

Shipper's Obligations under the Rotterdam Rules. A Comparison with the Hague-Visby Rules 1968 and the Hamburg Rules 1978

Assistant professor **Oana ADĂSCĂLIȚEI**¹

Abstract

The article aims to analyse the shipper's liability in international contracts of carriage of goods under the Rotterdam Rules in comparison with his liability under the 1968 Hague Visby Rules and the 1978 Hamburg Rules. The shipper's obligations are based on the previous provisions contained in the Hague-Visby Rules 1968 and the Hamburg Rules 1978. The Rotterdam Rules introduce new obligations, such as the duty of cooperation between the shipper and the carrier of goods, the shipper's duty to pack and label a container in such a way as not to cause damage to persons or goods, or the duty to mark or label dangerous goods in accordance with any law, regulation, or other requirements of public authorities. The notion of "shipper" is defined differently from the Hamburg Rules of 1978. The Rotterdam Rules add the notion of "documentary shipper", a completely new concept adapted to the needs of international FOB contracts. There are no substantial differences between the Hague Visby Rules 1968 and the Hamburg Rules 1978. The obligations and liability of the shipper are better structured. A number of important issues, such as the shipper's liability to third parties or the shipper's liability for loss or damage caused by delay, remain unregulated by the Rotterdam Rules.

Keywords: shipper; documentary shipper; strict liability; Hague-Visby Rules 1968; Hamburg Rules 1978; Rotterdam Rules.

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1. Introductory aspects

Currently, the carriage of goods by sea is regulated by three international conventions, namely the Hague-Visby Rules 1968, the Hamburg Rules 1978, and the Rotterdam Rules. The obligations and liability of the shipper are partly regulated in the Hague-Visby Rules 1968 and the Hamburg Rules 1978. The Hague-Visby Rules 1968 regulate the shipper's obligation to guarantee the accuracy of the marks, number, quantity, and weight at the time of dispatch of the goods (Article III.5), the shipper's exemption from liability for loss or damage sustained by the carrier that is not the result of the carrier's action, fault, or neglect or that of his servants (Article IV.6), and the shipper's liability for dangerous goods delivered for carriage. The Hamburg Rules 1978 contain provisions on the shipper's exemption from liability (Article 12) and special rules on dangerous goods (Article 13). The shipper's obligations are set out in Chapter VII of the Rotterdam Rules. These concern the obligation to deliver the goods ready for carriage, the obligation to provide information, instructions, and documents relating to the carriage of the goods, the obligation to cooperate between the shipper and the carrier of the goods, the obligation to provide information for the Preparation of the contract provisions, and the obligation to provide information, marking, and labelling in respect

¹ Oana Adăscăliței - PhD. candidate, Maritime University of Constanța, Romania, oana.adascalitei@cmu-edu.eu.

of dangerous goods. Many of the obligations are the result of the codification of judicial practice². Similar to the provisions of Article IV (3) Hague-Visby Rules 1968 and Article 12 Hamburg Rules 1978, the shipper's liability is based on fault. The shipper is strictly liable for failure to comply with the obligations relating to dangerous goods. Similar provisions are laid down in Article IV (6) Hague-Visby Rules 1968 and Article 13 Hamburg Rules 1978. By using the logical and comparative method, the article aims to analyse the extent to which the new regulation through the Rotterdam Rules represents a change in the shipper's obligations or a simple restructuring of previous provisions.

2. Obligation to deliver goods ready for carriage

The shipper must deliver the goods ready for carriage unless otherwise agreed in the contract of carriage³. In practice, the meaning of the term "ready for carriage" depends on the wording of the contract of carriage of the goods⁴. The parties are free to modify such an obligation⁵. The Hague-Visby Rules 1968 and the Hamburg Rules 1978 do not contain corresponding provisions.

The shipper must deliver the goods in a condition to withstand the intended carriage, including loading, handling, stowing, securing, and unloading, and not cause damage to persons or property⁶. The goods must be fit for carriage on the intended voyage. If the carrier uses a transport route other than that provided for in the contract without informing the shipper in advance, the shipper shall not be liable for non-fulfilment of the obligation⁷. The goods must be delivered by the shipper in a condition to withstand the intended carriage without damage to persons or property. If the shipper performs the loading, handling, stowage, and securing of the goods under a FIO or FIOST clause, he is responsible for the proper performance of the obligations⁸. The shipper's obligation to deliver the goods in a condition that does not affect the ship, the property on board, or the goods being fit for voyage cannot be varied by the contracting parties⁹. If the shipper's failure to perform his obligation results in damage, he is liable only to the carrier and not to third parties¹⁰. The shipper is liable for damage to people and property. The Rotterdam Rules do not contain any provisions under which the

² Kofi Mbiah, *Updating the Rules on International Carriage of Goods by Sea: The Rotterdam Rules*, pp.1-15, <https://comitemaritime.org/work/rotterdam-rules/>, accessed October 16, 2023.

³ Article 27 paragraph 1 of the Rotterdam Rules. accessed October 16, 2023.

⁴ Filippo Lorenzon, *Obligations of the shipper to the carrier*, in Yvonne Baatz, Charles Debattista, Filippo Lorenzon, Andrew Serdy, Hilton Staniland, Michael Tsimplis (eds.) *The Rotterdam Rules. A Practical Annotation*, Informa Law from Routledge, 2009 (pp.79-97), p.80.

⁵ Michael F. Sturley, Tomotaka Fujita, Gertjan van der Ziel, *Shipper's obligations, Rotterdam Rules: The UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, Sweet & Maxwell, 2010, (pp.177-201), p.178.

⁶ Article 27 para. 2 of the Rotterdam Rules.

⁷ Johan Schelin, *Obligations of the shipper to the carrier*, in Alexander von Ziegler, Stefano Zunarelli, Johan Schelin (eds.), *The Rotterdam Rules 2008: Commentary to the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*, Kluwer Law International, The Netherlands, 2010, (pp.151-159), p.152.

⁸ *Idem*, p.153.

⁹ Frank Stevens, *Duties of shippers and dangerous cargoes*, in Rhidian Thomas (eds.), *The Carriage of Goods by Sea under The Rotterdam Rules*, Lloyds List, London, 2010, (pp.215-236), p.219.

¹⁰ Filippo Lorenzon, *op.cit.*, p.81.

shipper can be obliged to deliver the goods in such a condition that no environmental damage is caused¹¹.

The goods must be delivered on time by the shipper according to the contract. There are no provisions in Article 27 of the Rotterdam Rules relating to delay caused by defective loading, handling, stowage, or securing of goods. Defective stowage of goods accompanied by delay of the ship shall render the shipper liable¹².

The Visby Rules 1924, the Hague-Visby Rules 1968, or the Hamburg Rules 1978 do not contain express provisions on the shipper's liability for the delivery of goods for carriage.

The shipper packing a container or loading a vehicle must properly and carefully stack, secure, and secure the contents in or on the container or vehicle in such a way as not to cause damage to persons or property¹³. This is a new obligation compared to the previous conventions mentioned.

The shipper's obligations under Article 27 Rotterdam Rules are consistent with the seller's obligations under Article 35 (1) United Nations Convention on Contracts for the International Sale of Goods and Rule A9 F and C INCOTERMS Rules¹⁴.

3. Obligation of cooperation between the shipper and the carrier of goods

The carrier and the shipper are obliged to respond to each other's requests for information and instructions necessary for the proper handling and carriage of the goods¹⁵. The shipper has such an obligation provided that the information is in its possession, or the instructions are within its reasonable ability to provide¹⁶. If the required information is reasonably available to the carrier, the shipper shall not be liable for failure to provide it¹⁷. The parties' obligation to cooperate supports the obligation to provide the necessary information and instructions for the transport and handling of goods¹⁸.

3.1. Obligation to provide information, instructions, and documents relating to the carriage of goods

The shipper is obliged to provide the carrier with timely information, instructions, and documents relating to the proper handling and carriage of the goods, including precautionary measures to be taken by the carrier or a performing party¹⁹. The obligation relates to those information, instructions, and documents that are not reasonably available to the carrier but that are reasonably required²⁰.

¹¹ Ibidem.

¹² Johan Schelin, *op. cit.*, p.154.

¹³ Article 27, paragraph 3 of the Rotterdam Rules.

¹⁴ Alexander von Ziegler, *Rotterdam Rules and the underlying sales contract*, "CMI Yearbook 2013", (pp. 273-286), p. 280.

¹⁵ Article 28 of the Rotterdam Rules.

¹⁶ Ibidem.

¹⁷ Ibidem.

¹⁸ Michael F. Sturley, Tomotaka Fujita, Gertjan van der Ziel, *op. cit.*, p.182.

¹⁹ Article 29 paragraph 1 letter a) of the Rotterdam Rules.

²⁰ Ibidem.

The shipper is obliged to provide information, instructions, or documents to enable the carrier to comply with legislation, regulations, or other requirements of public authorities in connection with the intended voyage²¹. The obligation is incumbent on the shipper, provided he is notified in due time by the carrier²². If the shipper does not have the necessary information, he cannot be held liable²³. Similarly, the shipper is not obliged to provide information, in the absence of notification by the carrier, on what is required to be transmitted²⁴. The parties may not contractually derogate from this obligation²⁵.

Legislation, regulations, or other requirements of public authorities in connection with the intended carriage in respect of which the obligation to inform arises relate to the law of the state of dispatch of the goods, the law of the state of destination, the law of the flag state, or the law applicable to the contract of carriage²⁶.

The shipper has a specific obligation to provide specific information, instructions, and documents relating to the goods under the law, regulations, or other requirements of public authorities in connection with the intended carriage²⁷. The provisions of Article 29 paragraph 1 do not affect the shipper's obligations to the public authorities²⁸.

The Rotterdam Rules codify an implicit obligation that exists in contracts for the carriage of goods by sea²⁹. In the Visby Rules 1924, the Hague-Visby Rules 1968, or the Hamburg Rules 1978, there are, however, no equivalent provisions concerning the obligation to provide information, instructions, and documents.

3.2. Obligation to provide information for the compilation of contract particulars

The shipper must provide the carrier with the exact information necessary to draw up the contract provisions and to issue the transport document or electronic transport record, including the particulars specified in Article 36(1); the name of the party to be identified as the shipper in the contract provisions; the name of the consignee, if any; and the name of the person to whom the transport document or electronic transport record is to be issued, if any³⁰. The shipper is obliged to provide the information in a timely manner³¹. In the event of a breach of the obligation to inform provided for in

²¹ Article 29 paragraph 1, letter b) of the Rotterdam Rules.

²² *Ibidem*.

²³ Filippo Lorenzon, *op. cit.*, p.86.

²⁴ Michael F. Sturley, Tomotaka Fujita, Gertjan van der Ziel, *op. cit.*, p.182.

²⁵ Frank Stevens, *op. cit.*, p.224.

²⁶ Filippo Lorenzon, *op. cit.*, p.86.

²⁷ Article 29 paragraph 2 of the Rotterdam Rules.

²⁸ Johan Schelin, *op. cit.*, p.155.

²⁹ Francesco Berlingieri, *A comparative analysis of the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules*, paper delivered at the General Assembly of the International Association of Average Adjusters-AMD, Marrakesh, 5-6 November 2009, p. 20, available online at www.comitemaritime.org/draft/pdf/Comparative_analysis.pdf, accessed October 29, 2023; José Vicente Guzmán, *The Rotterdam Rules Shipper's Obligations and Liability*, <https://comitemaritime.org/work/rotterdam-rules/>, accessed October 19, 2023.

³⁰ Article 31 paragraph 1 of the Rotterdam Rules.

³¹ *Ibidem*.

Article 31(1), the shipper's liability shall be based on fault³². The shipper shall be deemed to have guaranteed the accuracy, at the time of receipt by the carrier, of the information provided. The shipper must indemnify the carrier for any losses or damages resulting from the inaccuracy of such information³³. The shipper's responsibility for the accuracy of the information provided is strict³⁴.

The Hague-Visby Rules 1968 and the Hamburg Rules 1978 contain similar provisions. The Hague-Visby Rules 1968 provide that the shipper shall be deemed to have warranted to the carrier the accuracy, at the time of shipment, of the marks, the number, the quantity, and the weight as furnished by him, and the shipper shall indemnify the carrier against all loss, damage, and expenses arising out of or resulting from inaccuracies in such information³⁵. The Hamburg Rules 1978 do not change the above-mentioned provisions³⁶.

3.3. Obligations in relation to dangerous goods

The shipper is obliged to inform the carrier of the dangerous nature or characteristics of the goods before they are delivered to the carrier or a performing party³⁷. The obligation must be fulfilled in a timely manner³⁸. If the shipper breaches this obligation and the carrier or the party performing the carriage has no knowledge otherwise of the dangerous nature or characteristics thereof, the shipper shall be liable to the carrier for loss or damage resulting from such failure to inform³⁹.

The shipper's liability for the obligation to inform under Article 32(1) of the Rotterdam Rules is strict⁴⁰. Any breach of this obligation by the shipper shall only render him liable if the carrier was unaware of the dangerous nature of the goods⁴¹. The Hamburg Rules 1978 provide for a similar obligation⁴².

Under the Rotterdam Rules, the shipper is required to mark or label dangerous goods in accordance with any law, regulation, or other requirements of public authorities that apply at any stage of the intended carriage of the goods. If the shipper fails to fulfill his obligation, he shall be liable to the carrier for any loss or damage resulting therefrom⁴³. The shipper's liability is strict⁴⁴. The shipper cannot be relieved from liability if he proves that the carrier was aware of the dangerous nature or characteristics

³² Filippo Lorenzon, *op. cit.*, p. 89.

³³ Article 31 paragraph 2 of the Rotterdam Rules.

³⁴ Johan Schelin, *op. cit.*, p.157.

³⁵ Article III (5) of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules") as Amended by the Brussels Protocol 1968 ("Hague-Visby Rules") and by the Brussels Protocol 1979.

³⁶ Art. 17 alin.1 of the United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) 1978.

³⁷ Article 32 paragraph 1 letter a) of the Rotterdam Rules.

³⁸ *Ibidem*.

³⁹ *Ibidem*.

⁴⁰ Johan Schelin, *op. cit.*, p.157.

⁴¹ Francesco Berlingieri, *op. cit.*, p.20.

⁴² Article 13 paragraph 2 United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) 1978.

⁴³ Article 32 paragraph 1, letter b) of the Rotterdam Rules.

⁴⁴ Filippo Lorenzon, *op. cit.*, p.93.

of the goods⁴⁵. The provisions of the Hamburg Rules 1978 are similar. The Hamburg Rules 1978 provide that the shipper must apply a marking or label to dangerous goods that indicates in an appropriate manner that the goods are dangerous⁴⁶. The Hague-Visby Rules 1968 do not refer to the shipper's obligation to mark or label dangerous goods. The Hague-Visby Rules 1968 provide that goods of a flammable, explosive, or dangerous nature, to the carriage of which the carrier, master, or agent of the carrier has not knowingly consented as to their nature and character, may at any time before discharge be unloaded at any place or may be destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such delivery⁴⁷. The shipper's obligations in respect of dangerous goods under the Rotterdam Rules do not increase as compared to previous conventions⁴⁸. The Rotterdam Rules, as well as the Hague-Visby Rules 1968 and the Hamburg Rules 1978, do not provide a definition of the term "dangerous goods". The Rotterdam Rules state that dangerous goods are those that, by their nature or characteristics, are or appear likely to become a danger to persons, property, or the environment⁴⁹.

4. The basis of the shipper's liability to the carrier

The shipper is liable for any loss or damage suffered by the carrier if the carrier proves that the loss or damage is caused by a breach of the shipper's obligations under the Rotterdam Rules⁵⁰.

Article 30 of the Rotterdam Rules governs the shipper's contractual liability towards the carrier⁵¹. Third parties have no direct cause of action against the shipper⁵². The shipper's liability is based on fault⁵³. The Rotterdam Rules do not address the shipper's liability for loss or damage brought on by delay. If the shipper is in breach of his obligations and thereby causes a delay, the damage caused to third parties shall be compensated by the carrier⁵⁴. The carrier has, under national law, an action in tort against the shipper for the recovery of payments he has made to third parties⁵⁵.

The burden of proof lies with the carrier. The carrier must prove that he has suffered a loss or damage, that the shipper has been in breach of his obligations under the Rotterdam Rules, and that there is a causal link between the shipper's breach of his obligations and the loss⁵⁶. The Hague Rules 1924, the Hague-Visby Rules 1968, and the

⁴⁵ Ibidem.

⁴⁶ Article 13 paragraph 1 United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) 1978.

⁴⁷ Art. IV (6) International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules") as Amended by the Brussels Protocol 1968 ("Hague-Visby Rules") and by the Brussels Protocol 1979.

⁴⁸ Francesco Berlingieri, *op. cit.*, p. 21.

⁴⁹ Idem, p. 20.

⁵⁰ Article 30 paragraph 1 of the Rotterdam Rules.

⁵¹ Frank Stevens, *op. cit.*, p.226.

⁵² Ibidem.

⁵³ Filippo Lorenzon, *op. cit.*, p.87.

⁵⁴ Michael F. Sturley, Tomotaka Fujita, Gertjan van der Ziel, *op. cit.*, p.186.

⁵⁵ Ibidem.

⁵⁶ Filippo Lorenzon, *op. cit.*, p. 87.

Hamburg Rules 1978 contain similar provisions. In accordance with the Hague Rules 1924 and the Hague Visby Rules 1968, the shipper shall not be liable for any loss or damage sustained by the carrier or the vessel arising out of or resulting from any cause whatsoever without the act, fault, or neglect of the shipper, his agents, or his servants⁵⁷. The Hamburg Rules 1978 provide that the shipper is not liable for the loss or damage suffered by the carrier or the actual carrier, nor for the damage to the ship, unless the loss or damage was caused by the fault or neglect of the shipper, his servants, or agents⁵⁸. The shipper shall be wholly or partly exempt from his liability if the cause or one of the causes of the loss or damage is not attributable to his fault⁵⁹. As an exception to this, there are cases where the loss or damage is due to incorrect information provided by the shipper for the compilation of contractual provisions or the issue of transport documents (Article 31(2)) and those resulting from the shipper's failure to fulfil his obligations in relation to the carriage of dangerous goods (Article 32). These exceptions are the only ones with respect to the principle that the shipper's liability is based on fault⁶⁰. As compared to the provisions of the Hague Rules 1924, the Hague Visby Rules 1968, and the Hamburg Rules 1978, the Rotterdam Rules are the only rules that expressly establish the strict liability of the shipper⁶¹. Contractual provisions that directly or indirectly modify, restrict, or increase the shipper's liability are void⁶².

The Rotterdam Rules do not establish who bears the burden of proof as to the fault of the shipper⁶³. If the shipper is exonerated from part of its liability, then it shall be liable only for that part of the loss or damage that is attributable to its fault or to the fault of its servants, agents, and subcontractors⁶⁴. The shipper must prove, in order to benefit from partial liability, that there was another cause contributing to the loss or damage that cannot be attributed either to him or to the persons for whom he is liable⁶⁵.

4.1. Liability of the shipper for other persons' actions

The shipper shall be liable for any breach of its obligations under this Convention caused by the acts or omissions of any person, including its employees, agents, and subcontractors, to whom it has entrusted the performance of any of its obligations⁶⁶. On the other side, the shipper shall not be liable for acts or omissions of the carrier or of a performing party acting on behalf of the carrier to whom the shipper has entrusted the performance of his obligations⁶⁷. Article 34 of the Rotterdam Rules

⁵⁷ Article IV (3) International Convention for the Unification of Certain Rules of Law relating to Bills of Lading ("Hague Rules") as Amended by the Brussels Protocol 1968 ("Hague-Visby Rules") and by the Brussels Protocol 1979, <https://www.fog.it/convenzioni/inglese/visby-1979.htm>, accessed October 16, 2023.

⁵⁸ Article 12 United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules) 1978, <https://unctad.org/search?keys=hamburg+rules>, accessed October 16, 2023.

⁵⁹ Article 30 paragraph 2 of the Rotterdam Rules.

⁶⁰ Frank Stevens, *op. cit.*, p. 227.

⁶¹ Francesco Berlingieri, *op. cit.*, p.19.

⁶² Article 79 paragraph 2 of the Rotterdam Rules.

⁶³ Michael F. Sturley, Tomotaka Fujita, Gertjan van der Ziel, *op. cit.*, p.188.

⁶⁴ Article 30 paragraph 3 of the Rotterdam Rules.

⁶⁵ José Vicente Guzmán, *op. cit.*, p. 8.

⁶⁶ Article 34 of the Rotterdam Rules.

⁶⁷ *Ibidem*.

exclusively addresses the shipper's liability towards the carrier⁶⁸.

4.2. Assumption of the shipper's rights and obligations by the documentary shipper

A documentary shipper is subject to the obligations and responsibilities imposed on the shipper and enjoys the shipper's rights and defences set out in Chapter 7 and Chapter 13 of the Rotterdam Rules⁶⁹. The shipper is the person who concludes a contract of carriage with the carrier⁷⁰. A documentary shipper is defined as a person other than the shipper who agrees to be named "shipper" in the transport document or electronic transport record⁷¹. According to the Rotterdam Rules, the documentary shipper is entitled to the rights and defences of the shipper. The documentary shipper is not entitled to limitation of liability⁷². The obligations, responsibilities, rights, or defences of the shipper are not affected by the fact that the documentary shipper enjoys the same rights and is subject to the same obligations⁷³. The liability of the documentary shipper does not replace the liability of the shipper⁷⁴. The shipper and the documentary shipper are not jointly and severally liable⁷⁵. In FOB international sales contracts, the documentary shipper is the seller⁷⁶. The buyer pays the costs of transporting the goods from the port of origin to the destination⁷⁷. In this case, the buyer is the shipper.

5. Conclusions

As compared to the 1968 Hague Visby Rules, the Rotterdam Rules introduce a separate chapter on the obligations and liability of the shipper. It regulates the shipper's obligation to deliver goods fit for carriage (Article 27), the obligation of cooperation between the shipper and the carrier in providing information and instructions (Article 28), the shipper's obligation to provide information, instructions and documents (Article 29), the shipper's obligation to provide accurate information for the compilation of contractual provisions (Article 31), the shipper's obligation to provide information on the nature and dangerous characteristics of the goods and to mark and label the goods (Article 32), the shipper's liability for other persons' actions (Article 34), the shipper's assumption of liability by the documentary shipper (Article 33) and the basis of the shipper's liability (Article 30).

By reference to the provisions of the Hague Rules 1924, the Hague Visby Rules 1968, and the Hamburg Rules 1978, the Rotterdam Rules are the only ones that expressly

⁶⁸ Frank Stevens, *op. cit.*, p. 229.

⁶⁹ Article 33 paragraph 1 of the Rotterdam Rules.

⁷⁰ Article 1.8 of the Rotterdam Rules.

⁷¹ *Idem*, Article 1.9.

⁷² Filippo Lorenzon, *op. cit.*, p.87.

⁷³ Article 33 paragraph 2 of the Rotterdam Rules.

⁷⁴ Frank Stevens, *op. cit.*, p. 229.

⁷⁵ *Ibidem*.

⁷⁶ Michael F. Sturley, Tomotaka Fujita, Gertjan van der Ziel, *op. cit.*, p. 198.

⁷⁷ *Ibidem*. See also Thomas Rhidian, *The position of shippers under the Rotterdam Rules*, in "European Journal of Commercial Contract Law" (EJCCL), 2010-1/2 issue, p. 25.

establish the strict liability of the shipper.

The Rotterdam Rules do not regulate the shipper's liability towards third parties. If the shipper is in breach of his obligation to deliver the goods fit for the intended carriage, it shall be liable only to the carrier. The Rotterdam Rules do not contain express provisions on the shipper's liability for the loss or damage caused by delay. By virtue of national law, the carrier has an action in tort against the shipper for the recovery of sums he has paid to third parties as a result of damage caused to them by delay. Similar to their predecessors, the Hague-Visby Rules 1968 and the Hamburg Rules 1978, the Rotterdam Rules do not provide a definition of "dangerous goods". The Rotterdam Rules also introduce the notion of "documentary shipper", which is absent from the Hague-Visby 1968 Rules and the Hamburg Rules 1978.

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