(c). These particulars, when included in the NCD, may be relied upon by any third party acting in good faith as evidence of the goods' characteristics.

107. Article 6(1) recognizes that the transport operator may not always be in a position to verify the accuracy of such information. To prevent unjust liability or misrepresentation, article 6(1) allows the transport operator to qualify such information under certain circumstances.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 67 and 68
Report of the forty-third session of Working Group VI	A/CN.9/1164 , para. 81
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 58

(b) Circumstances for qualification (art. 6(1)(a) and (b))

108. The transport operator may include a qualification to indicate that it does not assume responsibility for the accuracy of the information provided by the consignor. However, it may only do so under the following two circumstances. Firstly, when the transport operator either has actual knowledge or reasonable grounds to believe that the information is false or misleading. If the transport operator knows or suspects that the consignor's description of the goods is inaccurate but does not qualify the description, it may become liable for the loss of or damage to the goods. However, such damage is limited to damage to the goods and excludes consequential damage and costs such as those arising from dangerous goods. Secondly, when the transport operator has no reasonable means of checking the information. The phrase "reasonable means" should be interpreted in light of the specific mode of transport and the relevant industry. If the transport operator lacks the practical ability to verify the goods (e.g. they are in sealed containers), it may qualify the stated particulars.

109. These safeguards serve to protect the transport operator from liability for unverifiable or potentially misleading information. Since subparagraphs (a) and (b) already set out the circumstance in which the transport operator may qualify information provided by the consignor, the transport operator is not required to state the grounds for including the qualification. However, in practice, a transport operator is expected to indicate in the NCD the relevant subparagraph pursuant to which the qualification is made.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 67 and 68
Report of the forty-third session of Working Group VI	A/CN.9/1164 , para. 81
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 14 and 15
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 74 and 75
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 58–61

(c) *Evidentiary function (art. 6(2))*

110. Paragraph 2 affirms that the NCD serves as prima facie evidence that the transport operator has taken the goods in charge as stated in the document. This provision reflects the evidentiary function of the NCD. The NCD functions as proof of the transport operator's receipt of the goods, including their description, quantity and condition, as stated in the document. However, this effect applies only insofar as the information has not been qualified under paragraph 1. Where the transport operator does not qualify the information provided by the consignor, it is presumed to have accepted the goods as stated in the NCD. If the transport operator qualifies the information under paragraph 1, the presumption does not apply to those particulars.

111. The term "prima facie" indicates that the information in the document is presumed accurate unless proven otherwise. It shifts the burden of proof to the transport operator to rebut the presumption if the goods were not taken in charge as stated.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 67 and 68
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 16 and 17
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 59
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 62

(d) *Protection of third parties acting in good faith (art. 6(3))*

112. Paragraph 3 introduces a safeguard for third parties who acquire an NCD in good faith and in reliance on the information it contains. It limits the transport operator's ability to challenge the accuracy of that information once the document has been transferred, thereby reinforcing the negotiability of the NCD.

113. The rule protects third parties who acquire the NCD and rely on its contents to make decisions or assert rights. If the transport operator later seeks to prove that certain information in the NCD was inaccurate, such proof is inadmissible against the third party unless the information was qualified under paragraph 1. Such a rule plays a vital role in promoting the negotiability of NCDs, as a third party acting in good faith and relying on the document's contents may be placed in a stronger legal position than the original transferor. This protection promotes confidence in the reliability of the NCD and facilitates its circulation in commercial and financial markets. Importantly, this protection applies only where the third party acts in good faith, for example when that party has no knowledge of any inaccuracies or no intent to defraud.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 66 and 69–70
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 83–87
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 18
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 59
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 63 and 64

D. Chapter III. Rights and liability of the holder

1. Article 7. Rights of the holder of a negotiable cargo document

(a) General remarks

114. In some common law jurisdictions, a holder of a negotiable transport document is often treated as acquiring rights through mechanisms such as statutory transfer or assignment, effectively stepping into the shoes of the original contracting party. In contrast, some civil law jurisdictions conceptualize a holder as a third-party beneficiary, entitled to enforce certain terms of the contract but not necessarily acquiring the full spectrum of contractual rights. These divergent theories reflect broader differences in contract law.

115. Articles 7(1) and (2) adopt a functional formulation without prescribing a specific doctrinal basis. Pursuant to article 7(1), the holder enjoys the rights provided for in the NCD and these rights can be exercised only by the holder. This emphasizes the autonomous legal value of the NCD, independent of the underlying contractual relationship between the consignor and the transport operator. Article 7(2) provides for supplementary rights that are not provided for in the NCD itself but derive from the transport contract and the law applicable to the transport contract.

116. Article 7(3) safeguards the interests of the holder that is not the consignor and thus not the original party to the transport contract, ensuring that such a holder acquires enforceable rights and is protected against inconsistent contractual terms.

117. Article 7(4) gives the NCD the attribute of a document of title. It states that the transfer of the NCD has the same legal effect as the physical handing over of the goods, thereby facilitating the sale of goods in transit and supporting the role of the NCD in trade finance.

118. The Convention, however, does not regulate how to transfer the ownership of the goods or the legal effect of physically handing over the goods. It merely provides that the transfer of the NCD has the same legal effect, whether that concerns ownership or otherwise. Similarly, the Convention does not address whether and how a holder could create security rights over NCDs. However, it does not preclude parties from doing so. The creation, third party effectiveness and priority of any security interest in an NCD will be determined by other legal regimes, including, where relevant, the law governing the NCD itself. Nothing in the Convention prevents a State Party from seeking to provide additional legal certainty by enacting secured transactions laws, such as those based on the UNCITRAL Model Law on Secured Transactions (2016).

119. Article 7(5) requires the holder to present the document to the transport operator to exercise its rights under an NCD.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 65–68

(b) Exclusive rights of the holder (art. 7(1))

120. Paragraph 1 establishes a foundational principle: once an NCD is issued, the rights it confers – most notably the right to demand delivery of the goods at destination – can be exercised only by the holder. This rule affirms the function of the NCD as a negotiable document.

121. By limiting the exercise of rights solely to the holder, paragraph 1 ensures that the NCD operates as a singular key to the goods. The holder, whether the original consignee or a transferee through endorsement or delivery, is the only party entitled to exercise the rights provided for in the NCD, including the right to demand delivery of the goods from the transport operator.

122. Paragraph 1 is closely linked to article 10(1), which provides that delivery of the goods may be demanded only against surrender of the NCD. Together, they reinforce the status of an NCD as the exclusive instrument through which the right to demand delivery at destination is exercised. Importantly, the right to demand delivery at destination is inherent in the NCD in accordance with paragraph 1, regardless of whether it is explicitly stated within its terms. This ensures that the transport operator is obligated to deliver the goods only to the party who presents and surrenders the NCD.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 27
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 66 and 67
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 88, 89 and 92
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 63 and 64

(c) Rights acquired by the holder other than the consignor (art. 7(2))

123. Under paragraph 2, a holder that is not the consignor acquires rights in addition to those provided for in the NCD. They include: (a) the right to bring a claim against the transport operator under the transport contract; (b) where applicable, the right of disposal under the transport contract; and (c) those rights provided for in the law applicable to the transport contract. The terms of the transport contract may therefore be relevant to the effective enforcement of the holder's rights.

124. Although the holder enjoys the exclusive exercise of the rights conferred in the NCD, the transfer of the NCD does not extinguish all of the consignor's pre-existing rights under the transport contract. For example, if three containers are taken in charge but only two are recorded in the NCD, a subsequent holder acquires rights only with respect to the recorded containers. The consignor, however, retains the right to bring a claim against the transport operator in relation to the unrecorded container.

Right to bring a claim against the transport operator

125. Article 7(2) lists the right of the holder to bring a claim against the transport operator under the transport contract. This right is fundamental to the legal and commercial utility of the NCD, as it enables the holder to seek redress for breaches of the transport operator's obligations.

126. By providing that the holder may bring a claim "as if it were a party to [the] contract", paragraph 2 ensures that the holder has direct legal standing to enforce the terms of the transport contract and can act independently of the consignor. It may also allow the holder to participate in dispute resolution, such as arbitration or litigation, if provided for in the transport contract and subject to applicable law. By ensuring that the holder can bring claims directly against the transport operator, the Convention enhances the acceptability of the NCD. It enables the document to circulate freely in trade and finance, assuring each holder of the right to enforce claims.

Right of disposal under the transport contract, where applicable

127. Another right that may be exercised by the holder is the right of disposal under the transport contract. This right generally refers to the holder's ability to give instructions to the transport operator, for example, to change the place or time of delivery.

128. The concept of the right of disposal is well-established in inland transport (such as rail and road) and air transport regimes, where the consignor or, under certain conditions, the consignee may give instructions to the carrier, such as to redirect the goods while in transit. In contrast, the existing maritime conventions (except the Rotterdam Rules) do not provide the holder with a right of disposal; any such right generally derives from the applicable national law. Hence, the reference to the right of disposal in article 7(2) should be understood as applying only where such a right exists under the transport contract.

129. The Convention deliberately does not define the term "right of disposal", leaving its scope and application to be interpreted in accordance with the law applicable to the transport contract, including relevant international transport law instruments such as the Uniform Rules concerning the Contract of International Carriage of Goods by Rail, 2016, the Agreement on International Railway Freight Communications, 2020, the Convention on the Contract for the International Carriage of Goods by Road, 1956,²¹ as amended, and the Convention for the Unification of Certain Rules for International Carriage by Air, 1999²² (the "Montreal Convention"). These instruments impose specific conditions for exercising the right of disposal, such as identification of the party entitled to give instructions, presentation of documents and timing restrictions.²³ Therefore, the holder of the NCD must exercise this right in accordance with the law applicable to the transport contract. The scope of the right may differ depending on the transport mode and contractual terms. A holder exercising the right of disposal may assume certain liability pursuant to article 9(2) (see paras. 149–151 below).

Rights provided for in the law applicable to the transport contract

130. Paragraph 2 extends the scope of the holder's entitlements by stating that the holder also acquires those rights provided for in the law applicable to the transport contract, as if it were a party to that contract.

131. Transport contracts are often governed by international conventions or national laws that supplement or override contractual terms. These legal regimes may confer additional rights and obligations on parties to the contract, such as rights to,

²¹ United Nations, *Treaty Series*, vol. 399, No. 5742.

²² United Nations, *Treaty Series*, vol. 2242, No. 39917.

²³ See articles 18 and 19 of the Uniform Rules concerning the Contract of International Carriage of Goods by Rail; article 25 of the Agreement on International Railway Freight Communications; article 12 of the Contract for the International Carriage of Goods by Road; and article 12 of the Montreal Convention.

or limitations on, compensation for delay, loss or damage as well as procedural rights or requirements related to claims, limitation periods or burden of proof. Paragraph 2 safeguards the holder's position by clarifying that its rights are not limited to what is provided for in the NCD or the transport contract but extend to other rights under the broader legal framework in which the transport contract operates.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 71–75
Report of the forty-third session of Working Group VI	A/CN.9/1164 , paras. 88–93
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 84 and 85
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 19–26
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 60–65
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 77–86 and 90–92
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 69–74

(d) Protection against inconsistent contract terms (art. 7(3))

132. Paragraph 3 establishes protection for a holder of an NCD that is not the consignor. It provides that the transport operator may not invoke against such a holder any term of the transport contract that is inconsistent with the express terms of the NCD. This reinforces the status of the NCD as the authoritative document governing the legal relationship between the transport operator and the holder.

133. Holders that are not the consignor but that acquire the NCD and rely on its contents are not parties to the transport contract. They must therefore be able to trust that the express terms of the NCD accurately reflect the obligations of the transport operator. Allowing the transport operator to invoke conflicting terms from the underlying contract would undermine the reliability of the NCD and jeopardize its negotiability.

134. The term “express terms” refers to the clear and specific provisions stated in the NCD, such as delivery obligations. Any conflicting clauses in the transport contract – such as disclaimers, exclusions or procedural limitations – cannot be invoked against holders that are not the consignor. Paragraph 3 does not prevent the holder from exercising any rights not expressly stated in the NCD, in accordance with articles 7(1) and 7(2).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 65
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 87
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 75 and 76

(e) Document of title function (art. 7(4))

135. Paragraph 4 affirms that the issuance and transfer (whether initial or subsequent) of possession of an NCD has the same legal effect as the physical handing over of the goods, for the purpose of acquiring rights to the goods. This underscores the role of the NCD as a document of title in international trade. Nothing in article 7(4) affects the rights of carriers under applicable law, including in circumstances where the transport operator is not the actual carrier.

136. In commercial practice, especially in international transport, physical delivery of goods is often impractical or delayed due to distance, customs procedures or financing arrangements. Paragraph 4 addresses this by recognizing that transferring possession of the NCD is equivalent to transferring possession of the goods. This allows the holder of the document to acquire rights to the goods even if the goods are not physically delivered to the holder. This rule applies to both the initial transfer from the consignor and any subsequent transfers through endorsement and/or transfer of possession in line with article 11.

137. While paragraph 4 facilitates the use of NCDs in sale of goods transactions, trade finance and collateral arrangements, it does not address the transfer of ownership or risk of loss. This approach accommodates differences among legal systems as to the legal nature of rights that the holder may acquire in respect of the goods, which is determined in accordance with other law.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , para. 75
Report of the forty-third session of Working Group VI	A/CN.9/1164 , para. 93
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 28–31
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 68

<i>Document</i>	<i>Reference</i>
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 93
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 77–79

(f) Exercise of rights by the holder (art. 7(5))

138. Paragraph 5 sets out a procedural requirement that the holder must satisfy in order to exercise all of its rights under an NCD: the holder must present the NCD to the transport operator. This requirement ensures that the transport operator can verify the legitimacy of the person exercising its right.

139. The holder is not required to present all originals in order to exercise every right provided for in the NCD. For example, as stipulated in article 10(2), the right to demand delivery of the goods at destination may be exercised by the holder upon presentation and surrender of one original of the NCD (see paras. 156 and 157 below). However, if the holder wants to exercise its right of disposal and the NCD states that more than one original has been issued, the holder must present all originals. This prevents conflicting instructions from being given by different holders of separate originals and ensures that control over the goods is exercised exclusively and transparently.

140. The Convention does not specify the number of originals required to exercise the right to bring a claim against the transport operator (art. 7(2)), recognizing that this issue is addressed differently across jurisdictions. In some legal systems, courts require the production of all originals, while others consider such a requirement unreasonable – particularly in cases involving damage to goods, where at least one original would typically have been surrendered upon delivery. Given that this matter pertains to procedural rules and varies according to the law of the forum, it is not addressed in the Convention.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , para. 78
Report of the forty-third session of Working Group VI	A/CN.9/1164 , para. 95
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 33–42 and 55
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 70–72

2. Article 8. Missing information, instructions or documents

141. Article 8 addresses a practical challenge in the performance of obligations under a transport contract to which the NCD relates: the potential absence of essential information, instructions or documents required by the transport operator to fulfil its obligations. It prevents ambiguity about who is entitled to give instructions to the transport operator, as transport operators may face conflicting claims or uncertainty, particularly when the NCD has changed hands.

(a) Designating the holder as the point of contact

142. Article 8 establishes that in the context of NCDs, the holder is the point of contact for the transport operator in case of missing information, instructions or documents. This is a critical clarification, ensuring that the transport operator does not mistakenly rely on parties who may no longer possess certain rights (such as the right of disposal).

143. Where a negotiable transport document is not issued, the transport operator typically seeks necessary information, instructions or documents from the consignor or the consignee, as applicable, under the relevant transport contract. These parties are clearly identified and contractually empowered to provide such guidance. However, the Convention introduces a different legal architecture in order to protect the holder of an NCD. The concept of the holder – the person in possession of the NCD (art. 2(4)) – replaces certain roles of the consignor and consignee. This shift necessitates a clear rule to identify who the transport operator should turn to when essential information, instructions or documents are missing.

(b) Fallback to the transport contract

144. While article 8 does not impose a legal obligation on the holder to provide the requested information, instructions or documents, it implicitly allocates the risk to the holder. The transport operator must make a reasonable effort to obtain the missing elements from the holder and allow a reasonable time for a response from the holder. These standards are intentionally flexible, allowing adaptation to the specific circumstances of the transport operation such as urgency, perishability of goods or communication constraints. However, if the holder fails to act – by not responding or delaying its response – the consequences of that inaction, such as delays or complications in the transport process, fall on the holder rather than the transport operator, since article 8 allows the transport operator to proceed in accordance with the transport contract. This provision serves to protect the transport operator from liability or breach arising solely from the absence of a response from the holder as long as it proceeds in accordance with the transport contract.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 35 and 87–89
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 11–17
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 44 and 45
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 73
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 95–97

3. Article 9. Liability of the holder

145. Article 9 sets out the potential liability of a holder of the NCD that is not the consignor. When the consignor remains the holder, it is bound by all the terms of its transport contract with the transport operator, including possible liabilities. As between the transport operator and a holder that is not the consignor, however, it is questionable whether the holder is bound by all the terms of the transport contract, including any liability. Little uniformity exists on this matter across national jurisdictions.

146. The provision draws a distinction among holders depending on whether they exercise rights under the transport contract. It ensures that any person that comes into possession of the document and does not exercise any rights associated with it is not automatically burdened with liabilities under the transport contract. This is particularly important in commercial contexts where such documents may be transferred for reasons unrelated to the actual transport of goods, such as financing. At the same time, the provision ensures that those holders that exercise rights provided for in the NCD assume certain liabilities.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 80

(a) No automatic liability for holders (art. 9(1))

147. Paragraph 1 establishes that mere possession of NCDs (including those endorsed in blank) does not lead to the assumption of liability. Specifically, it provides that a holder that is not the consignor and that does not exercise any rights under article 7 of the Convention is not liable under the transport contract simply because it holds the document. This provision derives from article 58(1) of the Rotterdam

Rules and is designed to protect parties who acquire the NCD for purposes unrelated to the performance of the transport contract – such as banks, financiers, traders or intermediaries – ensuring that they are not inadvertently exposed to contractual liability. For example, a bank that holds the NCD for trade finance purposes and is not involved in the performance of the transport contract need not be concerned that it might assume any liability (e.g. freight charges).

148. The provision clarifies that liability under the transport contract remains between the transport operator and the consignor, unless and to the extent that a holder that is not the consignor steps in by exercising any right in accordance with article 7.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , para. 90
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 18 and 22
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 46
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 74
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 81 and 82(a)

(b) Liability of the holder upon exercising rights (art. 9(2))

149. Paragraph 2 sets out the circumstances under which a holder of an NCD that is not the consignor assumes liability. Liability is triggered when such a holder exercises a right under article 7, such as the right to demand delivery of the goods at destination. Once a right is exercised, the holder is treated as if it were a party to the transport contract, to the extent that liability is either legally attributable or contractually ascertainable as set out in subparagraphs (a) and (b).

150. Pursuant to subparagraph (a), the holder assumes any liability attributable to a person exercising a right in accordance with article 7 under the law governing the transport contract. This may include the obligation to pay any outstanding freight charges.

151. Subparagraph (b) establishes an additional basis for liability: the holder assumes any liability that arises from the exercise of rights under the transport contract, but only to the extent that such liability is ascertainable from the NCD. The requirement for liability to be “ascertainable” from the NCD sets an objective standard under which liability may be inferred from the NCD even if it is not explicitly stated. Such a standard helps ensure that banks, insurers or buyers that acquire the NCD

are readily aware of any potential liability that may accompany the exercise of rights under article 7.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-third session of Working Group VI	<u>A/CN.9/1164</u> , para. 98
Report of the forty-fourth session of Working Group VI	<u>A/CN.9/1170</u> , paras. 19–22
Report of the forty-fifth session of Working Group VI	<u>A/CN.9/1199</u> , para. 47
Report of the forty-sixth session of Working Group VI	<u>A/CN.9/1205</u> , paras. 75–77
Report of the fifty-eighth session of UNCITRAL	<u>A/80/17</u> , para. 98
Report of the forty-seventh session of Working Group VI	<u>A/CN.9/1245</u> , paras. 82 and 83

4. Article 10. Delivery of the goods

(a) General remarks

152. Article 10 establishes the legal and operational framework for the delivery of goods covered by an NCD. This rule is central to the negotiability and the document of title function of the NCD, ensuring that goods are released only to the holder.

153. The provision should be read together with article 1(3), which preserves the applicability of international conventions and national laws governing the transport contract (see para. 30 above). Consequently, if the applicable transport law – such as the Uniform Rules concerning the Contract of International Carriage of Goods by Rail, the Agreement on International Railway Freight Communications, the Contract for the International Carriage of Goods by Road, the Montreal Convention, the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, the Hague Rules, the United Nations Convention on the Carriage of Goods by Sea, 1978²⁴ (the “Hamburg Rules”) or the Rotterdam Rules, in each case including any amendments in force, or relevant national legislation – contains more detailed or specific provisions on delivery (e.g. acknowledgment of receipt of the goods), those rules are not displaced by article 10.

²⁴United Nations, *Treaty Series*, vol. 1695, No. 29215.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 16 and 17
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , para. 27
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 52
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 84(a)

(b) Delivery against surrender of the NCD by the holder (art. 10(1))

154. Paragraph 1 affirms that the transport operator is obligated to deliver the goods only upon surrender of the NCD by the holder (see paras. 37–39 above). The transport operator is not obliged to deliver the goods to any person other than the holder of the NCD. However, the provision does not address the legal consequences of delivery without surrender of the NCD, which are governed by the applicable national law.

155. Article 10 is closely linked with article 7(1), under which only the holder can exercise the rights provided for in the NCD, including the right to demand delivery of the goods at destination. Article 10(1), by requiring surrender, ensures that only the final holder – not a previous holder or an unauthorized claimant – can take delivery. This shields the transport operator from future demands for delivery by other parties.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 91–93
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 23–26
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 48
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 78
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 31

(c) Delivery in the case of multiple originals (art. 10(2))

156. Paragraph 2 sets out the rules for delivery when more than one original of an NCD has been issued. The first sentence provides that surrender of one original is sufficient to demand delivery of the goods, as each original carries equal legal weight. This rule applies regardless of whether the NCD states that more than one original has been issued, and it avoids unnecessary delay and logistical complications that would arise if all originals had to be presented in order to demand delivery. If only one

original has been issued, that original must be surrendered by the holder. If more than one original has been issued, surrender of any single original is sufficient.

157. Importantly, this provision does not conflict with article 7(5), which requires the presentation of all originals to exercise the right of disposal. This distinction is intentional and carefully calibrated: while the right to demand delivery of goods can be exercised on the basis of one original in order to promote operational efficiency in delivery, the right of disposal requires a higher level of control and certainty. Requiring the presentation of all originals in order to exercise the right of disposal ensures that no conflicting instructions can be given by holders of other originals (see paras. 138–140 above).

158. The second sentence introduces a rule based on the content of the NCD itself. Regardless of the number of originals actually issued, if the NCD states that multiple originals exist, then surrender of one original automatically invalidates the others. The rule is designed to protect an innocent holder that acquires an NCD that does not state that more than one original exists. In such a case, the holder will be unaware of the existence of other originals. If such a holder presents its original of the NCD after the goods have already been delivered to someone else who surrendered a different original, its rights under the NCD will remain legally valid. In this case, the transport operator will not be able to deliver the goods but will remain liable for damages to the innocent holder.

159. This creates a strong incentive for transport operators to explicitly state the number of originals issued in the NCD as required under article 4(1)(i) (see paras. 87–90 above). By doing so, they activate the protective mechanism that extinguishes the legal effect of remaining originals upon surrender of one, thereby limiting their exposure to liability. Failure to include such a statement leaves the transport operator vulnerable to claims from holders that acquire one original of the NCD in good faith and later suffer loss due to prior delivery. In effect, the rule encourages transparency at the point of issuance, aligning operational practice with legal safeguards and reducing the risk of conflicting claims.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , para. 15
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 49–51
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 79
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 31
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 84

5. Article 11. Transfer of rights of the holder

160. Article 11 addresses how a person can become a holder and reflects the widely accepted rule for the transfer of rights provided for in a negotiable document. The transfer of these rights goes along with the transfer of the document itself. The rule derives from article 13 of the United Nations Convention on International Bills of Exchange and International Promissory Notes, 1988²⁵ and article 57 of the Rotterdam Rules.

161. Subparagraph (a) specifies how the NCD may be transferred. In view of the fact that the NCD is an order document (art. 3(6)), subparagraph (a) provides for transfer by endorsement combined with transfer of possession of the NCD. This dual requirement ensures that both rights in the NCD and control of the NCD are passed to the new holder. The endorsement may be specific (to a named individual) or blank (without naming a transferee), with the latter enabling further transfer by mere transfer of possession (see para. 162 below).

162. Subparagraph (b) addresses the situation where the last endorsement is in blank. Blank endorsed documents are fairly common in practice, particularly for banks and traders when they do not wish to disclose information about their suppliers. In such cases, the NCD may be transferred by mere transfer of possession, without further endorsement. This facilitates fluidity in commercial transactions, allowing the NCD to circulate freely among parties without the need for multiple endorsements.

163. The Convention does not define the notion of “endorsement” or specify the formal requirements for an NCD to be duly endorsed, which remain a matter for applicable law.

164. Article 11 ensures that the transferee that takes possession of an NCD becomes a holder with all the rights provided for in the NCD (see art. (1) and (2)). This promotes certainty and predictability in the transfer of NCDs. Importantly, the same rights as provided for in the NCD are transferred from one holder to another. However, the Convention does not envisage the transfer of liability from one holder to another. Any costs incurred by a holder in exercising its rights are not intended to be transferred to subsequent holders. Nevertheless, a holder that is not the consignor and that exercises its right assumes liability in the circumstances set out in article 9(2).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-first session of Working Group VI	A/CN.9/1127 , paras. 80–86
Report of the forty-third session of Working Group VI	A/CN.9/1164 , para. 82

²⁵ General Assembly resolution 43/165, annex.

<i>Document</i>	<i>Reference</i>
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 28–38
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 53–57
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 80 and 81
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 99–102
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 85

E. Chapter IV. Special conditions for electronic negotiable cargo documents

1. General remarks

165. The Convention was prepared with a view to accommodating NCDs issued in paper and electronic form. To that end, it applies a technology-neutral approach, which encompasses the concept of system neutrality.

166. By virtue of the definition of “negotiable cargo document” in article 2, the substantive rules in chapters II and III of the Convention apply to NCDs issued either as paper documents or as electronic records. The latter are referred to in the Convention as eNCDs. As such, the Convention adopts a “medium-neutral” approach to ensuring that the same legal regime applies to NCDs regardless of medium and without giving preference to either.

167. In keeping with this approach, the substantive rules in chapters II and III are designed to apply to eNCDs. Nevertheless, some of those rules establish requirements that are traditionally associated with paper documents, such as the requirement to annotate or indicate (in writing), sign, endorse or possess, which may not be readily relatable to electronic records. Chapter IV therefore establishes a set of rules to overcome obstacles to the use of eNCDs that meet those requirements. It also sets minimum requirements for an electronic record to serve as an NCD and enables the practice of “switching” the medium of an NCD once issued (from paper to electronic or from electronic to paper).

168. Chapter IV is modelled on the provisions of the Model Law on Electronic Transferable Records and other legislative texts on electronic commerce prepared by UNCITRAL, including the Electronic Communications Convention. Like those texts, the rules in chapter IV apply a “functional equivalence” approach, whereby they prescribe the conditions by which the functions of formal requirements in the

Convention associated with dealings in paper documents can be fulfilled through the use of electronic means.

169. Many of the rules in chapter IV mandate the use of a “reliable method” to fulfil those functions. The term “method” is used in other legislative texts on electronic commerce prepared by UNCITRAL, where it is understood to encompass any number of technologies and products implemented by electronic records management systems. As employed in chapter IV, the term is intended to carry the same meaning and is not to be confused with the method of issuing the NCD referred to in article 3(2). Whether a method is “reliable” is to be assessed against the general reliability standard set out in article 18. Consistent with the principle of technological neutrality that underpins the Model Law on Electronic Transferable Records and other legislative texts on electronic commerce prepared by UNCITRAL, neither article 18 nor any other rule in chapter IV mandates or gives preference to the use of a particular technology or method or, for that matter, to any particular system model. As such, the Convention is compatible with systems that are based on a centralized registry model, as well as systems that deploy digital tokens recorded on a distributed ledger. Similarly, the Convention is compatible with the use of technologies that were not in use or anticipated at the time of drafting, provided that they meet the reliability standard.

170. As the rules in chapter IV are consistent with the provisions of the Model Law on Electronic Transferable Records, it is expected that systems and methods used to support electronic transferable records, including electronic bills of lading, will be able to be used to support eNCDs.

171. The Model Law on Electronic Transferable Records and other legislative texts on electronic commerce prepared by UNCITRAL generally use the formulation “where the law requires or permits”. However, the rules in chapter IV make it clear that they apply “for the purposes of this Convention”. Moreover, chapter IV does not contain a rule on amending eNCDs along the lines of article 16 of the Model Law, given that the Convention does not address the amendment of an NCD. It also does not contain a “non-discrimination” rule based on article 7(1) of the Model Law, given that the Convention itself gives legal effect and validity to eNCDs.

172. The rules in chapter IV are stated to apply to “requirements” in the Convention, which should be understood broadly. In keeping with other legislative texts on electronic commerce prepared by UNCITRAL, the term is intended to not only cover rules – however worded – that mandate a particular act, but also rules that merely contemplate an act the absence of which will attract legal consequences under the Convention. As such, indicating certain information in the eNCD that an NCD must indicate under article 4 would be a “requirement”, as would indicating information in an electronic record without which the record would not meet the definition of “negotiable cargo document” under article 2(5).

173. As noted above, the Convention does not deal with all the issues that may arise in connection with the use of an NCD, which may be governed by other applicable law. While the rules in chapter IV are primarily concerned with the requirements in the Convention and not with the requirements under such other law, the application of those rules “for the purposes of this Convention” could extend to requirements under other law that are applied to fill gaps in the application of the Convention or are otherwise addressed by the Convention. Nothing in the Convention prevents an eNCD from satisfying paper-based requirements under applicable law or prevents a State Party from seeking to provide additional legal certainty by enacting the provisions of the Model Law on Electronic Transferable Records.

174. Moreover, the rules in chapter IV do not address all formal requirements associated with paper documents, such as the requirement for a person to identify itself when dealing with a document. Again, nothing in the Convention prevents a person using an eNCD from satisfying this requirement by electronic means (e.g. through electronic identification) or prevents a State Party from seeking to provide additional legal certainty by enacting laws expressly enabling that use (e.g. the UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services).

175. Like the Model Law on Electronic Transferable Records, the Convention uses the term “electronic record” to refer to an NCD in electronic form. However, unlike the Model Law, the term “document” does not refer solely to an NCD issued in paper. As clarified in the definition of “negotiable cargo document” and consistent with the medium-neutral approach adopted by the Convention, the term “document” encompasses both the paper and electronic form. While earlier work by UNCITRAL on negotiable transport documents avoided the term “electronic document” in some languages due to a perceived association of the term “document” with the paper form ([A/CN.9/387](#), para. 31; [A/CN.9/390](#), para. 46), the drafters of the Convention were of the view that, at the time of drafting, the term “electronic document” had become widely accepted in practice.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fifty-third session of UNCITRAL	A/75/17 , part 2, para. 81
Report of the forty-second session of Working Group VI	A/CN.9/1134 , para. 20
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 47–49
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 59–61
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 82–85

<i>Document</i>	<i>Reference</i>
Report of the fifty-eighth session of UNCITRAL	<u>A/80/17</u> , paras. 105 and 113–115
Report of the forty-seventh session of Working Group VI	<u>A/CN.9/1245</u> , para. 86

2. *Article 12. Requirements for an electronic negotiable cargo document*

176. Article 12 establishes the minimum requirements for an electronic record to be able to serve as an NCD. It is modelled on article 10 of the Model Law on Electronic Transferable Records, with the necessary adaptations.²⁶

(a) Reliable method (art. 12(1))

177. Paragraph 1 reflects the approach taken in the Model Law on Electronic Transferable Records to solving the problem, associated with electronic records, of multiple claims being made to perform the same obligation, which arises from the fact that data comprising electronic records can be readily replicated (in other words, the possibility of having multiple “copies” indistinguishable from the “original” electronic record). That approach combines a requirement for the “singularity” of the electronic record with a requirement for its “controllability”, which are reflected in subparagraphs (a) and (b), respectively. Subparagraph (c) in turn reflects a requirement for “integrity”, which is not unique to negotiable documents but is a quality associated with the paper-based notion of an “original”. The qualities of singularity, controllability and integrity are assured by the use of a “reliable method” (see para. 169 above).

178. Paragraph 1(a) requires the use of the method to “identify” the electronic record “as the negotiable cargo document”. This requirement presupposes that the electronic record purporting to be the NCD is capable of being singled out so as to be distinguished from any other electronic record that might be presented to exercise the rights provided for in the NCD. The requirement does not preclude the issuance of an eNCD in multiple originals. The wording of paragraph 1(a) closely follows the wording of article 10(1)(b)(i) of the Model Law on Electronic Transferable Records, which was carefully chosen to avoid interpretive issues across the six language versions of the Convention.²⁷

²⁶ Specifically, paragraph 1 does not reproduce article 10(1)(a) of the Model Law on Electronic Transferable Records, as the content requirements for an NCD are contained in article 4 of the Convention. In addition, apart from the use of the words “for the purposes of this Convention” (see remarks in para. 171 above), the chapeau of paragraph 1 is formulated as a legislative statement recognizing that an NCD may be in electronic form, along the lines of article 5(6) of the United Nations Convention on the International Effects of Judicial Sales of Ships.

²⁷ See paragraphs 96 and 97 of the explanatory note to the Model Law in *UNCITRAL Model Law on Electronic Transferable Records* (United Nations publication, Sales No. E.17.V.5).

179. Paragraph 1(b) requires the use of the method to render the eNCD capable of being subject to control throughout its life cycle. The wording closely follows the wording of article 10(1)(b)(ii) of the Model Law on Electronic Transferable Records, except that the requirement is stated to apply from the moment of “issuance” (of the eNCD) not “creation” (of the electronic record), a change that is also reflected in paragraph 2. It was felt to be more appropriate for a provision setting the minimum requirements for a valid eNCD to measure controllability (and integrity) by reference to the legal act of “issuing” the NCD, which presupposes that the NCD has been signed and put into circulation, rather than the technical act of “creating” the electronic record serving as the NCD. The notion of “control” in paragraph 1(b) is the same as in article 15 (see para. 193 below).

180. Paragraph 1(c) requires the use of the method to retain the integrity of the electronic record. The wording is identical to article 10(1)(b)(iii) of the Model Law on Electronic Transferable Records.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 86
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 86

(b) Integrity assessment (art. 12(2))

181. Paragraph 2 elaborates on the notion of “integrity” and provides guidance on assessing whether the requirement for integrity in paragraph 1(c) has been met. It clarifies that integrity is an absolute notion that is capable of being assessed objectively; in other words, the eNCD can be proven either to retain its integrity or not to retain its integrity. In practice, the requirement for integrity will be met where a reliable assurance is provided of the link between an electronic signature affixed on the record and the content of that record at the time the electronic signature was affixed.

182. Paragraph 2 closely follows the wording of article 10(2) of the Model Law on Electronic Transferable Records, except that it refers to “issuance” (of the eNCD) not “creation” (of the electronic record) (see para. 179 above). By virtue of the definition of “electronic record” and consistent with the composite nature of electronic records (see para. 35 above), the requirement for integrity applies not only to information contained in the record as issued but also to information that is generated after its issuance and is included in the record on account of the various dealings in an NCD that occur throughout its life cycle (e.g. information related to endorsement). In the former case, integrity is assessed from the moment of issuance of the record. In the latter case, integrity is assessed from the moment of inclusion of the information.

183. Paragraph 2 clarifies that the requirement for integrity also applies to additional information that is included by the electronic records management system under its operational rules and that may change over time. However, it does not concern changes in information that arise “in the normal course of communication, storage and display”. This refers to information added to an electronic record for purely technical purposes, such as information necessary to store the electronic record in a dedicated repository.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 86
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 103
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 86

3. Article 13. Content requirements

184. Several provisions in chapters II and III establish content requirements for NCDs. For example, the definition of “negotiable cargo document” in article 2(5), as well as articles 3 and 4, require certain information to be contained in the NCD. With respect to a paper document, those requirements would ordinarily be met by some form of writing (by hand or typed). Article 13 specifies how those requirements are met with respect to an electronic record.

185. Article 13 is modelled on article 8 of the Model Law on Electronic Transferable Records, with the necessary adaptations. In particular, it applies to requirements in the Convention for information to be “contained” in an NCD, rather than requirements for information to be “in writing”, given that no requirement in the Convention expressly refers to information “in writing”. It is nevertheless intended to have the same operation and effect as article 8 of the Model Law given that: (a) in keeping with other legislative texts on electronic commerce prepared by UNCITRAL, the requirement for information to be contained in a document is understood to encompass a requirement for information to be “in writing”;²⁸ and (b) the conditions specified in article 13 in which such a requirement is met in respect of an eNCD are identical to those specified in article 8 of the Model Law and other UNCITRAL texts, namely that the information be “accessible so as to be usable for subsequent reference”.

²⁸ See paragraph 143 of the explanatory note on the *Electronic Communications Convention* (United Nations publication, Sales No. E.07.V.2) and paragraph 47 of the *Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce*.

186. The requirement for information to be “accessible” so as to be “usable” for subsequent reference is found in several other legislative texts on electronic commerce prepared by UNCITRAL, where it is understood to reflect the notion of information being reproduced and read, which is capable of being assessed objectively.²⁹ Unlike other rules in chapter IV, article 13 does not refer to the use of a “reliable method” (see para. 169 above). Consistent with those other texts, the term “accessible” implies that information contained in an electronic record should be readable and interpretable, and that the software that might be necessary to render such information readable should be retained, while the term “usable” is intended to cover both human use and computer processing.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-second session of Working Group VI	A/CN.9/1134 , paras. 22 and 23
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 66
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 88
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 104–107

4. Article 14. Signature requirements

187. Several provisions in chapters II and III require an NCD or an annotation thereto to be signed. For example, the definition of “negotiable cargo document” in article 2(5) requires the NCD to be signed by the transport operator, while article 3(2) requires an annotation entered on a transport document to be signed by the transport operator. Article 14 specifies how those requirements are met with respect to an electronic record.

188. Article 14 is modelled on article 9 of the Model Law on Electronic Transferable Records, with the necessary adaptations. It specifies two conditions for an “electronic signature” that are to be assured through the use of a “reliable method” (see para. 169 above), namely: (a) the signatory is identified; and (b) the intention of the signatory when affixing the electronic signature is indicated.

189. The notions of “identifying” the signatory and of the signatory’s “intention” (in respect of the information contained in the electronic record being signed) are found in several other legislative texts on electronic commerce prepared by UNCITRAL, which in turn apply to a broad range of trade-related documents for which different

²⁹ See article 9(2) of the Electronic Communications Convention and remarks in paragraph 146 of the explanatory note on that Convention.

purposes might be pursued through the use of a signature. The notion of the signatory's "intention" is essentially concerned with the association of the signatory with the content of the electronic record being signed. In the context of the Convention and the requirement for NCDs and annotations to be signed by the transport operator, the notion ordinarily presupposes that, by affixing an electronic signature, the transport operator indicates that it is the originator of the contents of the NCD or annotation, as the case may be (but not necessarily the source of the information).

190. Like the other rules in chapter IV, article 14 does not mandate the use of a particular technology to sign an electronic record, such as an electronic signature using cryptography supported by public key infrastructure, sometimes known as a "digital signature". Such digital signatures can be used to fulfil the conditions in article 14 while also fulfilling other functions (e.g. assuring the integrity of the electronic record being signed). The use of a digital signature or other particular type of electronic signature by the transport operator may be mandated by other law, but that other law cannot make the effect or validity of an eNCD conditional upon the use of such a particular type of electronic signature.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 51–55
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 58, 62 and 63
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 89
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 60

5. Article 15. Possession requirements

191. Several provisions in chapters II and III require an NCD to be possessed. For example, the definition of "holder" in article 2(4) requires the person to be "in possession" of the NCD or to be the "bearer" thereof, while article 7(5) requires the holder to "present" the NCD in order to exercise its rights. Article 15 specifies how those requirements are met with respect to an electronic record by establishing control of an electronic record as the functional equivalent of possession of a paper document. Consistent with the principle of technological neutrality, it does not mandate or give preference to any particular technology that may be used to establish control. For instance, an electronic management system based on a distributed ledger may establish control through the chronological ordering of data recording dealings in the electronic record.

192. Article 15 is modelled on article 11 of the Model Law on Electronic Transferable Records, with the necessary adaptations. Paragraph 1 specifies two conditions that are to be assured through the use of a “reliable method” (see para. 169 above), namely: (a) exclusive control of the electronic record is established; and (b) the person in control is identified.

193. Article 15 does not define the notion of “control”, which is also referred to in article 12(1)(b). The reference to “exclusive” control in paragraph 1(a) clarifies that the term “control”, wherever it appears in the text of the Convention, implies exclusivity in its exercise. As such, a person would ordinarily be regarded as exercising control of an electronic record if it is the only person authorized by the electronic records management system to make changes to the record that are necessary to transfer or surrender the eNCD. At the same time, the notion of “exclusive control” encompasses a situation in which two or more persons exercise control concurrently, provided that such control is exclusive of all other persons. It also accommodates the situation in which the services of a third party are used to exercise control. Neither of these situations denies the establishment of exclusive control of the electronic record.

194. The requirement in paragraph 1(b) to identify the person in control applies to the method used (or rather the electronic records management system implementing that method), and not to the eNCD itself. Accordingly, it does not require the eNCD to name or contain other identifying information on the person in control or to contain information relating to the identification of that person. At the same time, it does not prevent the inclusion of such information in the electronic record or the inclusion of other unique identifiers that may facilitate the use of the NCD, including to enable the tracking of the goods.

195. Certain electronic records management systems, such as those based on distributed ledgers, may identify the person in control by referring to pseudonyms rather than to legal names. That identification, and the possibility of linking the pseudonym and legal name, if need be, would satisfy the requirement to identify the person in control. In any case, anonymity for commercial law purposes would not preclude the possibility of identifying the person in control for other purposes, such as law enforcement.

196. Paragraph 2 clarifies that the requirement to transfer possession is met with respect to an electronic record by transferring control thereof. This rule is relevant for applying the requirement in article 10(1) for the holder to “surrender” the NCD in order to demand delivery of the goods, which would be met in respect of an eNCD by the holder relinquishing control. It is also particularly relevant for applying article 11 to eNCDs.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-fourth session of Working Group VI	<u>A/CN.9/1170</u> , paras. 55 and 72
Report of the forty-fifth session of Working Group VI	<u>A/CN.9/1199</u> , paras. 68 and 74
Report of the forty-sixth session of Working Group VI	<u>A/CN.9/1205</u> , paras. 90–93
Report of the fifty-eighth session of UNCITRAL	<u>A/80/17</u> , para. 108
Report of the forty-seventh session of Working Group VI	<u>A/CN.9/1245</u> , para. 86

6. Article 16. Endorsement requirements

197. Several provisions of the Convention require an NCD to be endorsed. For example, for an NCD that is an order document, the definition of “holder” in article 2(4) and article 11 require the NCD to be endorsed in order to be transferred to a person that is neither the consignor nor the person to whose order the NCD is issued. As noted above (see para. 163 above), the Convention does not define the notion of “endorsement” or specify the formal requirements for the NCD to be duly endorsed, which remain a matter for applicable law. Regardless, article 16 specifies how the requirements for endorsement are met with respect to an electronic record without having to refer to any specific formal requirements.

198. Article 16 is modelled on article 15 of the Model Law on Electronic Transferable Records, with the necessary adaptations. It specifies two conditions, namely: (a) that the information required for the endorsement is included in the electronic record; and (b) that that information is compliant with the requirements set forth in articles 13 and 14. Consistent with the composite nature of electronic records reflected in the definition of that term in article 2(3) (see para. 35 above), required information would be “included” in the electronic record if it was logically associated with the other information constituting the record or otherwise linked together with that information so as to become part of the record.

199. Required information is “compliant” with the requirements of article 13 if the information is “accessible so as to be usable for subsequent reference” (see para. 185 above). It is also “compliant” with the requirements of article 14 if: (a) applicable law requires the signature of the transferor for the NCD to be duly endorsed; and (b) the conditions of article 14 are fulfilled with respect to the required information (see paras. 187 and 188 above). As required information is “included” in the electronic record, it is also subject to the integrity requirement in article 12(1)(c) (see paras. 180–183 above).

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 66 and 67
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , para. 69
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , para. 94
Report of the fifty-eighth session of UNCITRAL	A/80/17 , para. 108

7. Article 17. Change of medium

200. While the Convention provides for the use of eNCDs as part of the digital transformation of international trade, the drafters were conscious of the different levels of acceptance of electronic means, and readiness to use those means, among different sectors and jurisdictions. In particular, while the Convention provides for an NCD to be issued in electronic form only if so agreed between the transport operator and the consignor (art. 3(1)), a subsequent holder – not being a party to the transport contract – might have difficulty accessing the electronic records management system used to support that NCD and thus exercising the rights provided for therein. The ability for that holder to “switch” from an eNCD to a paper NCD is therefore critical to promoting the wider use of eNCDs. A change of medium may also be necessary if the transport of the goods involves customs or tax authorities that require documents to be submitted in a certain form. Article 17 establishes a mechanism for such a change of medium. It further seeks to ensure the continued legal effect and validity of the NCD despite the change of medium, while avoiding the risk of multiple claims arising from an NCD circulating in multiple mediums.

201. Article 17 is based on articles 17 and 18 of the Model Law on Electronic Transferable Records and applies to switching from a paper NCD to an eNCD and vice versa. Based on the principle of party autonomy, and mirroring article 3(1), on the issuance of NCDs, article 17 provides for a change of medium only if so agreed between the transport operator and the holder at the relevant time. In practice, just as some transport operators will not be in a position to issue NCDs in electronic form, not all transport operators will be in a position to switch medium.

202. Article 17 establishes neither a right for the holder to change medium nor an obligation on the transport operator to effect the change. While the agreement to change medium may be provided for in the transport contract, a subsequent holder – not being a party to the transport contract – would not be able to invoke that provision to request a change of medium. Whether that subsequent holder could persuade the consignor (as the seller) to request the change is a matter beyond the scope of the Convention. However, the requirement for the transport operator and the holder to

agree on the change of medium could be met if the NCD indicates that the holder may request a change of medium and the holder follows through with such a request.

203. Paragraph 1 requires the use of a “reliable method” (see para. 169 above) for the change of medium. Paragraph 2 then establishes two conditions in order for the change of medium to take effect, namely: (a) the surrender of all originals of the NCD in its previous medium; and (b) the inclusion of a statement in the NCD in its new medium that it replaces the NCD in its previous medium. These conditions are designed to provide assurance that an NCD issued in paper or electronic form does not circulate in both mediums. Paragraph 2(a) contemplates the possibility of issuing multiple originals of an eNCD. If the conditions set out in paragraph 2 are not fulfilled, the NCD in its new medium will not have any effect or validity.

204. Unlike article 10(2), which requires the surrender of only one original to demand delivery of the goods, article 17(2)(a) requires the surrender of all originals for a change of medium. This is because the transport operator, to whom the originals are to be surrendered, issued the NCD in the first place and should be in a position to ascertain whether the number of originals surrendered corresponds to the number of original issued.

205. The reference in paragraph 2(b) to the NCD in its new medium replacing the NCD in its old medium does not imply that the NCD is reissued. Article 17 is based on the notion that the NCD continues in existence, albeit in its new medium. It does not impose any additional form or content requirements for the NCD, apart from the inclusion of the statement required by paragraph 2(b). Indeed, it may be impossible for a paper document to reproduce all the information contained in an electronic record. Rather, the reference implies that extant form and content requirements continue to apply. This is reinforced by paragraph 4, which states that the rights and obligations of the parties are not affected by the change of medium. As such, where the NCD is switched from paper to electronic form, the electronic record generated by the switch must comply with article 12 and the statement required by paragraph 2(b) must comply with article 13.

206. As an additional safeguard, paragraph 3 requires the NCD in its previous medium to be “made inoperative”. This requirement implies some action on the part of the transport operator that renders the NCD incapable of being used or transferred after the change of medium. However, it leaves sufficient flexibility as to the method used, which may include obliterating or annotating a paper document or cancelling an electronic record. The requirement in paragraph 3 applies “upon a change of medium” and therefore only once the conditions in paragraphs 1 and 2 are fulfilled. This means that there should be no gap in the effect or validity of an NCD throughout its life cycle and across different mediums.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the forty-fourth session of Working Group VI	A/CN.9/1170 , paras. 68–74
Report of the forty-fifth session of Working Group VI	A/CN.9/1199 , paras. 70–75
Report of the forty-sixth session of Working Group VI	A/CN.9/1205 , paras. 95–98
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 109–111 and 113–115
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , para. 86

8. Article 18. General reliability standard

207. Most of the rules in chapter IV refer to the use of a “reliable method” (see para. 169 above). Article 18 establishes a standard for assessing the reliability of the method used, which is based on article 12 of the Model Law on Electronic Transferable Records.

208. Article 18(a) establishes reliability as a relative notion, in the sense that the reliability of the method is relative to the “function” that it is used to fulfil, as prescribed by the conditions laid down in the various rules in chapter IV. It then sets out an indicative list of factors that may be relevant to the assessment of reliability. With the exception of words inserted in subparagraph (a)(iii) to clarify that the word “system” refers to the electronic records management system used to implement the relevant method, the nature and content of the list is identical to the list in article 12(a) of the Model Law on Electronic Transferable Records and is intended to carry the same meaning, as elaborated on in paragraphs 128 to 135 of the explanatory note to the Model Law.

209. Article 18(b) dispenses with the requirement to assess the reliability of the method if it has, in fact, fulfilled the conditions laid down in the relevant rule. The wording is identical to article 12(b) of the Model Law on Electronic Transferable Records, which in turn is based on article 9(3)(b)(ii) of the Electronic Communications Convention. The paragraph pursues the same objective of avoiding needless litigation where there is no dispute that the method actually fulfilled the desired function.

210. As noted earlier (see para. 169 above), article 18 is technology-neutral and does not mandate or give preference to any particular technology. It also assumes that any assessment of reliability will take place after the fact (“ex post”), once the method has been used in the particular case (e.g. if the issue arises in legal proceedings). At the same time, the list of factors in paragraph (a) is intended to assist the design of electronic records management systems that are deployed to support eNCDs before they are used in a particular case (“ex ante”). As those factors are identical to

those listed in the Model Law on Electronic Transferable Records, technical standards developed for systems supporting electronic transferable records could be used for systems supporting eNCDs.

F. Chapter V. Final clauses

1. *Article 19. Depositary*

211. Article 19 designates the Secretary-General of the United Nations as the depositary of the Convention. The depositary is entrusted with custody of the authentic texts of the Convention and of any full powers delivered to the depositary. The depositary also performs a number of administrative services in connection with the Convention, including: (a) preparing certified copies of the original text; (b) receiving signatures to the Convention; (c) receiving and keeping custody of any instruments, notifications and communications relating to the Convention; and (d) informing States of instruments, notifications and communications relating to the Convention.

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

212. Establishing a harmonized regime for negotiable cargo documents is best served by securing broad appeal for the Convention among States. Article 20(1) declares that the Convention is open for signature by “all States”, which is a formula frequently used in multilateral treaties to promote the widest possible participation.

213. The Convention provides that it is subject to ratification, acceptance or approval by signatory States. Subjecting the Convention to ratification, acceptance or approval in addition to signature allows the State time to seek approval for the Convention at the domestic level and to enact any legislation necessary to implement the Convention internally, prior to undertaking the legal obligations arising from the Convention at the international level. Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply.

214. Accession is a means by which a State may become a party to a treaty without signing the treaty. Accession has the same legal effect as ratification, acceptance or approval. However, unlike ratification, acceptance or approval, which is preceded by signature, accession requires only the deposit of an instrument of accession.

215. The Convention uses the term “State Party” to refer to a State that has consented to be bound by the Convention and for which the Convention is in force.

3. Article 21. Participation by regional economic integration organizations

(a) Meaning of “regional economic integration organization”

216. The Convention also allows participation by regional economic integration organizations. Article 21 acknowledges the growing importance of such organizations, which already participate in a range of treaties.

217. The Convention does not define “regional economic integration organization”. Nevertheless, article 21 encompasses two key elements: the grouping of States in a certain region for the realization of common purposes, and the transfer of competencies relating to those common purposes from those States to the regional economic integration organization.

(b) Extent of competence of the regional economic integration organization

218. Article 21 is not concerned with the internal procedures leading to signature, ratification, acceptance, approval or accession by a regional economic integration organization. The Convention itself does not require a separate act of authorization by the States members of the organization and does not answer, in one way or the other, the question of whether the organization may consent to be bound by the Convention if none of its member States decide to do so. For the Convention, the extent of treaty powers given to a regional economic integration organization – and whether it expresses its consent to be bound by ratification, acceptance, approval or accession – is an internal matter concerning the relations between the organization and its own member States. Article 21 does not prescribe the manner in which such organizations and their member States divide competences and powers among themselves.

219. Nonetheless, article 21(1) provides that a regional economic integration organization may only express its consent to be bound if it “has competence over certain matters governed by this Convention”. Moreover, this competence needs to be demonstrated by a declaration made to the depositary pursuant to article 21(2) specifying the matters governed by the Convention in respect of which competence has been transferred to the organization by its member States.

220. A regional economic integration organization does not need to have competence over all the matters governed by the Convention; such competence may be partial or concurrent with its member States. Accordingly, both a regional economic integration organization and any or all of its member States may become parties to the Convention. However, article 21(1) provides that an instrument deposited by the organization is not counted in addition to those deposited by its member States for the purposes of the entry into force of the Convention (art. 25) or of any adopted amendment (art. 26).

221. By expressing its consent to be bound by the Convention, a regional economic integration organization becomes a party to the Convention in its own right. This is confirmed by article 21(3), which provides that any reference to a “State” or “State Party” in the Convention applies equally, where the context so requires, to a regional economic integration organization.

4. *Article 22. Non-unified legal systems*

222. According to the general principle stated in article 29 of the Vienna Convention on the Law of Treaties (1969), a treaty is binding upon each party in respect of its entire territory, unless a different intention appears from the treaty or is otherwise established. Article 22(1) permits a State to declare that the Convention is to extend to all its territorial units or only to one or more of them. Article 23 deals with the timing of that declaration. If no declaration is made, the Convention extends to all territorial units of the State (art. 22(4)). Article 22 is not designed to be used by regional economic integration organizations.

223. This provision, which is often called the “federal clause”, is particularly relevant to States with a federal system of government under which the constituent states, provinces or other “territorial units” of the State have legislative power over matters governed by the Convention. For some federal States, while the central Government retains treaty powers, it does not have the power to enact legislation necessary to implement the Convention in all or some of those territorial units. Article 22(1) addresses this situation by allowing the State to declare that the Convention applies only to those territorial units that have enacted legislation to implement the Convention. Article 23 allows the declaration to be amended at any time, which reflects the possibility for the State to apply the Convention progressively to its constituent territorial units.

224. Article 22 is not limited to federal States and may be used by other States with separate territorial units, including autonomous territories and overseas territories. However, as with federal States, a declaration can only be made under article 22(1) if “different systems of law are applicable” in those territorial units “in relation to matters dealt with in [the] Convention”.

5. *Article 23. Procedure and effects of declarations*

225. Article 23, which is modelled on article 20 of the United Nations Convention on the International Effects of Judicial Sales of Ships,³⁰ establishes common rules on how declarations under the Convention are made and take effect. The Convention contemplates two types of declaration, which are provided for in article 21(2) (declaration

³⁰General Assembly resolution 77/100, annex.

by a regional economic integration organization on transferred competence) and article 22(1) (declaration by a State on territorial units), respectively.

226. The third sentence of article 23(4) deals with the situation in which a State makes a declaration on territorial units under article 22(2) and modifies or withdraws the declaration before the Convention enters into force. For ease of administration, the Convention provides that the modification or withdrawal takes effect simultaneously with the entry into force of the Convention for that State.

6. Article 24. Reservations³¹

227. Article 24(1) permits a State to declare that it will not apply the Convention to negotiable transport documents that evidence or contain a contract for the carriage of goods wholly by sea, where such contracts are governed by an international convention to which the State is a party. This reservation can be made at the time of ratification, acceptance, approval or accession or any time thereafter. Where a State Party makes a reservation under article 24, a document purporting to be an NCD may not produce the legal effects under the Convention in that State, but it may still have legal effect as a negotiable bill of lading under applicable law.

228. This reservation acknowledges the existence of maritime transport conventions that contemplate the issuance and use of negotiable transport documents. Notably, the reservation is limited to unimodal maritime transport (“wholly by sea”) and does not extend to multimodal transport involving a maritime leg. Nevertheless, the Convention respects the existing rights, obligations and liabilities of the transport operator, consignor and consignee under applicable international conventions and national laws governing transport contracts (see art. 1(3)). Therefore, becoming a State Party to the Convention should not hinder a State in subsequently signing or ratifying any conventions governing transport contracts, including the Rotterdam Rules, that address the door-to-door carriage of goods including a maritime leg.

229. Paragraph 3 limits reservations to those expressly authorized in paragraph 1. This approach aims to support legal certainty by reducing the scope for unilateral divergence.

7. Article 25. Entry into force

230. Article 25(1) requires 10 States to express their consent to be bound by the Convention for its entry into force. By virtue of article 21(1), the instrument of ratification, acceptance, approval or accession of a regional economic integration organization is not counted in addition to those deposited by its member States. A

³¹[A/80/17](#), paras. 116–124.

period of 180 days from the date of deposit of the tenth instrument of ratification, acceptance, approval or accession is provided so as to give States that become parties to the Convention sufficient time to notify all relevant authorities and other interested parties of its impending entry into force.

231. Paragraph 2 deals with the entry into force of the Convention for States that express their consent to be bound by it after the deposit of the tenth instrument. For those States, the Convention enters into force 180 days after the date of deposit of their instrument.

8. Article 26. Amendment

232. Article 26 establishes a mechanism for amending the Convention. Amendment provisions are common in multilateral treaties, even if they are not commonly invoked.

9. Article 27. Denunciation

233. Article 27(1) allows a State Party to denounce the Convention. Just as article 22(1) allows a State to apply the Convention to a particular territorial unit, article 27(1) allows the State to denounce the Convention for a territorial unit.

234. Under article 27(2), denunciation takes effect 365 days after the notification is received by the depositary, unless a longer period is specified. The default period, which is approximately twice the period for entry into force of the Convention under article 25, is intended to give sufficient time to notify authorities and other interested parties in the denouncing State and in other States Parties of the denunciation.

References to preparatory work

<i>Document</i>	<i>Reference</i>
Report of the fifty-eighth session of UNCITRAL	A/80/17 , paras. 116–124
Report of the forty-seventh session of Working Group VI	A/CN.9/1245 , paras. 87–91

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