"UNCITRAL's Convention on Negotiable Cargo Documents (NCDs): Towards the establishment of a uniform transport law?"

From the perspective of International and Greek Maritime Law

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I. INTRODUCTION

The orientation towards the international uniformity constantly constitutes one of the most well-known and inherent elements of Maritime Law. Since the late nineteenth century, that desire of the international community had genuinely been a continuing request, which was eventually fulfilled in August 1924 with the signing of the "Hague Rules"[1], the first international convention to formulate uniform rules to govern central aspects of the carriage of goods by sea in liner trade[2]. In addition to the "Hague-Rules", as amended by the Visby Protocol 1968 (*"Hague-Visby Rules"* or *"HVR"*) and the SDR Protocol 1979, a variety of international transport conventions share the common characteristic of establishing liability regimes.

As indicated by the title of the essay, the core research topic is not focused though on a regulation of sea carrier's liability, rather on the novel "United Nations Convention on Negotiable Cargo Documents"[3] (*"Convention"* or *"Convention on NCDs"*), adopted on 15 December 2025 by the United Nations General Assembly and developed by the United Nations Commission on International Trade Law (*"UNICTRAL"*), the core legal body of the UN system in the field of private international trade law. This Convention establishes a uniform legal framework of negotiable cargo documents (*"NCDs"*), a new type of document of title that represents goods in transit, regardless of transport mode and it aims to extend the benefits of NCDs beyond maritime transport.

Nonetheless, examining with consideration the Convention, a number of questions arise, most of which importantly relate to the co-existence of the new provisions of the Convention and those well-established rules of the marine Bill of Lading. Consequently, the current contribution aims at both a comprehensive analysis and a comparative research from a perspective of international and Greek domestic maritime law. As the examined instrument is quite new and the number of academic references is still scarce, the essay will carefully provide a critical rather than mere descriptive analysis, with the further ambition to give a holistic approach of how NCDs will function in the context of international trade and maritime transport.

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[1] *"International Convention for the Unification of Certain Rules of Law Relating to Bills of Ladings"*.

[2] M. F. Sturley, *"The centenary of the Hague Rules: Celebrating a century of international conventions governing the carriage of goods by sea"*, LMCLQ, 2024, p. 565. A version of this article was delivered as the Berlingieri Lecture at the CMI Colloquium in Gothenburg, on 23 May 2024.

[3] The "Accra Convention on Negotiable Cargo Documents", (*"Resolution adopted by the General Assembly on 15 December 2025"*), A/RES/80/162.

II. THE PROCESS TOWARDS THE CONVENTION BY THE UNCITRAL WORKING GROUP VI

Prior to the in-depth analysis of legal challenges arising from the implementation of the Convention, the examination of the background process leading to the adoption of Convention's final text constitutes a prerequisite. Specifically, the UNCITRAL Commission advocated in 2019 the first proposal of *"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"*[4]. Traditionally, unlike the ocean bill of lading, other transport documents such as the air waybill or the rail and road consignment notes do not have the so-called document of title function. That said, the bill of lading has exclusively three fundamental functions: 1) it is a receipt for cargo, 2) it is evidence of the existence of a contract of carriage and may be the contract of carriage itself and 3) it grants its holder – and only him- an exclusive right to claim delivery of the cargo, which enables the bill of lading to function as a document of title[5]. Also in the recently revised Greek Code of Private Maritime Law[6], the bill of lading is explicitly defined as a document of title in Art. 121.

Since the early Working Documents by the UNCITRAL Working Group VI, which was given the assignment after the fifty-fifth session of the UNCITRAL Commission, the intention was the following: The development of a new instrument not for each individual mode of transport, and, consequently, not for the carriage of goods by sea, rather either for the international multimodal carriage or the international unimodal carriage other than sea[7]. However, as it will be further emphasized, the scope of application of the new instrument will be differentiated. Moreover, the irrelevance of maritime trade is demonstrated by the prospective of the discussed instrument to extend the negotiability function of the maritime bill of lading to documents issued in connection with the carriage of goods by other modes of transportation[8]. In December 2025, the final text of the new Convention was upon ratification by States. It is worth noting that despite the favorable reception among fundamental

[4] "Official Records of the General Assembly", Seventy-fourth Session, Supplement No. 17 (A/74/17), para. 216.
[5] F. Stevens, *"The Bill of Lading: Holder Rights and Liabilities"*, Routledge, 2018, p. 5.
[6] Following the reform by the Greek Law No. 5020/2023. For recent modifications of Maritime Law in Greece, see L. Athanassiou, *"Maritime Law"*, Nomiki Vivliothiki, 2nd Ed., 2025.
[7] A/CN.9/WG.VI/WP.96, entitled as *"Negotiable Multimodal Transport Documents"*, paras. 1 and 19.
[8] *Ibid*, para. 5.

institutions[9], important concerns arise especially regarding the application of the Convention in the carriage of goods by sea.

III. "RATIONE MATERIAE" OF CONVENTION ON NCDs

1. Art. 24(1): Reservations for the carriage of goods -wholly- by sea

On the one side, an argument could state that the new legal framework of the Convention promotes legal certainty and uniformity. According to Art. 1 (1) and (2), *"this Convention applies to… a negotiable cargo document… by one or more than one mode of transport"* and *"does not affect the application of any international convention or national law relating to… transport operations"*[10]. It could be contended that whereas the starting point was the creation of a legal framework for negotiable cargo documents either for the multimodal carriage or for the unimodal carriage other than sea, this eventually shifted towards the implementation of the Convention irrespective of the mode of transport. However, as regards goods transported by sea, they are already covered by a transport document, which is negotiable[11]. Moreover, the definition of "international transport of goods" in previous draft instruments[12] was based on the one contained in the "Convention on International Multimodal Transport 1980" (*"MT Convention"*), Art. 1(1)[13], which evidences –at least implicitly- the tension of not including the marine carriage within its scope of application. However, the Working Group VI agreed to delete that definition and supported that *"…the new draft instrument should apply to any transport of goods which had an international character"*[14]. Therefore, a further proposal of a new paragraph in Art. 1 was advocated by Comité Maritime International *("CMI")* for the proper identification of the scope of application to ensure that it is clear to which documents the Convention applies[15].

[9] Joint Submission by Global Shippers Forum (GSF), International Federation of Freight Forwarders Associations (FIATA) and International Chamber of Commerce Banking Commission (ICC), *"Compilation of comments on the draft convention on negotiable cargo documents"*, A/CN.9/1214/Add.1, p. 5-7.
[10] The Commission, at its fifty-fifth session, noted that the deliberations of the working group *"should avoid interference with existing liability regimes for the international carriage of goods"*, see *"Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17"* (A/77/17), para. 201.
[11] M. Goldby, *"Negotiable Electronic Cargo Records: Lessons from MLETR and RR"*, in the 11th Asia-Pacific Facilitation Forum ("Leveraging Digitalization for Sustainability Chains").
[12] For instance, see A/CN.9/WG.VI/WP.98, p. 6
[13] The said Convention held at Geneva, but failed to attract sufficient ratifications to enter into force.
[14] A.CN.9/1134, para. 38, A.CN.9/1164, para. 15.
[15] A/CN.9/WG.VI/WP.116/Rev.1, p. 2 ("Comment by CMI" on draft provisions, as they are contained in Working Document A/CN.9/WG.VI/WP.114), or A/CN.9/WG.VI/WP.108, para. 2.

Ultimately, aiming at the establishment of uniformity in global supply chain, the result of the Convention is the contested inclusion of the unimodal carriage of goods by sea within the scope of its application[16]. As CMI commented, the initial intention was to recognize a new document of title to goods in transit where one is not already recognized, and not to substitute or disapply existing law[17]. An indication of the problematic involvement of the unimodal sea transport is primarily inferred by the text of the Convention itself and Art. 24(1). Specifically, the latter gives the right to a State to declare the reservation of the non-application of the Convention to any negotiable transport document that evidences or contains a contract for the carriage of goods wholly by sea. The importance of Art. 24 is significant, taking into consideration the existence of settled rules governing the ocean bill of lading derived from transnational mercantile law (lex mercatoria). However, reservations may result in the reverse aim of the Convention. The States will then be categorized in those, which will ratify the Convention under no ratification, those that have declared a reservation and, thirdly, those that will not ratify the Convention at all.

Despite aforementioned concerns regarding the declaration of reservations, the inclusion of Art. 24 within the final text of the Convention properly ensures a more modest approach to the novelty of NCDs. Besides, CMI had proposed to UNCITRAL that States shall be allowed to have the right of reservation. However, it shall be stated the CMI's proposal highlighted the right of declaring reservations regarding documents issued in respect of goods being wholly or even partly transported in sea[18].

2. NCDs, Multimodal Transport Documents (MMTDs) and the Multimodal BoL under Ar. 129 of Greek Code of Private Maritime Law

Concerning the scope of application of the Convention, the latter gives in essence an international legislative effect on those negotiable cargo documents, which are issued in multimodal (and unimodal) transport. In a general context, multimodal transport documents (*"MMTDs"*) originated from commercial practice and most of them are privately drafted. Some examples include the "FIATA Multimodal Transport Bill of Lading 1992" (*"FBL"*)[19] or the "MULTIDOC 95" of the Baltic and International Maritime Council (*"BIMCO"*). Both of them

[16] Art. 1, par. 1: *"…by one or more mode of transport"*.
[17] A/CN.9/WG.VI/WP.116/Rev.1, p. 2.
[18] *"Compilation of comments on the draft convention on negotiable cargo documents"*, A/CN.9/1214/Add.1, p. 4-5.
[19] Alternatively, the most recent digital FIATA Bill of Lading of 2022, which uses blockchain technology for its protection.

incorporate the UNCTAD/ICC Rules[20], which do not have the force of the law but are of contractual nature and apply only if they are incorporated into a contract of carriage[21]. From a perspective of domestic law, the reformed Greek Code of Private Maritime Law established for the first time a set of provisions for the settlement of liability in the multimodal transport with a sea leg (Art. 147-149)[22], as well as gave explicitly a statutory effect to the multimodal bill of lading pursuant to Art. 129. However, an important clarification is stated: the latter rule of Greek domestic law recognizes the multimodal bill of lading as equivalent to the ocean bill of lading exclusively as regards the sea leg, provided that it contains the minimum elements, which are regulated in Art. 124(1). Other legs of transport are excluded from the regulation scope of the Greek maritime code[23].

Unlike the Greek law, England has left open the question how far documents, which do not correspond to the model of the traditional unimodal bill of lading, can share the latter's characteristics. A distinction is necessary to be drawn between those MMTDs, which relate to a multimodal transport including a marine carriage and those, which are issued when there is not a carriage by sea. According to an argument in legal theory, it is simpler for the first category of MMTDs to have the function of a BoL, as Sec. 1(2) of the Carriage of Goods by Sea Act 1992[24] (*"COGSA 1992"*) states that, if transferable, a "received for shipment" document (and all MMTDs are) is not prevented from being a bill of lading, without actually stating that the MMTD is one[25]. Regarding the second category of MMTDs, firstly, through the application of provisions of each (non-maritime) unimodal convention, such as the CMR Convention 1956[26], the carrier has the duty to deliver to the consignee and, consequently, the latter has the claim against the carrier. Secondly, pursuant to the general rules of bailment, if the carrier, who acts as a bailee and takes possession of goods and surrenders them in good faith in accordance with the instructions of the person who shipped them, will be entitled to protection.

[20] "United Nations Conference on Trade and Development/International Chamber of Commerce (UNCITAD/ICC) Rules on Multimodal Transport Documents 1992".
[21] "Implementation of Multimodal Transport Rules", Report by the UNCTAD Secretariat, 2001, p. 12.
[22] Explanatory Note of the Greek Code of Private Maritime Law, Art. 129, p. 160.
[23] *Ibid*.
[24] *"References in this Act to a bill of lading (a) do not include references to a document which is incapable of transfer either by indorsement or, as a bearer bill, by delivery without indorsement, but (b) subject to that, do include references to a received for shipment bill of lading".*
[25] A. Tettenborn, "Bills of Lading, Multimodal Transport Documents, and Other Things", in B. Soyer and A. Tettenborn, *"Carriage of Goods by Sea, Land and Air, Unimodal and Multimodal Transport in the 21st Century"*, Informa law from Routledge, 2014, p. 131.
[26] "Convention on the Contract for the International Carriage of Goods by Road", held in Geneva in 1956.

However, the document of title function of bill of lading has a second implication, according to which the possession of the paper document is regarded as equivalent to possession of goods. Due to that particular dimension, the bill of lading constitutes a unique document and MMTDs, even if are stated as negotiable, are not suffice to transfer possession[27]. Consequently, it is important to mention the Art. 7(4) of the Convention[28], which explicitly establishes that implication of the document of title function to negotiable cargo documents. Based on the above arguments, the true demand, which the Convention aims to fulfill, shall specify on MMTDs for the non-sea leg[29]. Moreover, whether the document in question is not recognized as a negotiable bill of lading by existing law, the new Convention could provide similar protection and its application should be permitted, even if the transport involves a maritime leg[30].

Under the above analysis, the following point shall be underlined: the broad ratione materiae of the Convention and the inclusion of both the BoL and those MMTDs, which include a sea carriage leg, have the potential of disrupting the framework of other long-established international conventions. A more sophisticated definition of the scope of application by explicitly excluding the negotiable documents related to the carriage of goods by sea would ensure a legal certainty.

3. Electronic NCDs

Alongside negotiable cargo documents in paper form, a separate Chapter of the Convention contains special conditions for issuance and use of electronic negotiable cargo documents (*"eNCDs"*). Because of the existing "UNCITRAL Model Law on Electronic Transferable Records, 2017" (*"MLETR"*), a proposal was discussed for including a single general provision requiring States parties to adopt under their national laws an appropriate legal framework enabling and governing the use of electronic equivalents of NCDs with reference to the MLETR[31]. Instead, the Convention contains detailed rules as it was concerned that a reference to MLETR would not provide the required level of legal certainty. As with MLETR, Chapter IV of the Convention applies a "functional equivalence" approach for eNCDs.

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[27] A. Tettenborn, *ibid*, p. 142-143.
[28] *"The issuance and initial transfer of possession of a negotiable cargo document, as well as any subsequent transfers, to the holder shall have the same effect, for the purpose of acquisition of rights to the goods, as the physical handing over of the goods"*.
[29] A/CN.9/WG.VI/WP.116/Rev.1, *"The Baltic and International Maritime Council (BIMCO), the International Group of Protection & Indemnity Clubs (IGP&I) and the International Chamber of Shipping (ICS)"*, p. 7.
[30] A/CN.9/WG.VI/WP.116/Rev.1, *"Comment by CMI"*, p. 2.
[31] A/CN.9/1170, para. 43 and A/CN.9/WG.VI/WP.104.

IV. PRELIMINARY QUESTIONS ON NCDs & COMPARISON WITH BoL

1. How and by whom are NCDs issued?

In order to have a holistic understanding of the new instrument, it is necessary to examine the substantive provisions of the Convention. The first issue for consideration, which caused a heated debate, was the method that the new type of document shall be issued. Specifically, according to Art. 3 (2) of the Convention, the issuance of an NCD shall include one of the following methods: 1) the entering of an annotation signed by the transport operator in each of the original transport documents, or 2) the issuance of a stand-alone negotiable cargo document, where no transport document has been issued or where a transport document has been issued and cancelled.

In comparison with previous draft instruments, the current provision follows a different approach. More specifically, the Working Group VI had agreed on a default rule permitting the upgrading of a transport document into an NCD, provided that this would be allowed under domestic laws. Otherwise, whether the transport document was non-negotiable, the Working Group agreed on a fallback rule, according to which the NCD would be issued as a separate document, in addition to the non-negotiable transport document[32]. That method reflected more clearly the so called "dual-track" approach of Convention, according to which 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[33]. However, important observations were raised related to the co-existence of NCDs and the consignment note, where the CMR Convention was applicable[34] and an almost inevitable conflict between the regimes of the Draft Convention and the CMR was supported.

Despite the avoidance of that conflict pursuant to current provisions, as the co-existence between NCDs and transport documents is no longer possible, two remarks shall be noted. Firstly, the method of the issuance of a stand-alone NCD –where no transport document has been issued- does not take into account the prohibition by some legal frameworks of transport documents functioning as negotiable documents, such as the Convention concerning International Carriage by Rail (COTIF-CIM) Uniform Rules (Art. 6.5). Secondly, regarding

[32] A/CN.9/WG.VI/WP.114, fnn.28 and 29, A/CN.9/WG.VI/WP.113, paras. 6-7.
[33] A/CN.9/WG.VI/WP.96, para. 9.
[34] P. Csoklich, T. Eckardt, C. Legros, F. Smeele, „CMR-AC Advise No. 1 on relation of the Draft Convention on Negotiable Cargo Documents and CMR", *Transportrecht*, Issue 5, 2025, p. 149.

the method of entering an annotation in each original transport document, the FIATA Multimodal Bill of Lading could certainly serve as a negotiable cargo document[35]. However, could an annotation be also entered in the non-negotiable sea waybill under Art. 3(2a) and, if so, would sufficiently co-exist the HVR and the Convention[36]?

The second reasonable question concerns the person who has the ability to issue NCDs, the determination of whom further clarifies the relationship between the NCD and the transport document[37] issued pursuant to the transport contract[38].

More specifically, in accordance to Art. 3(1) and Art. 2(8) of the Convention[39], the transport operator, following the respective agreement between him and the consignor, issues the negotiable cargo document. The scope of the term "transport operator"[40] is broad, as according to its definition, it includes the person that both concludes the transport contract with the consignor and assumes responsibility of the performance of the contract, irrespective of whether or not that person performs the transport itself, namely, acting either as contractual or as actual carrier. That said, any rail/road/air carrier or freight forwarder –not acting merely as agent- shall issue NCDs[41]. According to declarations of the Working Group VI, by establishing a narrow scope of application limited only to the contractual carrier, the final text would be relevant only for freight forwarders[42].

Nevertheless, the question that arises is the following: Would the broad extent of the *ratione personae* of the Convention substantially affect the application of existing international conventions governing transport of goods and particularly those provisions concerning liability of the carrier for loss or damage to the goods or for delay in their delivery? For instance, in the context of multimodal transport, when the transport operator concludes several individual transport contracts with multiple actual carriers, the holder of the NCD could only demand delivery of the cargo from the transport operator, who will be the issuer of the NCD, rather

[35] A/CN.9/WG.VI/WP.113, para. 6.
[36] A/CN.9/WG.VI/WP.108, para. 5.
[37] Art. 2(7): *"Transport document means a document that: (a) evidences or contains the transport contract and (b) evidences the taking in charge of the goods for transport under the transport contract".*
[38] Art. 2(6): *"Transport contract means a contract whereby the transport operator undertakes to perform international transport of goods for reward".*
[39] Art. 2(8): *"Transport operator means a person that concludes a transport contract with the consignor and that assumes responsibility for the performance of the contract, irrespective of whether or not that person performs that transport itself".*
Art. 3, par. 1:"If so agreed between the transport operator and the consignor, the transport operator shall issue a negotiable cargo document, ..., that contains a conspicuous reference to this Convention".
[40] MT Convention, Art. 1(2).
[41] A/CN.9/WG.VI/WP.102, para. 5, A/CN.9/WG.VI/WP.106, para. 7 and A/CN.9/WG.VI/WP.113 para. 5.
[42] A/CN.9/1134, para. 11.

than from the actual carrier. However, in the context of unimodal maritime transport, Art. 1 (b') HVR requires a *bill of lading or any similar document of title* to be applicable. Consequently, would HVR apply, whether the transport operator, acting as both contractual and actual carrier, issued an NCD-either by entering an annotation in a sea waybill or by issuing a standalone NCD- instead of the original bill of lading? Furthermore, based on the above scenario but varied, whether the contractual carrier differed from the actual carrier, in which framework would the latter be included? Despite that according to the draft provisions, the instrument will not deal with sub-contracts that may be concluded by the transport operator[43], the fact that under the Greek Maritime Code (Art. 134) the actual sea carrier now bears the same liability as the contractual carrier, might lead to the conclusion that the former's position may be also implicitly influenced.

2. NCDs & BoL: Which is the intersection of provisions of the Convention, HVR, Rotterdam Rules[44] ("RR") and the Greek domestic law?

Following the analysis of substantive provisions of NCDs, a comparative research between them and the BoL, as the latter is regulated in HVR, RR and Greek law will enlighten the core provisions of the new Convention. More specifically, Art. 4 (*"Contents of the NCD"*), Art. 5 (*"Deficiencies in the NCD"*) and Art. 6 (*"Evidentiary effect of the NCD"*) of the Convention have conceptual similarities with respective regulations (Art. 36, Art. 39 and Art. 41) of RR. From the perspective of Greek law, the new Art. 118 of Greek Code of Private Maritime Law constitutes a "navigation" regulation, which extends the scope of application of HVR, as they now apply in international carriage in liner trade, irrespective of the issuance of BoL or any similar document of title[45].

Unlike Art. 3(3) HVR, as well as Art. 124 of Greek Maritime Code concerning the BoL, the NCD shall contain more particulars in accordance with Art. 4(1) and (2) of the Convention. Similarly, Art. 36 RR requires more information contained in the respective transport document. According to Art. 5(1) of the Convention, *"the validity of one or more particulars … does not affect the validity of the document as a NCD, provided that the document nevertheless falls within the definition of NCDs as set out in Article 2, par.5" of the Convention"*[46]. As a result, it is not entirely clear which are the minimum requirements of the

[43] A/CN.9/WG.VI/WP.98, p. 7, fn. 15.
[44] The "United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea", adopted by UNCITRAL in 2008 has not entered into force.
[45] Explanatory Note of the Greek Private Maritime Code, Art. 118, p. 155.
[46] See also Art. 39 (1) RR.

context of NCDs[47]. Moreover, in the context of Art. 36 (1) RR an argument that the mandatory list should be limited as much as possible could respectively be taken into consideration as regards the list of particulars contained in NCDs[48]. Furthermore, as in Art. 3 (3) (c') HVR, Art. 36 (2)(a') RR and Art. 124 (2) of Greek Maritime Code, so according to Art. 4 (1)(d') of the Convention the transport operator shall indicate in the NCD the apparent order and condition of the goods. As the presumption rule of Art. 5 (6) of the Convention states, if the NCD fails to state the apparent order and condition, *"it shall be deemed… that the goods were in apparent order and condition…"*. Although the latter provision can also be found in Art. 39 (3) RR, the new Convention does not define the context of the term "apparent order and condition", as corresponding to RR[49].

Lastly, the evidentiary effect of NCDs, as stated in Art. 6 of the Convention, resembles the Art. 41 RR, the Art. 3(4) HVR and Art. 126 (5) of Greek Maritime Code. As a consequence, except to the extent that the information furnished by the consignor has been qualified by the transport operator, the NCD constitutes a prima facie evidence of the taking in charge of the goods by the transport operator as stated in the NCD. However, proof to the contrary by the transport operator shall not be admissible against third party, to whom the NCD has been transferred and acting in good faith.

V. RIGHTS AND LIABILITIES OF THE TRANSPORT OPERATOR AND THE HOLDER UNDER THE NEW CONVENTION: *Is there a conflict with the Bill of Lading Law?*

The last chapter of this contribution encapsulates the essence of the impact of the Convention to settled rules that govern bill of lading and the carriage of goods by sea. Initially, the Convention clarifies that *"does not affect the application of any international convention…relating to the regulation and control of transport operations"*[50] and *"does not modify the rights and obligations of the transport operator, consignor or consignee or their liability.."*[51]. However, by the phrase *"except as otherwise provided for therein"*[52], the

[47] K. Ramming, "Das neue NCD-Übereinkommen-erstes Überblick", *Zeitschrift für das Recht der Transportwirtschaft (RdTW)*, 1/2026, p. 5.
[48] Report of Working Group III (Transport Law), A/CN.9/594, para. 227.
[49] Art. 36 (4) RR.
[50] Art. 1 (2) of the Convention.
[51] Art. 1 (3) of the Convention.
[52] Deleting of the words *"except as otherwise provided for therein"* was also proposed by the Hellenic Maritime Administration, see A/CN.9/1214, p. 12.

Convention asserts primacy over provisions provided in long established rules of international maritime conventions and domestic laws. Despite the argument that Art. 1(3) of Convention is merely declaratory[53], due to the argued presumption favoring the newer instrument, the efficiency of long- established rules governing the bill of lading shall be underlined.

1. Rights of the holder of an NCD (Art. 7)

According to Art. 7 (1) of the Convention, rights provided by an NCD are exclusively exercised by its holder. Moreover, in Art. 7 (2), the person other than the consignor who becomes the holder of the NCD can exercise: 1) the right to bring a claim against the transport operator, 2) the right of disposal under the transport contract, where applicable, and 3) those rights provided for in the law applicable to the transport contract, as the holder were a party to that contract. Conversely, according to Art. 7(3) the transport operator cannot invoke against the holder that is not the consignor, any terms of the transport contract that are inconsistent with the express terms of the NCD.

A first argument could underline a certain similarity of the aforementioned terminology with Sec. 2 (1) of COGSA 1992. The latter contains the core provision of the Act, providing for suit by the lawful holder of a bill of lading, to whom *"shall have transferred to and vested in him all rights of suit under the contract of carriage, as if he had been a party to that contract"*. The trigger for such transfer is *"becoming the holder"* of the bill[54]. However, Art. 7 of the Convention gives a broader approach to rights of the holder, as it mentions that the holder acquires *"those rights provided ... to the transport contract, as if it were a party to that contract*". From the one side, it has been argued that treating the holder as a party to the contract of carriage is intended to ensure that the beneficiary also becomes a party to the contract of carriage[55]. However, that reflects "contractual theories" of the position of the third-party holder of the bill of lading[56]. Despite the fact that a similar terminology is used in COGSA 1992, if the actual contract between the shipper and the carrier included rights or liabilities that were not expressed in the bill of lading, such rights and liabilities are not transferred to the holder. The contract is exclusively and exhaustively contained in or evidenced by the bill of lading[57].

[53] K. Ramming, *ibid*, p. 11.
[54] S. R. Aikens, R. Lord QC, M. Bools QC, M. Bolding, K. S. T. Toh SC, M. Goldby(special contributor), *"Bills of Lading"*, Informa law from Routledge, Third Ed., 2021, p. 265.
[55] K. Ramming, *ibid.*, p. 12.
[56] F. Stevens, *ibid*, p. 136-150.
[57] F. Stevens, *ibid*. p. 159-160.

For the proper interpretation of the position and rights of the holder, the House of Lords' decision *"The Berge Sisar"*[58] shall be highlighted. More specifically, Lord Hobhouse, advocated a strict construction of the concept *"making a claim"*, as contained in Sec. 3(1) of COGSA 1992, because of the potential detrimental consequences of that act for the holder[59]. COGSA 1992 uses a more general *"contract of carriage"* terminology, but the rights and obligations of the holder are still determined, and exclusively determined by what appears from the bill of lading document itself[60]. In addition, according to the Greek law of bill of lading, the rights, which are incorporated in the bill of lading, are independent and identifiable by the context of it[61]. Consequently, an analogous interpretation shall be followed, insofar as an NCD would be issued under the context of maritime transport.

A further concern is arisen by the Art. 7(3) of the Convention, especially as whether a NCD could incorporate the terms of other documents, as occurs with charterparty bills of lading. As, specifically, jointly submitted by the ICS, the IGP&I and the BIMCO[62] , the effectiveness of general words of incorporation is well recognized in both English and Greek law. Under specific conditions defined in Art. 131 para. 2 of Greek Maritime Code, the holder of the bill of lading is bound to the terms of the charterparty and only "arbitration" and "choice of law" clauses shall explicitly have to be incorporated into the charterparty bill of lading. Under the combined effect of paras. (1) and (2) of Art. 7 of the Convention, it not ensured that they would suffice to allow shipowners who may issue an NCD as transport operators under the NCD convention to enforce the terms of the contract of carriage against the holder[63].

2. Liability of the holder of an NCD (Art. 9)

Art. 9 (1) of the Convention regulates the liability of the holder, who does not assume any liability solely by being a holder of the NCD[64]. According to Art. 9 (2), he shall have exercised a right in accordance with Art. 7 of the Convention, in order to assume liability. Nonetheless, as regards the specific conditions that have to be fulfilled, the Convention introduces significant limitations against the shipowner. More specifically, the liability of the holder shall be

[58] *"Borealis AB v Stargas Ltd and others and Bergesen D.Y. A/S (The Berge Sisar)"* [2001] UKHL 17, [2001] 2 All ER 193 (House of Lords, 22 March 2001).
[59] F. Stevens, *ibid*, p. 165.
[60] *Ibid*, p. 173.
[61] A. Antapasis, L. Athanassiou, *ibid*, p. 569.
[62] A/CN.9/1214/Add.1, p. 18.
[63] *Ibid*.
[64] That is a similar provision with Art. 58 (1) RR, which was added upon a request of the Working Group VI (A/CN.9/1127, par. 90).

"…attributable to the person exercising such a right…" or *"…arises from the exercise of that right… to the extent that such liability is ascertainable from the NCD, as it were a party to the transport contract"*. Firstly, concerns have already stipulated as regards the scenario a shipowner would be exposed to losses without a recourse party, particularly in cases where a claim cannot be brought against the consignor[65]. Further examples include the arrest of the ship, unpaid freights, demurrage fees and damages caused by providing incorrect information regarding dangerous goods[66]. Besides, in the context of examination of Sec. 3 (1) of COGSA 1992 (*"Liabilities under shipping documents"*), Law Commissions' Report did not consider it unacceptable for a subsequent holder to be sued on account of liabilities previously incurred by the original shipper of by a previous holder, such as demurrage caused in the load port by strikes or congested ports[67]. Especially for dangerous goods in sea carriage, under the current framework of the Convention, the carrier may be found liable against the holder of an NCD, despite the protective measure of Art. IV, r. 5(h) HVR[68].

3. What about transport operator's liability under NCDs?

As regards the transport operator's liability, the Convention does not make a specific provision. From the one side, as underlined above, upon Art. 9 in combination with Art. 1(3) of the Convention, the carrier in marine carriage may be found liable and the defenses pursuant international conventions will not apply[69]. The Joint Submission by the ICS, IGP&I and the BIMCO suggested[70] a further provision, according to which, in the case of transportation of goods involving a sea leg, the rights, obligations, responsibilities and liabilities of, amongst others, the transport operator, would be determined in accordance with the applicable international conventions or national law governing the transport contract.

On the other side, UNCTAD emphasized on the non-existence in multimodal transport of an international convention providing minimum standards of carrier's liability. It cautioned that transport operators might decide to either exclude or limit their liability. Therefore, it

[65] A/CN.9/1214/Add. 1, para. 22.
[66] A/CN.9/1205, para. 75.
[67] Frank Stevens, *ibid*.,p. 168.
[68] Art. IV, r. 5(h) HVR*: "Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value therof has been knowingly mis-stated by the shipper in the Bill of Lading".*
[69] A/CN.9/1214/Add.1, p. 15.
[70] *Ibid*. p. 18.

advocated[71] –which eventually was not contained in final Convention- to give statutory effect to the UNCTAD/ICC Rules exceptionally where no mandatory regime applies.

VI. CONCLUSIONS

Given the novel framework introduced by the Convention and combined with the scarcity of legal references to date, this contribution aimed to provide a comprehensive yet exploratory examination of provisions the Convention formulates. The innovative aspects of the Convention lie in the creation of a new document of title that will extend the benefits of the bill of lading to other modes of transport and, consequently, facilitate trade finance. However, maritime transport is governed by established rules and the co-existence of them and the provisions of the Convention, where they differ from those regarding the bill of lading, constitutes a challenge for both legal theory and shipping practice. The promotion of digitalization, aligned also with the MLETR, and the facilitation of trade financing are certainly notable advantages. As for the future development of the Convention, we shall anticipate to find out how Contracting States will approach and which ones will ratify it.

[71] *Ibid*, p.2.