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THE UNITED NATIONS CONVENTION ON NEGOTIABLE CARGO DOCUMENTS AND ITS IMPLICATIONS FOR INTERNATIONAL AIR TRANSPORT

(Presented by the United Nations Commission on International Trade Law secretariat)

EXECUTIVE SUMMARY

The United Nations Convention on Negotiable Cargo Documents (NCD Convention), adopted on 15 December 2025, established a new international framework for negotiable cargo documents that can represent goods in transit regardless of the mode of transport. This is particularly relevant to air transport, where transport documents are generally non-negotiable and do not function as documents of title.

This paper outlines the NCD Convention and its relevance to air transport, including its benefits for the air cargo sector and key provisions on negotiability, the document-of-title function and electronic NCDs. It then examines the Convention's interaction with existing international air transport law, in particular the *Montreal Convention* and the *Chicago Convention* and relevant International Civil Aviation Organization (ICAO) regulatory and facilitation frameworks, before concluding with its potential implications for the air transport sector.

1. INTRODUCTION

1.1 Today transport documents issued by air carriers are typically non-negotiable and do not legally represent the goods in transit. As a result, they cannot perform functions similar to those of maritime bills of lading, which are widely used as a negotiable document of title representing goods in transit.

1.2 This limitation creates cash-flow constraints for Micro, Small and Medium Enterprises (MSMEs) when goods are transported by air, limits the opportunities for businesses in landlocked regions to trade across borders and hinders the ability of logistics providers to offer seamless door-to-door transportation services.

1.3 In a global trading environment increasingly shaped by disruptions, the ability to switch seamlessly between modes of transport—for example, from maritime to air transport—without creating legal uncertainty can enhance the resilience and flexibility of international trade.

1.4 Since 2019, the United Nations Commission on International Trade Law (UNCITRAL) has been developing a new international legal instrument to establish a new type of document of title that represents goods in transit regardless of the mode of transport. The project was assigned to UNCITRAL Working Group VI in 2022, and the International Civil Aviation Organization (ICAO) participated in the

Working Group's deliberations as an observer, contributing in particular to ensuring that the international aviation perspective was reflected in the development of the instrument.

1.5 This work culminated in the adoption of the United Nations Convention on Negotiable Cargo Documents (NCD Convention) by the United Nations General Assembly on 15 December 2025 (A/RES/80/162). ICAO's contribution to the development of the Convention was explicitly acknowledged by the UNCITRAL Commission (A/80/17, para. 128) and the United Nations General Assembly (A/RES/80/162, p.2).

2. BENEFITS OF THE NCD CONVENTION FOR AIR TRANSPORT

2.1 The NCD Convention establishes a uniform legal framework governing the issuance and use of negotiable cargo documents (NCDs) — a new type of document of title, in paper or electronic form, that represents goods in transit, regardless of the mode of transport. For the air cargo sector, this creates an opportunity to extend the legal and commercial benefits traditionally associated with maritime bills of lading to air and multimodal transport.

2.2 The NCD Convention provides clear rules on the issuance and use of NCDs, including their legal effects and the rights and liability of NCD holders. This legal certainty can facilitate access to trade finance, enable the sale of goods while they are in transit, support more flexible supply-chain arrangements, and promote the digitalization of cargo documentation.

2.3 By making negotiability available across transport modes, the NCD Convention can enhance the role of air transport within increasingly integrated global supply chains. More specifically, an NCD retains its legal character as a document of title throughout the journey, even when the mode of transport changes—for example, from maritime to air transport. This continuity ensures that the document remains fully functional for the transfer of rights, allowing goods to be bought, sold or used as security for financing purposes while still in transit.

2.4 Importantly for air cargo, the NCD Convention allows a single NCD to cover an entire journey involving one or more modes of transport. This can help streamline documentation across multimodal movements, reduce administrative friction, improve operational efficiency, and facilitate the movement and clearance of goods through international supply chains.

2.5 For air transport stakeholders—including carriers, freight forwarders, logistics providers, cargo owners, financial institutions and customs authorities—the NCD Convention therefore offers a framework for making air cargo an even more seamlessly integrated component of global trade. By combining negotiability with multimodal applicability and the possibility of electronic documentation, NCDs can support faster, more flexible and more financeable movement of goods across borders.

3. KEY PROVISIONS OF THE NCD CONVENTION

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

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

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

3.4 Based on the principle of party autonomy, the Convention envisages the issuance of an NCD only where agreed by the transport operator and the consignor (art. 3(1)). While the Convention allows the parties to determine whether it applies, it does not allow them to determine how it applies, except where this is expressly permitted.

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

3.6 The Convention contains detailed rules to support the use of electronic NCDs (arts. 12–18). These rules have been drafted with reference to the UNCITRAL Model Law on Electronic Transferable Records (MLETR)[4]= and other legislative texts on electronic commerce prepared by UNCITRAL, including the United Nations Convention on the Use of Electronic Communications in International Contracts (ECC)[5] (2005).

4. INTERACTION WITH EXISTING LEGAL REGIMES

Montreal Convention

4.1 Given that the NCD Convention applies to the issuance, transfer and legal effects of NCDs, Article 1 (3) affirms that the Convention does not modify the rights and obligations of the transport operator, consignor or consignee or their liability under applicable international conventions and national laws governing contracts of carriage, “except as otherwise provided for” in the NCD Convention. This provision establishes a clear distinction between the legal effects of an NCD and the rights and obligations arising from the underlying contract of carriage.

4.2 In particular, where an NCD is issued, the specific provisions of the NCD Convention governing its negotiability and the rights and liability of its holder apply. Once the transport operator and the consignor agree to issue an NCD, the document acquires the legal characteristics prescribed by the NCD Convention, including its function as a document of title under Article 7(4). The rights and liabilities associated with the NCD and its holder are consequently governed by the relevant provisions of the NCD Convention, including Articles 7 and 9. At the same time, the rights and obligations of the parties to the underlying contract of carriage, including matters relating to carrier liability, remain governed by the applicable international convention or national law, unless otherwise provided for in the NCD Convention.

4.3 This framework is consistent with the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention). Article 4 (2) of the Montreal Convention expressly permits the carriage of cargo to be recorded by means other than an air waybill, provided that such means preserve a record of the carriage to be performed. This is further supported by Article 9, which provides that non-compliance with documentary requirements of the Convention does not affect the existence or validity of the contract of carriage, which remains subject to the Convention, including its provisions relating to limitation of liability. Moreover, the Montreal Convention does not contain an express prohibition on contractual arrangements that deviate from its documentary requirements, other than the specific restrictions applicable to liability limits, as reflected in Article 47.

4.4 Accordingly, the Montreal Convention does not prevent the issuance or use of an NCD in connection with international air carriage. The NCD Convention can therefore operate alongside the

Montreal Convention, providing a legal framework for the negotiability and document-of-title functions of an NCD while leaving the rights and obligations arising from the underlying contract of carriage, including the applicable liability regime, governed by the Montreal Convention.

Legal regimes relating to the regulation and control of transport operations

4.5 Article 1 (2) of the NCD Convention clarifies that the Convention does not override existing legal regimes relating to the regulation and control of transport operations.

4.6 In the context of international air transport, this includes the applicable provisions of the Convention on International Civil Aviation (Chicago Convention) and the Standards and Recommended Practices (SARPs) adopted under it. In particular, Annex 9 — *Facilitation* establishes SARPs concerning the facilitation and clearance of aircraft and cargo, including customs, immigration, public health and other border-control formalities, and seeks to minimize unnecessary delays to international air transport. Other ICAO instruments address specific aspects of the operation and control of air transport, together with the associated ICAO procedures and technical instructions. The NCD Convention is not intended to modify or displace these requirements; rather, it operates alongside them by establishing a legal framework governing the issuance, transfer and legal effects of NCDs.

5. CONCLUSION

5.1 The NCD Convention introduces a new legal framework that can enhance the role of air transport in international and multimodal trade. By giving NCDs the legal status of documents of title, it enables rights in goods to be transferred while they remain in transit and allows a single document to represent goods throughout a multimodal journey. This is particularly relevant to air cargo, which frequently carries high-value goods for which access to trade finance and the ability to use goods as security while in transit can be commercially important.

5.2 The NCD Convention is designed to complement, rather than replace, the existing international legal framework applicable to air transport. It operates alongside the Montreal Convention and the regulatory and facilitation framework established under the Chicago Convention, including the relevant ICAO SARPs. The NCD Convention governs the legal status, negotiability and transfer of NCDs, while existing air transport regimes continue to govern matters within their respective scopes, including carrier liability and operational and facilitation requirements.

5.3 The Convention therefore provides an opportunity to make air cargo documentation more flexible, financeable and compatible with multimodal supply chains, while preserving the existing international air transport framework. Its practical benefits will depend on implementation by States and adoption by industry, including the development of appropriate electronic systems and procedures.

5.4 The Conference is invited to note the information contained in this paper.

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