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Working Group VI (Negotiable
Multimodal Transport Documents)
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Negotiable Multimodal Transport Documents

Note by the Secretariat

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I. Introduction

1. At its fifty-fifth session (New York, 27 June–15 July 2022), the Commission considered a note by the secretariat summarizing the preparatory work in the area of negotiable multimodal transport documents in response to an earlier request by the Commission (A/CN.9/1101). After discussion, the Commission agreed to assign the topic to Working Group VI and requested the secretariat to prepare a preliminary draft text reflecting the outcome of the expert consultations it had conducted since the fifty-fourth session of the Commission and to report back to the Commission, at its fifty-sixth session, in 2023, on the further progress made in the working group.¹
2. The annex to this document contains an annotated set of preliminary draft provisions for an instrument on negotiable multimodal transport documents for consideration by the Working Group. The following paragraphs set out some key issues that the Working Group is invited to consider in that context.

II. Issues for consideration by the Working Group

3. During the Commission's deliberations at its fifty-fifth session, it was noted that the assigned working group needed to consider various policy questions, and, for that reason, the Commission agreed that it was not advisable, at the present stage, to limit the mandate of the assigned working group or provide detailed instruction on the approach it should adopt.² Within those parameters, the Working Group has a broad mandate and considerable freedom to determine the scope and form of its work and how to address the issues it identifies as suitable for being addressed in a new instrument on negotiable multimodal transport documents.
4. The set of preliminary draft provisions contained in the Annex to this note has been prepared by the secretariat, as requested by the Commission, to help focus the deliberations of the Working Group. Those draft provisions are largely based on relevant provisions of existing international instruments on international carriage of goods and reflect the outcome of the expert consultations conducted by the secretariat since the fifty-third session of the Commission, when this topic was included in the UNCITRAL work programme. The following paragraphs offer background information on the drafting of those provisions, as they resulted from the expert consultations, and some issues that the Working Group may wish to consider in its deliberations.

A. Form of the new instrument

5. The central purpose of the new instrument is to clearly provide that a document issued by agreement of the parties to a contract for the international carriage of goods, also known as the transport contract, may serve as a document of title in respect of the goods it represents irrespective of the actual modes of transportation used for the particular carriage. This is currently the case only for the maritime bill of lading, whereas the air waybill, as well as the road and rail consignment notes do not have that function. The particular situation of the maritime bill of lading is the result of a long evolution and its function as document of title, which originates in the law merchant, is recognized as a rule of law by judicial precedent or legislation. Although the effect of the transfer of a bill of lading as a means of conveying property to goods is not uniformly recognized by law in all jurisdictions, it is undisputed that the mere agreement of the parties would not suffice to attribute that function to a transport document. Therefore, all experts consulted by the secretariat believed that legislation would be needed in order to extend the negotiability function of the maritime bill of

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

² *Ibid.*, para. 201.

lading to documents issued in connection with the carriage of goods by other modes of transportation.

6. The preliminary draft provisions have therefore been formulated as legislative text intended for State enactment, rather than as contractual clauses or a guidance text. Moreover, and without prejudice to an ultimate decision by the Commission on the form of the new instrument, the preliminary draft provisions have been structured in the form of an international convention considering that instruments concerned with the international carriage of goods have traditionally been negotiated and adopted as international conventions so as to ensure the highest degree of uniformity. The secretariat could formulate drafting options for a model law to help the Working Group visualize such an alternative at a future meeting, if the Working Group so wished.

7. Consistent with that approach, the preliminary draft provisions use as far as possible terminology from existing international transport conventions. They include the Convention on International Multimodal Transport 1980 (“MT Convention”);³ the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2008 (the “Rotterdam Rules”);⁴ the Convention concerning International Carriage by Rail (COTIF) 1980⁵ and the COTIF/CIM Uniform Rules concerning the Contract of International Carriage of Goods by Rail (the “CIM-COTIF 1999”);⁶ the Agreement on International Railway Freight Communications (SMGS) 2020⁷; the Convention on the Contract for the International Carriage of Goods by Road (CMR)⁸ and its Additional Protocol concerning the Electronic Consignment Note 2008 (“e-CMR”);⁹ and the Convention for the Unification of Certain Rules for International Carriage by Air (the “Montreal Convention”).¹⁰

B. Substantive scope (“dual-track” and “modality-neutral” approaches)

8. The original proposal considered by the Commission at its fifty-second session (Vienna, 8–19 July 2019) advocated creating “a bill of lading for one or more modes of transport, including railway, road and air, to achieve the goals of using a single bill, controlling the cargo with the bill and taking delivery of goods with the bill, giving that new transport document the nature of a document of title in order to enable it to perform the financial settlement function.”¹¹ In addition to addressing the document of title function, it was proposed that the future instrument should include new rules on issues such as the issuer’s qualifications, the conditions for issuance and the object, format and validity of the issuance.¹² When assigning this topic to the Working Group, at its fifty-fifth session, the Commission noted that the deliberations of the working group “should avoid interference with existing liability regimes for the international carriage of goods.”¹³

9. These two elements (i.e., focusing on the function of document of title and avoiding interference with the existing international regimes for carrier liability) have

³ Resolution adopted by the General Assembly on 20 December 1978 (A/RES/33/160). See also https://unctad.org/system/files/official-document/tdmtconf17_en.pdf.

⁴ Resolution adopted by the General Assembly on 11 December 2008 (A/RES/63/122).

⁵ See https://otif.org/fileadmin/user_upload/otif_verlinkte_files/07_veroeff/01_COTIF_80/cotif-1980-e.PDF.

⁶ See https://otif.org/fileadmin/user_upload/otif_verlinkte_files/07_veroeff/01_COTIF_80/cotif-cim-1980-e.PDF.

⁷ For English translation of the agreement, see <https://en.osjd.org/en/8906/page/106077?id=2099>.

⁸ United Nations, *Treaty Series*, vol. 399, No. 5742.

⁹ United Nations, *Treaty Series*, vol. 2762, A-5742.

¹⁰ United Nations, *Treaty Series*, vol. 2242, No. 39917.

¹¹ *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 216.

¹² *Ibid.*

¹³ *Ibid.*, *Seventy-seventh Session, Supplement No. 17 (A/77/17)*, para. 201.

served as a basis for the secretariat to determine the substantive scope of the preliminary draft provisions, which reflects a so-called “dual-track” approach. The document to be provided in the new instrument would not replace any of the transport documents that an actual carrier may be required to issue under the law (domestic or international) governing a specific segment of the international carriage in question. By the same token, the new instrument would coexist and would not substantially affect the application of any international convention that governed the contract or contracts negotiated by the parties for the carriage in question or any part thereof, in particular the liability of the carrier for loss of or damage to the goods or for delay in their delivery.

10. It should be noted that such a “dual-track” system for cargo-related documentation is not an untested novelty, as it has been used in practice in connection with international multimodal carriage of goods. A well-known example of a similar approach is the multimodal transport bill of lading developed by the International Federation of Freight Forwarders Associations (FIATA) (hereinafter “the FIATA Multimodal Bill of Lading”). Freight forwarders traditionally act as agents who arrange for the shipment of goods on behalf of the shipper, but they may also act as principal contractor arranging the carriage in their own name. Freight forwarders often consolidate cargoes of several shippers into a single shipment. In such cases, they assume the function of a contractual carrier, receiving a freight payment from the shipper and subcontracting the carriage to actual carriers. A FIATA Multimodal Bill of Lading issued by the freight forwarder may therefore coexist with transport documents such as maritime bills of lading or rail or road consignment notes issued by the actual carriers to cover specific segments of the multimodal carriage. In regions where traders require letters of credit or other means of trade financing, there is a strong demand for negotiable transport documents to support credit applications, and FIATA Multimodal Bills of Lading are often issued also in conjunction with road or rail transport to supplement the non-negotiable rail or road consignment notes.

11. In this context and for the purposes of the new instrument, the “dual-track” approach would mean that the substantive scope and coverage of its provisions could be limited to those that are strictly necessary for the document contemplated in the new instrument to function as a self-standing document of title without interfering with existing liability regimes for the international carriage of goods. Therefore, the preliminary draft provisions contained in the Annex focus on the following matters: (a) defining the nature of the document it covers; (b) the minimum content of the document and how it is issued in both printed and electronic form; (c) the evidentiary value of the document and its replacement (e.g., with an electronic record or vice-versa); (d) the procedure for and effect of transfer of the document; (e) the holder’s right of control of the goods, including the right to give or modify instructions with respect to the goods, to demand delivery of the goods upon presentation of the document or electronic record and to transfer title to the goods by transferring the document or transferring control of the electronic record.

12. In the consultations conducted by the secretariat, it has been suggested that the new instrument could cover all modes of transport in both unimodal and multimodal carriage of goods with or without a sea leg. Accordingly, although identified as an instrument on negotiable “multimodal” transport documents, the new instrument intends to follow a “modality-neutral” approach to include in its scope both unimodal and multimodal transportation.

C. Relationship to transport contract

13. Consistent with the limited approach described above, the preliminary draft provisions do not deal with the rights and obligations of the parties to the transport contract, in particular with the liability of the carrier for loss of or damage to the goods or for delay in their delivery. It is acknowledged that the extent of the carrier liability is an important practical consideration for the holder of a negotiable transport document, but the consultations conducted by the secretariat suggest that, from a legal

point of view, it is possible to deal with the negotiability aspect of transport documents separately from the applicable liability regime.¹⁴

14. The UNCTAD/ICC Rules for Multimodal Transport Documents¹⁵ already offer an example of a partial separation of the two issues. Indeed, whereas article 6, paragraph 1, establishes a uniform limitation of liability of the multimodal transport operator for loss of or damage to the goods, paragraph 4 of the same article 6 refers to the limit of liability provided by other applicable international convention or mandatory national law whenever it is determined that the loss of or damage to the goods occurred during one particular stage of the multimodal transport, in respect of which such applicable international convention or mandatory national law would have provided another limit of liability if a separate transport contract had been made for that particular stage of transport. The preliminary draft provisions take that approach one step further and refer in all circumstances to the liability regime applicable to the entire carriage or any segment thereof pursuant to the applicable law. Moreover, among the experts consulted by the secretariat, there was strong support for providing explicitly in the new instrument that, except as otherwise expressly stated therein, its provisions did not interfere with transport operations and rights and obligations of the carrier, consignor and consignee under the transport contract and applicable law.

15. Another example could be the practice of a charter party bill of lading, which is issued to offer the charterer the possibility to generate a transferrable and negotiable document on the basis of the underlying transport arrangements. The charter party bill of lading offers the charterer and its contracting partners in sales contracts a document of title to support the negotiability of the goods in transit and a vehicle to refer to the terms of carriage as provided for in the charter party.

16. Arguably, the only point of direct connection between the regime envisaged in the new instrument and the rights and obligations of the parties under the transport contract concerns the exercise of the right of control by the holder and the corresponding obligations of the carrier to carry out instructions and deliver the goods. However, undue interference with the underlying contract can still be avoided to the extent that the new instrument can limit itself to restating rules of wide application in the international carriage of goods, particularly established practices in respect of delivery and right of control under negotiable transport documents.

D. Relationship to transport documents

17. Closely related to the previous question is the relationship between the document contemplated by the new instrument and the transport document issued pursuant to the transport contract. The first issue to be considered is whether the document contemplated by the new instrument should itself be the transport document for the international carriage or whether it should be a document issued in addition to the actual transport document only for the purpose of serving as a document of title in relation to the goods.

18. Issuing both documents separately would allow it to distinguish more clearly their respective functions in a “dual-track” approach: the new document would be used for documentary credit and negotiation purposes, whereas the transport document would fulfil its usual functions, accompanying the cargo and serving for custom clearance purposes. However, as both documents relate to the same goods, they would need to mirror each other and, in that connection, there has been some concern about the risks of unintended inconsistencies or discrepancies between the transport document and the new document. It has been suggested that a “dual-track” approach might still theoretically apply to a single document since the document would fulfil two different functions, and different legal regimes would apply to those

¹⁴ Ibid.

¹⁵ ICC Publication No. 481.

functions. The need for two documents has been especially questioned if the contents of the new document and the transport document were expected to be the same.

19. As a practical matter, depending on the journey agreed by the parties, one document may perform both functions or a separate document may be issued in addition to the transport document especially for the purpose of serving as a document of title:

(a) *International multimodal carriage*. There is no international convention currently in force governing international multimodal carriage that would allow for one single document to replace all transport documents required for specific segments of an international multimodal carriage. Depending on the modes of carriage used, the transport document issued to cover the entire journey may coexist with other transport documents issued for specific segments of the overall journey. In such a case, there would be no need for a separate document only to provide for the negotiability function in respect of the segments where the specific legal regime does not attribute that function to the respective transport document (e.g., a railway consignment note). The multimodal transport document itself could serve that purpose and thereby supplement the functional limitation of those transport documents to which the law does not attribute the function of document of title (airway bill, road and rail consignment notes);

(b) *International unimodal carriage other than by sea*. In the consultations conducted by the secretariat, it has been strongly suggested that the new instrument, while focused on multimodal transportation, could also be beneficial for international unimodal carriage other than by sea. Existing international conventions on air, road and rail carriage do not attribute the function of document of title to the transport documents to which they apply. Therefore, it would also not be possible for the parties to validly incorporate such a function into any of those transport documents (for instance, by an annotation to a railway consignment note issued under CIM-COTIF 1999). However, it should be possible for the parties to agree on the issuance of a separate document to serve as a document of title in respect of the same goods if a legislative text in force in the countries concerned admitted that possibility irrespective of the mode of transportation.

20. The preliminary draft provisions in the Annex to this note provide for both alternatives. In either case, the parties must agree on the issuance of the document of title. With a view to avoiding confusion between the transport document and the document created by the new instrument to serve as a document of title, the preliminary draft provisions call that document “a negotiable cargo document”. The views of the experts consulted by secretariat have differed as to whether the contents of a negotiable cargo document should be kept as short as possible, focusing only on negotiability aspects, in particular when the negotiable cargo document is issued as a separate document “in addition to” the transport document (as envisaged in draft article 3, subparagraph 2(a)), but there was a general preference for the negotiable cargo document to contain all pertinent information related to the goods and the transport contract since, without that information and access to the underlying transport contract (or the transport document that evidences or contains the transport contract), third parties would be unable to make an informed business decision on whether to purchase the cargo. In addition, it was noted that relevant information would be required to enable the holder of the negotiable cargo document to exercise its rights of control over the goods and sue the carrier if necessary. Including all pertinent information as required by the ICC Uniform Customs and Practice for Documentary Credits (UCP 600) and related international standard banking practice about the goods and their transportation in the negotiable cargo document itself was also considered essential for banks that otherwise would refuse to accept the negotiable cargo document for documentary credit since its value as a collateral would be diminished. Article 4 of the preliminary draft provisions reflects that preference for a detailed content.

E. Order and bearer documents

21. It was considered that, to be universally applicable, a new instrument should accommodate the practice with the use of different types of negotiable cargo documents, including a bearer negotiable cargo document that was widely used for meeting commercial and other needs (e.g., privacy). A bearer negotiable cargo document was considered particularly useful in commodity trade where the buyer was often not known at the time of shipment. It was also considered useful in documentary credit transactions where the bank that might end up being the holder of the negotiable cargo document that would not be known in advance or would prefer to remain unnamed. It was considered that a bearer negotiable cargo document could make the negotiable cargo document more attractive to banks and sellers/consignors that would be able to hold it as security against the buyer/consignee. It was, however, acknowledged that in in-land transport specifying the name of the consignee was usually required for border and custom controls. Noting those challenges, the Working Group may wish to consider whether certain provisions in the new instrument would apply only in the context of a specific mode of transport.

F. Electronic cargo documents

22. During the April 2021 webinar (see [A/CN.9/1061](#), paras. 46–55), it was explained that in the electronic world, one record related to a particular transport contract could be created, which would link all necessary information related to that contract, including that contained in the transport document and the negotiable cargo document. Access of relevant persons, such as the holder of the negotiable cargo document, including banks and the carrier, to information contained in such a record would be enabled under certain conditions, eliminating the need to surrender original(s) for obtaining delivery of goods or exercising rights of control over goods in transit. Those benefits of electronic solutions were in addition to eliminating or decreasing risks of fraud, confusion and other problems that arose, for example, if the negotiable cargo document did not arrive on time at destination or the lawful holder did not have all originals at the time it needed to exercise its right of control over the goods in transit. In the light of the full digitalization of world trade expected to occur in the coming decade, it was suggested that a section with recommendations on how to technically produce such a record in terms of key value pairs should be included in a new instrument, clearly specifying standardized names for every key (i.e., the standardized technical field name) and the standardized format of a pertaining value in accordance with UNECE recommendations. This would be necessary to allow for the greatest possible technical transferability of rights in the electronic environment. It was also considered that the use of the term “document”, which was associated with the paper environment and a paper-based medium, should be avoided, and the term “instrument” or another appropriate term might be used instead.

23. There have been suggestions that a truly enabling environment for the digitalization of cargo operations would require moving away from pure medium neutrality (that is, establishing the equivalence between paper documents and electronic records) to a more forward-looking regime detached from traditional paper-based notions such as “document” and “possession”. That approach would entail devising specific rules for the digitalization of cargo operations that assume the electronic form as the default option, rather than treating the electronic form merely as an alternative to paper documents.

24. The secretariat appreciates the reasoning underlying that suggestion but has adopted a more cautious approach considering that the proposed new instrument is intended to operate in parallel with existing international conventions, which are still structured on the premise of the issuance of a “document” rather than on a system of information management. The provisions on negotiable electronic cargo records contained in the preliminary draft provisions follow largely the approach taken in the

Rotterdam Rules and the UNCITRAL Model Law on Electronic Transferable Records (MLETR).¹⁶

G. Other issues for consideration

25. In addition to the issues identified in the annotations to the preliminary draft provisions, the Working Group may wish to consider the following issues (without any order of priority):

(a) *Inconsistencies between the negotiable cargo document and the transport document.* Where the contract provides for international transport by a single mode of transportation, the negotiable cargo document may be issued as a separate document in addition to the transport document. In case of any inconsistencies between the particulars stated in the negotiable cargo document and those stated in the transport document, it was noted that giving primacy to the transport document might create disincentives for the use of negotiable cargo documents. The solution may also differ depending on whether such inconsistencies appear as regards factual information at the time of receipt of the goods by the transport operator or changes that may be introduced subsequently by the holder concerning, for instance, the place and timing of delivery;

(b) *Position of an intermediate holder.* It was suggested that the new instrument should address the position of an intermediate holder vis-à-vis the carrier, in particular the consignor that would be expected to maintain residual rights and obligations even if it ceased to be the holder of the negotiable cargo document. The new instrument may also explicitly state that a holder that is not the consignor and that does not exercise any right under the transport contract does not assume any liability under the transport contract solely by reason of being a holder. Moreover, a holder that is not the consignor and that exercises any right under the transport contract assumes any liabilities imposed on it under the transport contract to the extent that such liabilities are incorporated in or ascertainable from the negotiable cargo document;

(c) *Additional protection for holders acting in good faith.* In case that reservations concerning, for instance, the condition of the goods were only entered into the transport document but not the negotiable cargo document, it has been suggested that the new instrument could offer additional protection (other than those provided under existing legal framework) for holders of the negotiable cargo document acting in good faith. The secretariat has not drafted a provision to that effect in view of its close relation to the transport contract and to general contract and property law provisions under domestic legal systems;

(d) *Liability.* Although the new instrument is not intended to regulate the rights and obligations of the parties under the transport contract, it was suggested that it might be unavoidable to address some issues, for instance the right of the transport operator to retain the goods pending payment of freight and other remuneration to which the transport operator is entitled in accordance with applicable law, in view of its close link to the transport operator's delivery obligation. The new instrument may therefore envisage liability of the holder of the negotiable cargo document for not complying with the obligation to pay the transport operator for freight when it is required to do so and to accept the goods. Another issue concerns the liability of the transport operator for delivery of the cargo to the wrong person, especially considering that the transfer of a negotiable cargo document would entitle the holder to demand delivery of goods, rather than the consignee (if named) in the transport document. In the context of negotiable electronic cargo records, it was noted that liability issues unique to the digital world, such as attribution of liability and level of liability, should be taken into account. The secretariat has not drafted provisions to that effect in view of their close relation to the transport contract and to general

¹⁶ United Nations publication, Sales No. E.17.V.5.

contract and property law provisions under domestic legal systems. However, it should be noted that article 7(4) of the preliminary draft provisions addresses the liability of the transport operator for providing false information in the negotiable cargo document with intent to defraud; and

(e) *Relationship with other conventions.* The Working Group may wish to consider the relationship between the new instrument and existing conventions governing international transport. The Working Group may in particular consider whether it would be sufficient to rely on article 1 (2) of the preliminary draft provisions in combination with the provisions of article 30, paragraphs 3 and 4 of the Vienna Convention on the Law of Treaties to address any conflicts between a new instrument and those conventions.¹⁷

III. Conclusions and organization of future work

26. The Working Group may wish to use the preliminary draft provisions in the Annex to this note as a basis for its deliberations at its forty-first session. After conclusion of its deliberations, the Working Group may wish to request the secretariat to prepare a revised version of the preliminary draft provisions for consideration by the Working Group at its forty-second session, scheduled to be held in New York from 8 to 12 May 2023.

¹⁷ For instance, article 9 (1)(c) of the preliminary draft provisions (stipulating that the holder has the right to replace the consignee) may conflict with article 18 (1)(c) of CIM-COTIF 1999 (entitling the consignor to ask the carrier to deliver the goods to a consignee different from the one entered on the consignment note).

Annex

Preliminary draft provisions for a new instrument

Article 1. Scope of application

1. This Convention applies to the issuance, transfer and legal effects of a negotiable cargo document in connection with the international transport of goods if:
 - (a) The place of receipt of the goods by the transport operator as provided for in the transport contract is located in a Contracting State; or
 - (b) The place of delivery of the goods by the transport operator as provided for in the transport contract is located in a Contracting State.¹⁸
2. This Convention does not affect the application of any international convention or national law relating to the regulation and control of transport operations.¹⁹
3. Other than as explicitly provided for in this Convention, this Convention does not modify the rights and obligations of the transport operator, consignor and consignee and their liability under applicable international conventions or national law.

Article 2. Definitions

For the purposes of this Convention:

“Actual carrier” means any person to whom the performance of the carriage of goods, or of part of the carriage, has been entrusted by the transport operator, and includes any other person to whom such performance has been entrusted.²⁰

“Consignor” means any person by whom or in whose name or on whose behalf the transport contract has been concluded with the transport operator, or any person by whom or in whose name or on whose behalf the goods are actually delivered to the transport operator in relation to the transport contract.²¹

“Consignee” means the person entitled to take delivery of the goods.²²

“Holder” means a person that is in possession of a negotiable cargo document and is identified in it as the consignor or the consignee or is the person to which the document is duly endorsed; [or if the document is a blank endorsed order document or bearer document, is the bearer thereof].²³

“International transport of goods” means the carriage of goods by one or more modes of transport on the basis of a transport contract from a place in one country at which the goods are received by the transport operator to a place designated for delivery situated in a different country.²⁴

“Negotiable cargo document” means a document that indicates by wording such as “to order” or “negotiable” or other appropriate wording recognized as having the

¹⁸ MT Convention, article 2. In the consultations held by the secretariat, it was considered that a new instrument should apply to the issuance, transfer and legal effects of negotiable cargo documents only in connection with the international transport of goods where the place of receipt and the place of delivery of the goods by the transport operator as provided for in the transport contract were located in two different Contracting States. In addition, for a new instrument to apply, some experts were of the view that the parties to the transport contract should opt into its application, failing which the otherwise applicable law would apply. The Working Group may wish to consider these suggestions.

¹⁹ MT Convention, article 4 (1).

²⁰ United Nations Convention on the Carriage of Goods by Sea (the “Hamburg Rules”), article 1 (2).

²¹ MT Convention, article 1 (5).

²² MT Convention, article 1 (6).

²³ Rotterdam Rules, article 1 (10)(a).

²⁴ MT Convention, article 1 (1).

same effect by the law applicable to the document that the goods have been consigned to the order of the holder and is not explicitly stated as being “non-negotiable” or “not negotiable”.²⁵ Unless otherwise stated, references to a “negotiable cargo document” in this Convention include a “negotiable electronic cargo record”.

“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.²⁶

“Negotiable electronic cargo record” means a negotiable cargo document issued in the form of electronic record.

The “transfer” of a negotiable electronic cargo record means the transfer of exclusive control over the record.²⁷

“Transport contract” means a contract whereby a transport operator undertakes, against payment of freight, to perform or to procure the performance of international transport of goods.²⁸

“Transport document” means a document issued under a transport contract by the transport operator that:

- (a) Evidences the transport operator’s receipt of goods under a transport contract; and
- (b) Evidences or contains a transport contract.²⁹

“Transport operator” means any person who concludes a transport contract with the consignor and who assumes responsibility for the performance of the contract.³⁰

Article 3. Issuance of a negotiable cargo document

1. The parties to an international transport contract may agree that when the goods are received by the transport operator,³¹ [or at a later date determined by the parties,] the transport operator shall issue a negotiable cargo document in accordance with the provisions of this Convention.

2. The negotiable cargo document may be issued:

- (a) as a separate document in addition to the transport document where the contract provides for international transport by a single mode of transportation; or
- (b) by inserting an appropriate reference to this Convention on the face of the transport document where the contract provides for international transport by more than one mode of transport, and the parties agree that the transport document issued under the contract to cover the entire transport shall serve as a negotiable cargo document for the purposes of this Convention.³²

²⁵ Rotterdam Rules, article 1 (15).

²⁶ MLETR, article 2.

²⁷ Rotterdam Rules, article 1 (22).

²⁸ Rotterdam Rules, article 1 (1); MT Convention, article 1 (3).

²⁹ Rotterdam Rules, article 1 (14); see also MT Convention, article 1 (4).

³⁰ MT Convention, article 1 (2). The Working Group may wish to note that in the new instrument a transport operator assumes responsibility for both: (a) the performance of the transport contract (i.e., delivery of the cargo from the place of its receipt to its destination); and (b) issuance of a negotiable cargo document and delivery of the cargo to the lawful holder of the negotiable cargo document against the surrender of the negotiable cargo document. In addition, the new instrument is not intended to deal with sub-contracts that might be concluded by the transport operator to perform the transport contract, whether in unimodal or multimodal context.

³¹ MT Convention, article 5 (1).

³² The Working Group may wish to consider whether these two possibilities adequately address the issues concerning the relationship between negotiable cargo document and transport document discussed in paras. 18–20 of the introductory note.

3. The negotiable cargo document does not substitute any transport document which the transport operator or any actual carrier may be required to issue pursuant to the law applicable to the transport contract or to the terms of the contract. The issuance of the negotiable cargo document does not preclude the issue, if necessary, of any other documents relating to transport or other services involved in international transport of goods, in accordance with applicable international conventions or national law.³³
4. A negotiable cargo document that is issued as a separate document in addition to an airway bill, a road consignment note or a railway consignment note, as provided in subparagraph 2(a), shall only be valid if its issuance has been acknowledged by a corresponding annotation in all copies of the transport document.³⁴
5. A negotiable cargo document shall be made out to order [or to bearer].³⁵ A negotiable cargo document that is made out to order shall contain the name of the person to whose order the goods are to be delivered. If the name is not indicated, the negotiable cargo document shall be deemed to be made out to the order of the consignor.
6. A negotiable cargo document that is issued in a set of more than one original shall indicate the number of originals in the set. If any copies are issued, each copy shall be marked as “non-negotiable” copy.

Article 4. Content of the negotiable cargo document

1. The negotiable cargo document issued as a separate document in accordance with article 3, subparagraph 2 (a) shall reproduce the transport contract particulars and shall indicate, in particular the following:

(a) The general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the gross weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the consignor;³⁶

(b) The apparent condition of the goods;

(c) The name and principal place of business of the transport operator;

(d) The name and address of the consignor;³⁷

(e) The name and address of the consignee[, if required by applicable law or named by the consignor];³⁸

³³ MT Convention, article 13.

³⁴ In the consultations held by the secretariat, it was felt that a corresponding annotation in the transport document would be useful for indicating to the transport operator and other persons that, for the exercise of the rights of control over the cargo, including obtaining its delivery, the negotiable cargo document (not the transport document) should be used. The Working Group may wish to consider whether any consequence should be attached to the absence of the annotation about the existence of the negotiable cargo document in the transport document or whether the legal effect of the negotiable cargo document should remain unaffected.

³⁵ MT Convention, article 6 (1)(a). In view of the increased risks of delivery of the goods to the wrongful holder under a bearer negotiable cargo document, the Working Group may wish to consider the desirability of introducing the notion of “lawful holder” of the negotiable cargo document if bearer negotiable cargo documents were to be retained in the draft instrument.

³⁶ Rotterdam Rules, article 36 (1); Montreal Convention, article 5 (c); CIM-COTIF 1999, article 7 §1; SMGS, article 15 §1. As regards dangerous goods, see e.g., CIM-COTIF 1999, article 7 §1 (h), and SMGS, article 9 and annex 2.

³⁷ CIM-COTIF 1999, article 7 §1 (b) and SMGS, article 15 §1 (1).

³⁸ Rotterdam Rules, article 36 (3). The Working Group may wish to consider the differences across different modes of transport as regards this item.

[(f) The manner in which the transport operator is to be notified of the transfer of the negotiable cargo document];³⁹

(g) The place and date of [loading or] receipt of the goods by the transport operator;⁴⁰

[(h) The place and date of issue of the transport document and of the negotiable cargo document, if issued separately;]

(i) [When known to the transport operator,]⁴¹ The place of delivery of the goods;⁴²

(j) The date or the period of delivery of the goods at the place of delivery, if expressly agreed upon between the parties;

(k) The number of originals of the negotiable cargo document, when more than one original is issued;⁴³

(l) The signature of the transport operator or of a person authorized by the transport operator;⁴⁴

(m) The freight for the transport, if expressly agreed between the parties, or the freight including its currency, to the extent payable by the consignee or other indication that freight is payable by the consignee;⁴⁵

[(n) The intended journey route, mode of transport and places of transshipment, if known at the time of issuance of the negotiable cargo document;]

[(o) Any indication made in the transport document of the law governing the contract, in particular any international convention to which the contract is subject;]

(p) Confirmation that delivery of the goods to the holder has been effected, or that, pursuant to article 6, paragraph 4, or article 12, the negotiable electronic cargo record, if any, has ceased to have any effect or validity; and

(q) Any other particulars which the parties may agree to insert in the negotiable cargo document, if not inconsistent with the law of the country where it is issued, or which may be required to be inserted in that document under the law of the country where the negotiable cargo document is issued.⁴⁶

2. The signature on the negotiable cargo document may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other means, if not inconsistent with the law of the country where the negotiable cargo document is issued.⁴⁷

Article 5. Conditions for use and effect of negotiable electronic cargo records

1. A negotiable electronic cargo record can be issued if the issuance and subsequent use of a negotiable electronic cargo record is with the consent of the

³⁹ The Working Group may wish to consider whether the requirement to notify the transport operator about the transfer of the negotiable cargo document, which is inspired by provisions requiring the notification of delivery instructions to the carrier under railway conventions, is appropriate in this context or whether it would undermine the nature of a negotiable cargo document as a document of title.

⁴⁰ Rotterdam Rules, articles 36 (2)(c) and 36 (3)(c).

⁴¹ Rotterdam Rules, article 36 (3)(c).

⁴² CIM-COTIF 1999, article 7 §1 (f) and SMGS, article 15 §1 (5). The Working Group may wish to consider differences across different modes of transport as regards this item.

⁴³ Rotterdam Rules, article 36 (2)(d).

⁴⁴ Multimodal Transport Act of Singapore, article 9 (3).

⁴⁵ CIM-COTIF 1999, article 7 §1 (o).

⁴⁶ E.g., the Rotterdam Rules require naming the ship in the transport document, including a negotiable transport document and specifying there also the port of loading and the port of discharge, if specified in the transport contract (see article 36 (3)(d)).

⁴⁷ MT Convention, article 5 (3).

transport operator and the consignor.⁴⁸ A negotiable electronic cargo record shall have the same legal effect of a negotiable cargo document and shall not be denied legal effect on the sole ground that it is in electronic form⁴⁹ if a reliable method is used:

(a) To identify that electronic record as the negotiable electronic cargo record;⁵⁰

(b) To record all information required by article 4 in a manner that is accessible so as to be usable for subsequent reference;⁵¹

(c) To render that negotiable electronic cargo record capable of being subject to exclusive control from its creation until it ceases to have any effect or validity;⁵²

(d) To permit the identification of the holder and the transfer of exclusive control over the negotiable electronic cargo record to another holder⁵³ [including by endorsement or to the bearer];

(e) To provide confirmation that delivery of the goods to the holder has been effected, or that, pursuant to article 6, paragraph 4, or article 12, the negotiable electronic cargo record has ceased to have any effect or validity;⁵⁴ and

(f) To retain the integrity of that negotiable electronic cargo record.⁵⁵

2. A negotiable electronic cargo record shall be signed by the transport operator or a person acting on its behalf by means of a reliable electronic signature that ensures its link with the negotiable electronic cargo record.

3. The reliability of an electronic signature method is presumed, unless otherwise proved, if the electronic signature is:

(a) Uniquely linked to the signatory;

(b) Capable of identifying the signatory;

(c) Created using means that the signatory can maintain under its exclusive control; and

(d) Linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.⁵⁶

4. A negotiable electronic cargo record may also be signed by any other electronic authentication method permitted by the law of the country in which the negotiable electronic cargo record has been made out.⁵⁷

5. The criterion for assessing integrity shall be whether information recorded in the negotiable electronic cargo record, including any authorized change that arises from its creation until it ceases to have any effect or validity, has remained complete and unaltered apart from any change which arises in the normal course of communication, storage and display.⁵⁸

6. The requirements in paragraph 1 of this article shall be readily ascertainable.⁵⁹

⁴⁸ Rotterdam Rules, article 8 (a).

⁴⁹ MLETR, article 7 (1).

⁵⁰ MLETR, article 10 (1)(b)(i).

⁵¹ MLETR, articles 8 and 10 (1)(a); e-CMR, article 4 (1); Rotterdam Rules, article 8 (a).

⁵² MLETR, articles 10 (1)(b)(ii) and 11 (1)(a); Rotterdam Rules, articles 1 (21) and 1 (22).

⁵³ MLETR, article 11 (1)(a); see e-CMR, article 5 (1)(c) (“The manner in which the party entitled to the rights arising out of the electronic consignment note is able to demonstrate that entitlement.”).

⁵⁴ Rotterdam Rules, article 9 (1)(d); e-CMR, article 5 (1)(d). In the consultations held by the secretariat, it was noted that the negotiable electronic cargo record might still have some evidentiary value after the transfer although it would cease serving the primary purpose.

⁵⁵ MLETR, article 10 (1)(b)(iii); e-CMR, article 5 (1)(b); Rotterdam Rules, article 9 (1)(b).

⁵⁶ e-CMR, article 3 (1).

⁵⁷ e-CMR, article 3 (2).

⁵⁸ MLETR, article 10 (2); e-CMR, article 4 (2).

⁵⁹ Rotterdam Rules, article 9 (2).

Article 6. Replacement of a negotiable cargo document with a negotiable electronic cargo record and vice versa^{60,61}

1. If a negotiable cargo document has been issued and the transport operator and the holder agree to replace that document by a negotiable electronic cargo record:

(a) The holder shall surrender the negotiable cargo document, or all of them if more than one has been issued, to the transport operator;⁶²

(b) The transport operator shall issue to the holder a negotiable electronic cargo record that reproduce [all] information as recorded in the negotiable cargo document, consistent with article 4, paragraph 1⁶³ and includes a statement that it replaces the negotiable cargo document; and

(c) For the change of medium to take effect, a reliable method for such change shall be used.⁶⁴

2. If a negotiable electronic cargo record has been issued and the transport operator and the holder agree to replace that negotiable electronic cargo record by a negotiable cargo document:

(a) The transport operator shall issue to the holder, in place of the negotiable electronic cargo record, a negotiable cargo document that reproduces information as recorded in the negotiable electronic cargo record, consistent with article 4, paragraph 1 and includes a statement that it replaces the negotiable electronic cargo record; and

(b) For the change of medium to take effect, a reliable method for such change shall be used.⁶⁵

3. Upon issuance of the negotiable electronic cargo record in accordance with paragraph 1, the negotiable cargo document shall be made inoperative and ceases to have any effect or validity.⁶⁶

⁶⁰ Rotterdam Rules, article 10; MLETR, articles 17 and 18. The Working Group may wish to note the existing practice with the use of transport documents comprising several copies, each of which performed a particular function and consider whether the same could be achieved in the use of a negotiable electronic cargo record. The Working Group may also wish to note that the current commercial practice would require the use of a paper document in some circumstances, and consider whether it would be preferable to ensure that the holder of a negotiable electronic cargo record has the right to require the change of medium instead of seeking an agreement with the transport operator.

⁶¹ In the consultations held by the secretariat, a suggestion was made to introduce provisions dealing with the transfer of a negotiable electronic cargo record from one system to another system with a different technology, considering that different technologies might be employed by different systems.

⁶² The Working Group may wish to note that the reference to “a negotiable cargo document” would normally include all of its originals if more than one original has been issued, both in paper and electronic form. Accordingly, the Working Group may wish to consider the necessity: (a) to retain “or all of them if more than one has been issued” in this subparagraph; and (b) to introduce in paragraph 2 of this article similar wordings requiring the surrender of negotiable electronic cargo record.

⁶³ In the consultations held by the secretariat, some experts noted the need to add a provision that explicitly required all the information contained in a negotiable cargo document (see article 4) to be accurately reflected in a negotiable electronic cargo record and vice versa when carrying out a change of medium. Support was expressed as such a requirement would be appealing to the banking industry, especially considering the difficulty for banks to check and ensure the completeness and accuracy of the information. However, in the view of some other experts, “mirroring” the content of the previous document or record in the converted one was not considered necessary but preserving the minimum required contents as stipulated in article 4 was considered essential. The Working Group may wish to consider which approach is more appropriate.

⁶⁴ Rotterdam Rules, article 10 (1); MLETR, articles 17 (1) and 17 (2).

⁶⁵ Rotterdam Rules, article 10 (2); MLETR, articles 18 (1) and 18 (2).

⁶⁶ MLETR, article 17 (3).

4. Upon issuance of the negotiable cargo document in accordance with paragraph 2, the negotiable electronic cargo record shall be made inoperative and ceases to have any effect or validity.⁶⁷
5. A change of medium in accordance with paragraphs 1 and 2 shall not affect the rights and obligations of the parties.⁶⁸

Article 7. Deficiencies in the negotiable cargo document

1. The absence or inaccuracy of one or more of the particulars referred to in article 4 does not of itself affect the legal character or validity of the negotiable cargo document⁶⁹ [if the missing or inaccurate particular can be ascertained or rectified, as appropriate, from the particulars stated in the transport document].
2. If the negotiable cargo document includes the date but fail to indicate its significance, the date is deemed to be:
 - (a) The date on which all goods indicated in the negotiable cargo document were loaded, if the transport contract particulars indicate that the goods have been loaded; or
 - (b) The date on which the transport operator received the goods, if the transport contract particulars do not indicate that the goods have been loaded.⁷⁰
3. If the negotiable cargo document fails to state the apparent order and condition of the goods at the time the transport operator receives them, the negotiable cargo document is deemed to have stated that the goods were in apparent good order and condition at the time the transport operator received them.⁷¹
4. When the transport operator, with intent to defraud, gives in the negotiable cargo document false information concerning the goods or omits any information required to be included in the negotiable cargo document by the transport operator [under the law applicable to the transport contract] [under the law of the country where the negotiable cargo document is issued], it shall be liable for any loss, damage or expenses incurred by the holder, including a consignee, or any third party who acted in reliance on the description of the goods in the negotiable cargo document issued.⁷²

Article 8. Evidentiary effect of the negotiable cargo document

1. Except to the extent that the transport contract particulars as contained in the negotiable cargo document have been qualified in the manner that indicate that the transport operator does not assume responsibility for the accuracy of the information furnished by the consignor or has no reasonable means of checking the information furnished by the consignor or made other reservations to a similar effect, the negotiable cargo document shall be prima facie evidence of the transport operator's receipt of the goods as stated in the transport contract particulars.⁷³
2. Proof to the contrary by the transport operator in respect of any transport contract particulars shall not be admissible if the negotiable cargo document has been transferred to a third party[, including a consignee,] acting in good faith [in reliance on the description of the goods therein]⁷⁴[unless the consignee or such third party

⁶⁷ MLETR, article 18 (3).

⁶⁸ MLETR, articles 17 (4) and 18 (4).

⁶⁹ Rotterdam Rules, article 39 (1) and MT Convention, article 8 (2).

⁷⁰ Rotterdam Rules, article 39 (2).

⁷¹ Rotterdam Rules, article 39 (3).

⁷² MT Convention, article 11.

⁷³ Rotterdam Rules, articles 40 and 41; MT Convention, article 10 (a); see also CIM-COTIF 1999, article 12.

⁷⁴ Rotterdam Rules, article 41 (c); MT Convention, article 10 (b); and Multimodal Transport Act of Singapore, article 11 (2).

was aware, or was unaware through gross negligence, at the time when the negotiable cargo document was transferred, that the information therein is incorrect].⁷⁵

Article 9. Extent of rights of the holder under a negotiable cargo document

1. The holder has the right of control of the goods represented by the negotiable cargo document, including:

(a) The right to give or modify instructions in respect of the goods [that do not constitute a variation of the transport contract];

(b) The right to demand delivery of the goods;

(c) The right to replace the consignee;

(d) The right to transfer or pledge the goods to a third party; and

(e) The right to assert, in its own name, any rights against the transport operator under the transport contract for loss or damage to the goods as well as for delay in delivery.⁷⁶

2. The rights listed in paragraph 1 above exist after the transport operator receives the goods for carriage and cease, except for that listed in subparagraph 1 (e), when the goods are delivered.⁷⁷

3. In order to exercise the rights listed in paragraph 1 above, the holder shall produce the negotiable cargo document to the transport operator and shall properly identify itself.⁷⁸ If more than one original of the negotiable cargo document was issued, all originals shall be produced, failing which the right of control cannot be exercised.⁷⁹

⁷⁵ The Multimodal Transport Reform Law of Germany, section 444 (2).

⁷⁶ The Working Group may wish to consider whether a reference to the right of control is sufficient, whether an express mention of the nature of the rights acquired by the holder is desirable or whether, on the contrary, the instrument should expressly provide that it does not deal with the effects of the transfer of the negotiable cargo document on property rights in the goods. The Working Group may further wish to consider the extent to which rights enumerated in this draft article should be subject to the parties' agreement and one expert expressed concerns about the oligopolistic structure of the transport industry and the unequal bargaining power of carriers and shippers, which was often reflected in unfair terms in contracts of adhesion found in some modes of transport. It would be essential, it was said, to consider carefully the implications of any provisions allowing variation by agreement. At the same time, it was emphasized that certain aspects of the negotiable cargo document would be of a contractual nature, including the rights enumerated in draft article 9 (1).

⁷⁷ Rotterdam Rules, article 50 (2). In the consultations held by the secretariat, one view was that the time frame during which the right of control could be exercised should be deleted since the matter would be regulated by applicable law and the transport contract while the other view was that it would be helpful for a new instrument to address that point explicitly, which would provide certainty and reduce litigation risks. It was suggested that the draft provision should permit the exercise of certain rights after the goods are delivered by the transport operator. The Working Group may wish to consider whether any other right(s) should not cease when the goods are delivered.

⁷⁸ The Working Group may wish to consider whether the requirement of identification would apply in all cases when the right of control is to be exercised by the holder of the negotiable cargo document. In the expert consultations conducted by the secretariat, it was pointed out that identification might be required in all cases in the electronic environment. In practice, identification was considered also an essential step in establishing a proper legal relationship between the carrier and the holder of a blank negotiable cargo document. The Working Group may also wish to consider whether different requirement(s) should apply to the holder when exercising the right listed in article 9, paragraph 1 (e).

⁷⁹ Rotterdam Rules, article 51. This provision reflects the established practice in the maritime transport, under which, where more than one original of a bill of lading was issued: (a) each original was to note how many originals were issued; (b) all originals were to be surrendered to the carrier in order to exercise the rights of control with respect to the goods in transit; this is to ensure that any changes introduced in the transport contract would be reflected in all originals of the bill of lading; and (c) for obtaining the delivery of the goods, the surrender of only one original bill of lading was sufficient because all other originals lose automatically validity upon

4. Any demand, declaration, instruction, request, reservation or other communication relating to the transfer of a negotiable cargo document or the delivery of the goods mentioned in the negotiable cargo document, may be made out by electronic communication.⁸⁰

*Article 10. Transfer of rights under a negotiable cargo document or negotiable electronic cargo record*⁸¹

1. The holder may transfer the rights incorporated in the negotiable cargo document by transferring it to another person:

(a) Duly endorsed [either] to such person [or in blank][, if an order document];⁸² or

(b) Without endorsement, if: (i) a document made out to the order of a named person and the transfer is between the first holder and the named person;⁸³ [or (ii) a document made out to bearer or endorsed blank.]⁸⁴

2. If more than one original of a negotiable cargo document was issued, all originals shall be transferred to the person in order to effect a transfer of rights under a negotiable cargo document.

3. When a negotiable electronic cargo record is issued, its holder may transfer the rights incorporated in it, [whether it be made out to order or to the order of a named person,] by transferring the exclusive control of the electronic cargo record in accordance with the requirements referred to in article 5, paragraph 6.⁸⁵

*Article 11. Providing additional information, instructions or documents to the transport operator*⁸⁶

The holder exercising the rights under article 9, paragraph 1, on request of the transport operator, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the consignor and not otherwise reasonably available to the transport operator that the transport operator may reasonably need to perform its obligations under the transport contract.

*Article 12. Delivery of the goods*⁸⁷

1. Delivery of the goods may be demanded from the transport operator only against surrender of the transport document, if required, and the negotiable cargo document duly endorsed where necessary⁸⁸ [and upon the holder properly identifying itself].

delivery of the goods. In the consultations held by the secretariat, it was felt that there should be no requirement for the holder of the negotiable cargo document to produce or surrender anything else to the transport operator in addition to the negotiable cargo document for the exercise of the right of control (see draft articles 9 (3) and 12 (1)), except for payment of freight when required.

⁸⁰ e-CMR, article 2 (1).

⁸¹ In the consultations held by the secretariat, it was suggested that there should be no requirement to notify the transport operator about the transfer of the negotiable cargo document so as not to undermine the nature of a negotiable cargo document as a document of title.

⁸² Rotterdam Rules, article 57 (1); Standard Conditions (1992) governing the FIATA Multimodal Transport Bill of Lading, 3.1.

⁸³ Rotterdam Rules, article 57 (1).

⁸⁴ Ibid.

⁸⁵ Rotterdam Rules, article 57 (2).

⁸⁶ Rotterdam Rules, article 55.

⁸⁷ The Working Group may wish to consider whether this provision should address (a) the liability of the transport operator to the lawful holder of the negotiable cargo document for delivery of goods to the wrong person, and (b) the liability of the lawful holder of the negotiable cargo document for not complying with the obligation to pay the transport operator for freight when it is required to do and to accept the goods.

⁸⁸ MT Convention, article 6 (2). The Working Group may wish to consider how to accommodate the practice in the rail sector of the retention of the consignment note by the carrier until delivery under CIM-COTIF 1999, article 17, § 1 (“consignee may ask the carrier to hand over the consignment note”). See a similar provision in SMGS, article 26, § 1. The Working Group may

2. [Where a negotiable cargo document has been issued in a set of more than one original, the transport operator shall be discharged from its obligation to deliver the goods if it has in good faith delivered the goods against surrender of one of such originals⁸⁹.][If more than one original of the negotiable cargo document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity.⁹⁰]⁹¹
3. On request of the transport operator, the holder shall acknowledge receipt of the goods from the transport operator in the manner that is customary at the place of delivery. The transport operator may refuse delivery if the holder refuses to acknowledge such receipt.⁹²
4. The law applicable to the transport contract shall govern other aspects of delivery of the goods to the holder.

Article 13. Reliability requirements of negotiable electronic cargo records

In determining the reliability of the method used for the purposes of this Convention, all relevant circumstances shall be taken into account, which may include:⁹³

- (a) Compliance of the operational rules, policies and practices used in the method with any applicable internationally recognized standards and procedures;
- (b) Any relevant level of reliability of the method used;
- (c) Any applicable industry standard;
- (d) The security of hardware and software;
- (e) Financial and human resources, including existence of assets;
- (f) The regularity and extent of audit by an independent body; and
- (g) The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method.⁹⁴

also wish to consider whether this provision would need to be adjusted if the same document would be used for both documentary credit and transportation and customs clearance purposes.

⁸⁹ MT Convention, article 6 (3).

⁹⁰ Rotterdam Rules, article 47 (1)(c).

⁹¹ The Working Group may wish to note that the requirement to surrender one original is inconsistent with the requirements to surrender all originals under article 9 (3) regarding the exercise of the right of control (including the right to demand delivery of goods) and article 10 (2) regarding the transfer of rights. The Working Group may wish to consider whether surrendering all originals of the negotiable cargo document would be required for delivery of the goods. See also footnote 79.

⁹² Rotterdam Rules, article 44.

⁹³ The Working Group may wish to consider whether the chapeau of this article needs to be further revised to explicitly refer to specific situations where reliable methods need to be employed, including the identification of the holder and exclusive control.

⁹⁴ MLETR, article 12; UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services, article 10.