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1. Uniform usage of the terms "negotiable cargo document" and "negotiable cargo record"

The approach of repeatedly pairing "negotiable cargo document" with "negotiable electronic cargo record" throughout the document creates unnecessary redundancy.

The suggested solution to consolidate terminology is excellent, and the proposal in footnote 16 about the negotiable electronic cargo document approach would be superior for several reasons:

Terminological consistency with emerging practices: As footnote 16 indicates, while earlier UNCITRAL work avoided terms like "electronic document," more recent international instruments have embraced medium-neutral terminology. The United Nations Convention on the International Effects of Judicial Sales of Ships and UNCITRAL-UNIDROIT Model Law on Warehouse Receipts specifically adopt this approach, showing an evolution in legal drafting practice.

Conceptual clarity: Using "negotiable cargo document" as a medium-neutral umbrella term with paper and electronic versions maintains the fundamental legal concept while acknowledging different formats. This approach recognizes that the essential qualities of the document remain consistent regardless of medium.

Drafting efficiency: Beyond just avoiding repetition, this approach would make the convention more readable and accessible to practitioners. The current repetitive structure makes the text unnecessarily cumbersome.

Regulatory coherence: A unified approach to both formats under one primary concept helps ensure consistent application of rules across paper and electronic environments, potentially reducing legal uncertainty.

The footnote 16 suggestion to extend the definition of "negotiable cargo document" to include electronic forms would create a more elegant legal instrument while maintaining full recognition of electronic formats. The alternative suggestion in the footnote — adding an interpretation clause stating that references to "negotiable cargo documents" include "negotiable electronic cargo records" — would also work, though it seems less elegant than the negotiable electronic cargo document approach.

This terminological consolidation would significantly improve supporting of the electronic negotiable cargo document.

2. Commentary to "Interaction between draft convention on negotiable cargo documents and existing international transport law conventions"

The document "Interaction between draft convention on negotiable cargo documents and existing international transport law conventions" is extremely helpful.

International transport conventions such as the Convention on the Contract for the International Carriage of Goods by Road (CMR, 1956) (road transport), Convention concerning International Carriage by Rail (COTIF 1999) (rail transport), and Agreement on international railway freight

traffic (SMGS 1951) (international railway) contain stringent anti-derogation provisions that invalidate any contractual stipulations deviating from their mandatory frameworks.

At first glance, these provisions might appear to create obstacles for the assignment of contractual rights or the substitution of parties. However, a slightly deeper examination reveals that these prohibitions serve specific purposes distinct from assignment mechanisms and, in fact, do not fundamentally prohibit the transfer of rights between parties.

The CMR, COTIF/CIM, and SMGS conventions contain nearly identical prohibitions against derogation:

- CMR Article 41: “Any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void”.
- COTIF/CIM Article 5: “Any stipulation which, directly or indirectly, would derogate from these Uniform Rules shall be null and void.”
- SMGS Article 6: “Any condition of a contract of carriage directly or indirectly contravening the conditions laid down in this Agreement shall be null and void”.

These provisions serve several crucial functions within the international transport regime:

- Safeguarding the uniform application of law across different jurisdictions, ensuring predictability in cross-border trade.
- Protecting weaker contractual parties (typically shippers and consignees) from unfair terms imposed by carriers with stronger bargaining positions.
- Maintaining carefully negotiated liability regimes that balance the interests of all stakeholders in transport operations.
- Providing legal certainty by ensuring that fundamental rights and obligations remain consistent regardless of contractual variations.

Importantly, these anti-derogation clauses are primarily concerned with the substantive content of transport contracts — the rights and obligations themselves, liability limits, time bars for claims, bases of liability, and similar substantive matters. They aim to prevent contractual provisions that would diminish, expand, or otherwise alter the carefully calibrated rights and responsibilities established by the conventions.

The assignment of contractual rights represents a fundamentally different legal mechanism than derogation from convention provisions. The assignment does not modify the substance of rights and obligations; it merely transfers contractual rights from one party to another.

The language of these anti-derogation provisions specifically targets stipulations that “derogate from” or “contravene” the conventions’ provisions. The ordinary meaning of these terms relates to contradicting or departing from established rules — not transferring rights while maintaining their substance. Assignment preserves the content of rights while changing who can exercise them.

While these conventions regulate many aspects of transport contracts in detail, none explicitly prohibits the assignment of rights or the substitution of parties. This notable absence, particularly in conventions that are otherwise quite comprehensive, suggests that the assignment was not intended to be prohibited.

These conventions already recognize limited forms of rights transfer in specific contexts:

- All three conventions acknowledge that the right of disposal can be transferred between consignor and consignee under certain conditions.

- Successive carriers may assume rights and obligations under the same contract.
- Certain rights pass to insurers through subrogation.

These examples demonstrate that the conventions are not inherently hostile to the concept of rights transfer or party substitution.

An assignment with the carrier's knowledge and consent (as would be the case with formally issued negotiable cargo documents) does not seem to create any compatibility issues. When carriers participate in the assignment process, they effectively acknowledge the change in parties.

The assignment of benefits (rights to receive goods, claim damages) generally raises fewer concerns than the delegation of duties. However, the draft convention on negotiable cargo documents addresses explicitly this by ensuring that negotiable cargo documents holders who do not exercise rights do not assume liabilities solely by virtue of being holders.

Transport conventions exist to facilitate international trade, not impede it. Interpreting anti-derogation provisions to prohibit assignment would contradict this fundamental purpose by restricting standard and valuable commercial practices:

- Financing and security arrangements often depend on the ability to assign rights under transport contracts.
- Documentary sales in international trade require transferable rights to goods in transit.
- Insurance and risk management practices involve rights transfers through subrogation and other mechanisms.

The anti-derogation provisions in the CMR, COTIF/CIM, and SMGS conventions serve important purposes in protecting the integrity of international transport regimes. However, they do not substantively prohibit the assignment of rights or substitution of parties. An assignment represents a distinct legal mechanism that preserves the substance of contractual rights while facilitating their transfer — a process fundamentally different from derogation from convention provisions.

The recent initiatives to amend SMGS and review COTIF further indicate recognition within the transport law community that negotiability and assignment can be accommodated within these frameworks. This evolution reflects the ongoing need to balance the certainty provided by uniform transport regimes with the flexibility required by modern trade finance and supply chain practices.

Conclusion

The assignment of rights under the convention on negotiable cargo documents does not contradict the anti-derogation provisions of certain transport conventions.

The reference in paragraph 5 of the document A/CN.9/WG.VI/WP.115 to the fact that, according to the general principle stated in Article 30, paragraph 3, of the Vienna Convention on the Law of Treaties (1969), a later treaty prevails over an earlier treaty to the extent of any incompatibility between the two, should be fully supported.

3. Proposals for specific articles

3.1. Article 1. Scope of application

The proposed solution, where the geographical scope is described using "or" between 1(a) and 1(b), is the right one.

The “or” approach in determining the scope of application of transport conventions is the correct and logical choice. It ensures a broader and more predictable application of international transport law by recognizing that both the place of shipment and the place of delivery are equally significant in defining a transport contract’s legal framework.

This approach eliminates legal uncertainty that arises when the law applies only based on the place of shipment. This may lead to the exclusion of contracts where goods are delivered in a contracting state but were shipped from a non-contracting one. This does not seem logical since the goal of the shipment is delivering the goods to a destination, not just taking them for shipment. By incorporating both shipment and delivery locations, the “or” approach better reflects the realities of global trade and enhances legal uniformity.

This approach is widely adopted in existing transport conventions, demonstrating its effectiveness and acceptance in modern legal frameworks. Some key conventions that follow the “or” approach include:

- Convention on the Contract for the International Carriage of Goods by Road (CMR, 1956) — applies if either the place of taking over or the place of delivery is in a contracting state.
- Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI, 2001) — also adopts the “or” criterion for determining its scope.
- Montreal Convention (1999) for Air Transport - applies if the place of departure or destination is in a contracting state.
- Rotterdam Rules (2008) for Maritime Transport — extends the “or” approach to multimodal transport, applying if the place of receipt, place of delivery, port of loading, or port of discharge is in a contracting state.

Given the widespread adoption of the “or” approach, it is clear that this is the modern legal standard in transport law. The shift toward this approach represents an evolution in legal thinking aimed at making transport conventions more flexible and effective in governing cross-border trade.

The transition from the Hague–Visby Rules (1968) to the Hamburg Rules (1978) provides a clear example of this modernization. The Hague–Visby Rules adhered to the outdated “origin state approach”, meaning the rules only applied if the port of shipment was in a contracting state. This limited their applicability and often excluded transactions where goods were shipped from a non-contracting state but delivered in a contracting state.

The Hamburg Rules corrected this by adopting the “or” approach, making them applicable whenever either the port of loading or the port of discharge was in a contracting state. This marked a significant modernization of maritime law, ensuring greater fairness, legal certainty, and consistency in international transport contracts.

Thus, the “or” approach is both the right and modern solution, already entrenched in international transport law. The Hamburg Rules signified the point where maritime conventions fully embraced this principle, moving away from the restrictive origin state approach of the Hague–Visby era and aligning with the broader trends in global transport law.

(a) Opt-out mechanism in the scope of application (Footnote 4)

The footnote 4 to Article 1 suggests that the Working Group should consider allowing an opt-out mechanism, meaning that the consignor and the transport operator could exclude the application of the convention from their transport contract. The reasoning behind this suggestion is to broaden the scope of the convention’s application while still allowing contractual freedom.

However, Article 3 already states that a negotiable cargo document or negotiable electronic cargo record shall only be issued "if so agreed" between the transport operator and the consignor. This implies that the parties must first agree to apply the convention before it becomes applicable to their contract.

Redundancy Concern

If Article 3 already establishes that a negotiable cargo document is only issued if both parties agree, then there is no need for an explicit opt-out mechanism under Article 1.

The phrase "if so agreed" in Article 3 means that the convention does not apply automatically — it only applies when parties voluntarily choose to follow its rules.

Thus, adding an explicit opt-out clause in Article 1 seems unnecessary because the parties already have the power to opt out by simply not agreeing to apply the convention under Article 3.

The rationale behind this suggestion appears to be that some international conventions apply automatically unless explicitly excluded (such as the United Nations Convention on Contracts for the International Sale of Goods under Article 6). The opt-out provision in Article 1 would follow this logic — ensuring broad applicability while giving parties the ability to exclude the convention.

However, this logic does not apply here since Article 3 already requires explicit consent before a negotiable cargo document is issued under the convention.

If both provisions remain in the text, there is a risk of interpretational conflict:

- Article 1 (if revised to include an opt-out) would suggest that the convention applies automatically unless explicitly opted out.
- Article 3 already states that the convention only applies if agreed upon, meaning there would be no automatic application to begin with.

Conclusion

The opt-out provision in Article 1 is unnecessary and redundant given that Article 3 already ensures party autonomy by requiring explicit agreement for issuance.

If the Working Group retains both, there is a risk of confusing the default applicability rule.

A more logical approach would be to remove the opt-out mechanism from Article 1 and rely on Article 3's "if so agreed" clause to ensure contractual flexibility.

(b) By one or more than one mode of transport (Article 1(1))

The phrase "[by one or more than one mode of transport]" appears in Article 1 of the draft. It seems redundant.

The entire convention applies to transport operations, specifically international transport of goods. By definition, any transport of goods occurs through one or more modes of transport. Therefore, explicitly stating that the convention applies to transport "by one or more than one mode" is unnecessary.

The phrase "one or more than one mode" is logically redundant:

- "One mode" means a single method of transport (e.g., only by sea or only by rail).
- "More than one mode" refers to multimodal transport (e.g., sea + rail, air + truck, etc.).

- Since the phrase “one or more” includes both scenarios, adding “than one” serves no additional purpose.

Many transport-related international instruments do not include similar redundant wording. For example:

- The Rotterdam Rules (United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea) use the phrase “wholly or partly by sea” without specifying the number of transport modes.
- The United Nations Convention on International Multimodal Transport of Goods (1980) refers simply to “multimodal transport” without distinguishing between one or multiple modes.

This suggests that specifying “one or more than one mode” is unusual and unnecessary.

Footnote 3 in the document suggests that the secretariat added the phrase for clarity. However, given that the convention already applies to all international transport, the phrase does not provide additional legal clarity and could be omitted without loss of meaning.

Conclusion

The phrase should be removed to enhance the clarity and conciseness of the text.

(c) Modification and non-modification of rights under transport contract (Article 1(3)

Article 1, paragraph 3 states:

“Other than as explicitly provided for in this Convention, this Convention does not modify the rights and obligations of the transport operator, consignor and consignee and their liability under applicable international conventions or national law.”

While this provision clarifies that the convention does not modify the existing contractual rights and obligations, it says nothing about the fact that its application could result in a change in the person who holds those rights and obligations, which appears to be the main and only purpose of the draft convention.

For the sake of absolute clarity, it is worth considering the following revision:

“Other than as explicitly provided for in this Convention, this Convention does not modify the substantive rights and obligations of the transport operator, consignor, and consignee or their liability under applicable international conventions or national law. However, the application of this Convention may result in a transfer of these rights and obligations to a different party in accordance with the rules governing the issuance and transfer of negotiable cargo documents or negotiable electronic cargo records.”

Rationale for the change:

- Preserves the core principle — the convention does not itself alter contractual obligations.
- Recognizes the effect of negotiability — a holder of a negotiable document can succeed to the rights and obligations of the original contracting party.
- Avoids legal ambiguity — it explicitly acknowledges that a change in the person holding the rights and obligations may occur.

This approach ensures that the provision remains accurate while addressing the potential legal implications of transferring negotiable cargo documents.

3.2. Article 2. Definitions

(d) Artcile 2(8) and 2(10)

Having two definitions, a "transport contract" and a "transport operator," is unnecessary and could be considered circular. Having a separate definition of "transport operator" may be unnecessary and even impractical: "transport contract" naturally implies the role of the transport operator.

In legal frameworks, the concept of a "transport contract" inherently includes the notion of a party responsible for the transportation. In most jurisdictions, this responsibility falls to an entity known as a "carrier" or "transporter" within the contract's framework.

Defining only the "transport contract," implies that there is an entity (the transport operator, carrier, or transporter) bound by the obligations of the contract. This approach reduces redundancy, as there's no need to introduce a new term where the role is clear from the context of the contract itself.

Existing legal codes don't define "transport operator" separately. Many civil law systems avoid defining a "transport operator" because the term "carrier" (or an equivalent term) is sufficient to cover any party that assumes responsibility under a transport contract. For example, German, French, and Italian codes define "carrier" within the contract itself without needing a separate definition for "transport operator."

Conflicting terminology

Articles 1(8) and 1(10) contain terminology that creates an inconsistency in how the draft convention defines key parties in transport contracts:

Article 1(8) defines "transport contract" as "a contract whereby a transport operator **undertakes to perform** international transport of goods for reward."

Article 1(10) defines "transport operator" as "any person who concludes a transport contract with the consignor and who **assumes responsibility for the performance** of the contract, irrespective of whether or not that person performs the carriage itself."

The inconsistency stems from the differing terminology used to describe essentially the same obligation:

- Article 1(8) uses "undertakes" to describe the transport operator's commitment under the transport contract.
- Article 1(10) uses "assumes responsibility" to describe the same party' s obligation regarding the same contract.

This creates a definitional loop with inconsistent terminology: a transport operator is defined as someone who assumes responsibility for a transport contract, which is itself defined as a contract where the transport operator undertakes to perform transport.

The phrase "irrespective of whether or not that person performs the carriage itself" in Article 1(10) could be incorporated into Article 1(8) if deemed necessary.

Revised Article 1(8) could read: "'Transport contract' means a contract whereby a transport operator (being any person who concludes such contract with the consignor) undertakes to perform international transport of goods for reward, irrespective of whether or not that person performs the carriage itself."

This approach would:

- eliminate inconsistent terminology

- remove the circular definition problem
- preserve the substantive content of both provisions
- streamline the convention
- reduce potential for conflicting interpretations

By consolidating these closely related definitions, the convention would gain clarity and precision without losing any substantive coverage of the relevant concepts.

(e) Blank endorsement (Article 2(3))

There is a logical inconsistency in the current text as regards the possibility of blank endorsements.

While the Working Group explicitly decided to exclude bearer documents "in light of possible abuse and the risk of money-laundering" (footnote 36), the convention paradoxically continues to permit blank endorsements. Because blank endorsements functionally transform order documents into bearer instruments, their continued inclusion contradicts the convention's foundational policy choices and creates a significant loophole that could facilitate precisely the kinds of abuses the exclusion of bearer documents was meant to prevent.

The draft convention explicitly excludes bearer documents in Article 3, paragraph 6, which limits negotiable cargo documents to two forms: those "made out to order" or those made out "to order of a named person." As noted in footnote 36 (page 9), this limitation was deliberate, reflecting the Working Group's agreement "not to accommodate the issuance of bearer documents in light of possible abuse and the risk of money-laundering."

However, Article 11 on transfer mechanisms still permits blank endorsements. Under Article 11(a), the holder may transfer rights by endorsing the document "either to such person or in blank." Furthermore, Article 2, paragraph 3 defines "Holder" to include a person who "if the document is a blank endorsed order document, is the bearer thereof." This creates a fundamental inconsistency in the convention's approach.

A blank endorsement transforms an order document into the functional equivalent of a bearer document. When a negotiable cargo document contains a blank endorsement, it becomes transferable by mere delivery without requiring any further endorsement or identification of the transferee. The new holder only needs to possess the document to exercise the rights it contains.

This functional equivalence means that while the convention prohibits the issuance of bearer documents at the outset, it permits their creation through the simple mechanism of a blank endorsement. From a practical perspective, there is no meaningful difference between:

- A document initially issued as a bearer document (prohibited).
- A document issued to order or to order of a named person that is subsequently endorsed in blank (permitted).

In both cases, the result is a document that passes by mere delivery and is exercisable by whoever physically possesses it.

This creates a significant logical inconsistency in the convention's framework. If bearer documents present unacceptable risks of abuse and money laundering — as the Working Group has determined — then blank endorsements present precisely the same risks. The convention's approach is akin to locking the front door while leaving the side door wide open.

The inconsistency becomes even more apparent when considering the definition of "Holder" in Article 2, paragraph 3. This definition explicitly recognizes that a blank endorsed document makes

the bearer the holder — the very bearer instrument nature that the convention seeks to prohibit at issuance.

The continued allowance of blank endorsements effectively nullifies the protective measure of excluding bearer documents. Any party wishing to create a bearer-like instrument need only obtain a negotiable cargo document made out to order, endorse it in blank, and then transfer it. The document would then circulate as if it were a bearer document.

To address this logical inconsistency and ensure the effectiveness of the convention's anti-abuse measures, the Working Group should eliminate the possibility of blank endorsements from the draft convention. Specifically:

- Article 11(a) should be amended to remove the option of endorsement "in blank."
- Article 2, paragraph 3 should be revised to remove the reference to "if the document is a blank endorsed order document, is the bearer thereof".
- A new provision should be added explicitly stating that all endorsements must identify the transferee.

This approach would create a consistent framework that truly eliminates the bearer nature of negotiable cargo documents, aligning with the Working Group's expressed concerns about abuse and money laundering.

3.3. Article 3. Issuance of a negotiable cargo document or negotiable electronic cargo record

(f) Article 3(1)

It looks like this Article contains an internal contradiction that could create significant practical issues.

The second phrase of Article 3(1) allows transport operators to issue negotiable cargo documents "at a later stage through annotating an existing transport document."

However, this conflicts with the fundamental definition of the transport document in Article 2(9)(b), which states that a transport document "evidences the taking in charge of the goods for transportation under the transport contract."

This definition implies that the transport document has already been created and handed over to the consignor as evidence of receipt of the goods. Once the document is in the consignor's possession, the transport operator no longer has access to annotate it. This procedural gap makes the "later annotation" provision practically unworkable unless there is some mechanism for the consignor to return the document to the transport operator.

A simple solution would be to add the phrase **"If so agreed between the transport operator and the consignor"** to the beginning of the second sentence of Article 3(1), creating a similar phrasing structure with the first sentence. This addition would clarify that later annotation requires mutual agreement and would implicitly establish a duty for the consignor to make the transport document available for annotation, resolving the contradiction between possession requirements and annotation capabilities.

(g) Article 3(2)(a)

The suggestion in footnote 27 to replace the requirement in Article 3(2)(a) with a requirement that the transport document meet the definition of negotiable cargo document under Article 2(4) should be supported.

This would create better structural coherence in the convention by ensuring that definitional requirements are applied consistently, eliminating redundancy and potential contradictions between the definition and operational provisions.

(h) Article 3(6)

The provision in Article 3(6) seems to create a fallback rule where, if the negotiability type (e.g., "to order," "to order of a named person," or "to bearer") is not specified, the document will default to a negotiable form "to order" or "to the order of" a specified party.

However, this fallback mechanism might contradict Article 2(4)'s definition of a negotiable cargo document, which requires an explicit designation like "to order" or "negotiable" to qualify as negotiable.

Here's how the contradiction arises:

Article 2(4) defines a negotiable cargo document as one that includes explicit language such as "to order" or "negotiable." This is a strict requirement for the document to be recognized as negotiable under the convention;

However, Article 3(6) allows for a negotiable document, even without such explicit language, through the fallback provision that deems the document negotiable if it fails to specify the negotiability type.

If a document is deemed negotiable by Article 3(6) without explicitly meeting Article 2(4)'s requirement, it creates ambiguity about whether the document genuinely qualifies as a negotiable cargo document.

This contradiction could be resolved by integrating the substance of Article 3(6) into Article 2(4) as a clarifying provision. This would create a coherent approach to negotiability throughout the convention.

Article 2(4) could be revised as follows:

"Negotiable cargo document" means a document signed and issued by the transport operator that:

(a) indicates by wording such as "to order" or "negotiable" or an equivalent expression that the goods as specified in the document have been taken in charge by the transport operator and consigned to the order of the holder

(b) evidences or contains the transport contract

(c) contains a conspicuous annotation with reference to this Convention; and

(d) if the document fails to specify whether it is made out to order generally or to order of a named person, it shall be deemed to be made out to the order of the holder.

This integration offers several advantages:

- Logical consistency: The definition now acknowledges that a document can meet the basic requirement of having "to order" wording without necessarily specifying whether it is made out generally or to a named person.
- Clarifies intent: Including the presumption within the definition makes it clear that this is part of understanding what constitutes a negotiable cargo document, not a separate operational rule.
- Prevents contradictory interpretations: By consolidating these provisions, we prevent situations where a document might be considered non-negotiable under Article 2(4) but treated as negotiable under Article 3(6).

- Maintains flexibility: The solution preserves the practical flexibility intended by Article 3(6) while maintaining the formal requirements for negotiability.
- Drafting efficiency: With this approach, Article 3(6) could be deleted entirely, streamlining the convention and eliminating a source of potential confusion.

If keeping these as separate provisions is preferred, Article 2(4) could be modified to include a cross-reference to Article 3(6):

"'Negotiable cargo document'" means a document signed and issued by the transport operator that: (a) indicates by wording such as "to order" or 'negotiable' or an equivalent expression that the goods as specified in the document have been taken in charge by the transport operator and consigned to the order of the holder, subject to the presumption in Article 3(6);"

This would maintain the separation of provisions while clearly acknowledging their relationship, though it would be less elegant than the integrated approach.

The proposed solution enhances the coherence of the convention while preserving the apparent intent behind both provisions.

(i) Transport document that cannot be made negotiable. Article 3(3)

Article 3(3) begins with "Where the transport document is not negotiable:" which presents several conceptual challenges.

The current wording fails to capture the nuanced relationship between transport documents and negotiable cargo documents in the convention's framework.

The convention actually establishes a mechanism in Article 3(2) whereby transport documents can be "upgraded" to serve as negotiable cargo documents through appropriate annotation.

On the contrary, Article 3(3) addresses a situation where the transport document cannot or should not be transformed into a negotiable document.

A far better and more precise wording would be as follows:

"Where the transport document is non-negotiable or cannot be made negotiable under applicable law."

This wording effectively captures two distinct but related legal scenarios:

i. "Where the transport document is non-negotiable." This addresses the current status of a document under its governing legal regime. Many transport documents (such as air waybills under the Montreal Convention) are inherently non-negotiable by legal definition.

ii. "or cannot be made negotiable under applicable law". This addresses legal prohibition against transformation. Some transport documents may technically be non-negotiable in their standard form, but certain legal regimes explicitly prohibit any attempt to transform them into negotiable instruments (as with CMR consignment notes).

The wording is economical yet precise. It avoids unnecessary elaboration while still capturing the essential legal distinctions.

From a practitioner's perspective, this wording provides clear guidance: if a document is non-negotiable by law or legally prohibited from being transformed, then Article 3(3) applies. This clarity helps avoid misinterpretation and potential conflicts between this convention and existing transport conventions.

The suggested wording omits reference to party agreement or choice, recognizing that Article 3(3) is properly concerned with legal limitations rather than contractual decisions. This focus

maintains conceptual clarity and prevents potential confusion about the scope and purpose of the provision.

(j) Article 3(5)

Article 3(5) of the convention prohibits transport operators from requesting the issuance of multiple negotiable documents for the same goods but fails to specify any consequences for violating this obligation.

This creates uncertainty about enforcement and accountability, potentially undermining the convention's goal of preventing document duplication, which could lead to fraud or competing claims.

For example, suppose the transport operator, contrary to a convention prohibition, requested the issuance of another negotiable document with respect to the same goods entrusted to him. In that case, he should be held entirely and unlimitedly liable for willful infringement regardless of the applicable transport convention limitations.

The provision could be strengthened by adding a simple risk/liability clause: “and shall bear all risks and liabilities resulting from any failure to comply with this obligation.”

This concise addition establishes clear consequences while maintaining the provision’s original structure. It ensures transport operators face appropriate accountability for actions that could compromise the integrity of the negotiable cargo document system.

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

Article 4(1)(j) reads as follows: “A statement as to whether the freight has been prepaid or an indication as to whether the freight is payable by the consignee.”

Such a wording seems to be too black-and-white.

Nothing prevents the parties to the transport contract from stipulating that the amount of the reward should be split between the consignor and the consignee (the holder of a negotiable cargo document).

A more nuanced formulation could read as “The amount of the fright to be paid by the holder” since this document allocates the rights to the holder and not to the consignee.

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

(k) Article 7(2)

There seems to be a logical inconsistency between Article 7(1) and Article 7(2).

Article 7(1) clearly establishes that a person who becomes a holder “shall, by virtue of becoming the holder, have acquired all rights under the transport contract” — effectively transferring these rights to the holder. Given this complete transfer of rights, Article 7(2)’s statement that “any entitlement to the rights referred to in paragraph 1 above that is conferred upon the consignor or the consignee... cannot be exercised by the consignor or the consignee that is not the holder” is redundant and potentially confusing.

If rights have been fully transferred to the holder as stated in paragraph 1, then logically, the previous rights-holders (consignor or consignee) no longer possess these rights at all. There’s no need to specify that they “cannot exercise” rights they no longer have. This creates unnecessary complexity and could lead to misinterpretation that the consignor or consignee somehow retains some residual entitlement to the rights despite the transfer, without outlining this entitlement.

A previous cleaner approach was to state that upon issuance of a negotiable cargo document, any rights previously held by the consignor or consignee under the transport contract are extinguished and fully transferred to the holder. This would maintain the clear transfer of rights without suggesting any lingering entitlement that merely "cannot be exercised."

The current formulation might create confusion about whether consignors or consignees retain some theoretical rights that are merely suspended rather than completely transferred, undermining the clarity necessary in a legal instrument governing international transport documentation.

Moreover, there is a logical inconsistency between Article 8, as mentioned in footnote 71, and the fundamental structure of rights transfer established in Article 7.

Article 7(1) clearly establishes that when a person becomes a holder of a negotiable cargo document or negotiable electronic cargo record, he/she "acquires all rights under the transport contract." Article 7(2) reinforces this by stating that the consignor or consignee who isn't the holder cannot exercise these rights upon issuance of a negotiable cargo document.

Footnote 71 attempts to justify replacing the phrase "shall extinguish" with "cannot be exercised by the consignor or the consignee that is not the holder" by referencing Article 8, which contemplates the possibility of the consignor or consignee giving instructions. This creates a fundamental contradiction in the legal framework:

If rights have been fully transferred to the holder, as Article 7(1) states, then the consignor and consignee no longer possess these rights. Thus, they cannot be subject to obligations to provide instructions regarding rights they no longer have. The creation of such obligations would contradict the complete transfer of rights that forms the foundation of the negotiable document system.

The concept of seeking "information, instructions or documents" from non-holders who previously had rights but lost them through the issuance of a negotiable cargo document creates confusion about the finality of rights transfer. It suggests a lingering relationship that contradicts the clean break implied by Article 7(1).

A more coherent approach would either (1) clarify that the transport operator may only seek factual information (not instructions) from former rights-holders or (2) revise Article 7 to specify that certain limited obligations remain with the consignor or consignee despite the transfer of rights to the holder. The current approach of suggesting both complete rights transfer and continuing instructional authority creates an untenable legal contradiction.

(l) Article 7(3) Change "physical handing" to transfer

The current text uses the words "physical handing." However, the purpose of this rule is not to underline that the goods are of a physical nature and can be physically handed over but to point out the functional equivalence between transferring a paper document and transferring physical goods.

Thus, it is worth considering replacing "physical handing over" with "transfer", as an idea to clarify that the purpose of this rule is to establish functional equivalence rather than to describe or explain the process of transferring the document. Using "transfer" instead would emphasize that this provision is about creating an equivalency between physical and electronic transfers, rather than focusing on the specifics of how a transfer is physically or electronically executed.

This would help to focus on achieving the same end result, whether through physical or electronic means, reinforcing that both methods should have equal legal effect. "Transfer" is a broader term that can encompass both physical and electronic exchanges, making it more universally applicable in modern trade contexts where electronic records are increasingly common.

Thus, changing "physical handing over" to "transfer" would make the rule clearer, underlining that the provision is about equivalency in legal effect rather than describing specific methods of exchange. This could be particularly useful in aligning traditional legal concepts with modern digital practices.

Moreover, it aligns with the words "taking in charge" in Article 1(1)(a), which have replaced the word "receipt" in the previous version.

Contrary to what is said in footnote 73, the Budapest Convention does not use the word "physical."

(m) Article 7(4) Termination of a right to demand delivery

The draft convention on negotiable cargo documents' primary and only regulation sphere is to establish a mechanism for changing parties to a transport contract.

However, Article 7(4) oversteps its legitimate scope by attempting to regulate when substantive rights under transport contracts terminate.

"The rights and effect set out in paragraphs 1 and 3 above exist after the issuance of the negotiable cargo document or negotiable electronic cargo record and cease, except for that listed in subparagraph 1(c), when the negotiable cargo document or negotiable electronic cargo record is surrendered."

While the first part appropriately identifies when the holder acquires rights (still derived from the transport contract), the second part inappropriately legislates when these rights terminate.

The provision that rights "cease... when the negotiable cargo document is surrendered" fundamentally misunderstands the nature of rights under transport contracts. A holder's right to demand the delivery of goods cannot simply terminate upon surrender of a document — it can only be extinguished through the actual delivery of the goods.

Consider this scenario: A holder surrenders their negotiable cargo document to the transport operator at the destination port. According to Article 7(4), his rights would immediately "cease." If the transport operator then fails to deliver the goods, would the holder have no recourse? This cannot be correct.

The right to demand delivery logically persists until the contract is fulfilled through actual delivery. The surrender of the document is merely procedural evidence that the holder has presented themselves to receive the goods — it cannot extinguish substantive rights that derive from the transport contract.

By dictating when substantive rights terminate, the convention improperly encroaches on matters that should be governed exclusively by the terms of the transport contract only.

Article 1(3) explicitly recognizes this boundary, stating that the convention "does not modify the rights and obligations of the transport operator, consignor and consignee and their liability under applicable international conventions or national law." Yet Article 7(4) precisely attempts to modify when rights terminate.

Article 7(4) should be revised to eliminate provisions that dictate when rights under transport contracts terminate. The convention should limit itself to identifying who qualifies as the legitimate holder entitled to exercise rights, without attempting to regulate the substantive duration or termination of those rights.

By maintaining this distinction, the convention would properly recognize that while it can establish who is recognized as the legitimate holder, the substantive rights under the transport contract can only terminate through proper fulfillment of that contract — the actual delivery of goods — not through mere document surrender.

Another possible option would be deleting Article 7(4) altogether.

(n) Article 7(5)

The last sentence in Article 7(5) could lead to serious misinterpretations that contradict established maritime practice.

The current wording creates the dangerous impression that multiple originals need only be presented to exercise the right of disposal in Article 7(1)(b) only, while other rights might be exercised by presenting just one original.

This contradicts longstanding practice in bill of lading transactions where the production of all originals is required for the exercise of all rights (except delivery, where one original may suffice). The selective requirement only for the right of disposal creates a serious legal loophole that could enable fraud or conflicting claims.

Therefore, the following redrafting is suggested:

"In order to exercise any of the rights listed in paragraph 1 above, the holder shall produce the negotiable cargo document or negotiable electronic cargo record to the transport operator and shall identify itself if the negotiable cargo document or negotiable electronic cargo record was made out to the order of a named person. If the negotiable cargo document or negotiable electronic cargo record states that more than one original has been issued, all originals shall be produced for exercising any rights under paragraph 1, with the exception that for exercising the right to demand delivery of the goods at destination under subparagraph 1(a), the production of one original shall be sufficient."

This redrafting properly reflects the established practice in bill of lading transactions, closes the dangerous loophole in the current wording, and maintains the exception for delivery that aligns with commercial practice. It would prevent potential fraud scenarios where a holder might attempt to exercise control rights without producing all originals, while preserving the practical flexibility of allowing delivery against a single original.

3.6. Article 8. Missing information, instructions or documents

It would be reasonable to introduce a requirement for each new holder to notify the transport operator of their status as the current holder. Such a requirement could enhance clarity and operational efficiency, allowing the transport operator to have an updated record of whom to contact for instructions or necessary information.

This would align more closely with frameworks like the Rotterdam Rules, where there is more structured communication between the holder and the transport operator. By requiring holders to notify the transport operator upon acquiring the negotiable document, the operator could ensure they know the rightful party for instructions without compromising the negotiable and transferable nature of the document. Additionally, this requirement could mitigate risks associated with lost or stolen documents, providing a clearer chain of custody and enhancing security for all parties involved in the transport process.

This change would balance the negotiable document's flexibility with the need for clear communication in logistics and could be added as a supplementary provision in the draft document.

A requirement for the new holder to notify the transport operator could be integrated effectively within Article 8 ("Missing Information, Instructions or Documents") or Article 11 ("Transfer of rights"). Here's how it could be reformulated:

(o) Article 8

This Article deals with situations where the transport operator may need to contact the holder for additional information or instructions. A new clause could specify that the current holder is obligated to notify the transport operator of their status upon acquiring the negotiable cargo document or electronic record. This placement would make it clear that such a notification is necessary to ensure smooth communication when information or instructions are needed.

(p) Article 11

Since Article 11 governs the transfer of rights under the negotiable cargo document or electronic cargo record, adding a clause here could require that each new holder notify the transport operator as part of the rights transfer process. This would ensure that the operator always has an up-to-date record of the holder, aligning the notification with the formal transfer of rights.

Both placements could work, but Article 11 might be more fitting as it would embed the notification within the rights transfer process itself, clarifying that notification is a critical step in recognizing a new holder's rights.

Risk option

Another possible solution would be to introduce a risk allocation rule.

Since there was a clear wish in the Working Group not to impose an obligation on the holder to give instructions and reply to the transport operator's requests, it is an idea to introduce an explicit "risk" clause by adding a provision to Article 8 that places the responsibility on the holder to notify the transport operator of their status as the new holder could be a practical addition. Such a provision would clarify the parties' obligations and mitigate potential risks, particularly those related to miscommunication or delayed delivery. Here's why this addition could be beneficial and how it might look:

"The holder of a negotiable cargo document or negotiable electronic cargo record bears the risk of failing to notify the transport operator of their status as the new holder. In the absence of such notification, the transport operator shall not be liable for any loss, delay, or incorrect delivery resulting from reliance on the information previously provided regarding the holder's identity."

Adding a provision to Article 8 that assigns the risk of non-notification to the holder would enhance clarity, protect the transport operator, and promote an orderly delivery process. It would also support a transparent chain of custody, aligning with the goals of both traditional and electronic negotiable documents.

Such a risk allocation rule without explicit obligation for the holder to notify the transport operator could meet possible concerns of bank holders that do not want to be identified.

3.7. Article 9. Who bears liability?

Article 9(1) states that "A holder of the negotiable cargo document or negotiable electronic cargo record that is not the consignor and that does not exercise any right under the transport contract does not assume any liability under the transport contract solely by reason of being a holder."

This creates a problematic scenario when considered alongside Article 7. Under Article 7, upon issuance of a negotiable cargo document, the rights under the transport contract are transferred to the holder. In contrast, the consignor and consignee, who are not holders, cannot exercise these rights.

However, Article 9(1) then stipulates that a holder who doesn't exercise rights assumes no liability. This creates a situation where:

- The original parties (consignor/consignee) no longer have rights under the contract.

- The new rights-holder (who hasn't exercised rights yet) has no liability.
- No party is clearly responsible for obligations under the transport contract.

This legal vacuum could create serious problems in practice. For example, if unforeseen circumstances require decisions or actions during transport, the transport operator would face uncertainty about who bears responsibility for associated costs or risks. The transport operator could be left without a liable counterparty for legitimate claims, despite having fulfilled their obligations.

Article 8's provision that if the transport operator, after reasonable effort, is unable to obtain that information, instructions, or documents within a reasonable time, the transport operator shall proceed in accordance with the transport contract clearly does not help to identify who bears liabilities under the transport contract.

The provision also contradicts fundamental contract law principles where rights and obligations generally go together. By allowing complete separation of rights (which transfer to the holder) from liabilities (which seemingly disappear until rights are exercised), the convention creates an imbalanced legal framework.

A more coherent approach would be **to specify that while passive holders may have limited liability, certain core obligations remain with either the original parties or transfer automatically with the rights to the holder**. This would prevent the creation of a contractual relationship where rights exist without corresponding obligations, ensuring that transport operators always have a liable counterparty under the transport contract.

3.8. Article 11. Delivery of the goods

There is an important inconsistency in the draft convention's approach to negotiable cargo documents. Article 11(b)(ii) allows for the transfer of rights via "a document endorsed blank," effectively permitting a negotiable cargo document to function as a bearer instrument through blank endorsement.

This creates a logical contradiction with the decision reflected in Article 3(6) and footnote 36, where the Working Group explicitly "agreed not to accommodate the issuance of bearer documents in light of possible abuse and the risk of money-laundering." If bearer documents were deemed too risky at issuance, allowing their creation through blank endorsement undermines this policy decision completely.

The blank endorsement provision essentially creates a backdoor to convert a negotiable cargo document issued to a named person or to order into a *de facto* bearer document that can be transferred by mere delivery without any additional endorsement. This transformation subjects the document to exactly the same risks of abuse and money-laundering that motivated the prohibition on bearer instruments at issuance.

If the concerns about bearer instruments are legitimate enough to prohibit their issuance, those same concerns logically extend to their creation through blank endorsement. The current drafting creates an artificial and fictitious distinction between bearer status at issuance versus bearer status through endorsement, when the practical risks and regulatory concerns are identical.

To resolve this contradiction, Article 11(b)(ii) should be removed, limiting transfers to either specifically endorsed documents or the narrow first-holder exception in Article 11(b)(i). This would maintain a consistent approach to document control throughout the lifecycle of negotiable cargo documents and properly reflect the policy decision against bearer instruments.

3.9. Article 17. Change of medium

Both paragraphs 3 and 6 of the said Article use the phrase “be made inoperative and cease to have any effect or validity.” This expression lacks precision and creates uncertainty about what concrete actions must be taken to properly terminate the superseded document or record.

This vague language could lead to practical problems in implementation. Without clearly specifying the physical or technical means of termination, the convention leaves open questions about what does “inoperative” mean and what exactly shall be done to make the document or the record inoperative. This ambiguity could result in disputes about whether a document was properly terminated, particularly in cases where the original document later reappears in circulation.

The terminology fails to account for the fundamental difference between physical and electronic records. Physical documents require physical solutions, while electronic records need technical ones. Using the same abstract legal terminology for both formats ignores their distinct material realities.

For paper documents in Article 17(3), specific requirements like “shall be physically destroyed, marked as void, or permanently defaced in a manner that prevents any future use” would provide clear guidance on the expected action. This concrete language would leave no doubt about the proper procedure for terminating the document.

For electronic records in Article 17(6), technical terminology such as “shall be permanently deleted from all systems, rendered inaccessible through technological means, or clearly marked in the system as invalid” would better reflect the digital context and provide appropriate guidance for electronic systems.

By using unclear terminology about “inoperative” status, the convention misses an opportunity to establish standardized practices for document termination that could reduce fraud and enhance certainty in international trade. Precise, medium-specific requirements would better serve the convention’s goals of creating secure and reliable negotiable cargo documentation systems.