

## Erik Røsæg

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**From:** Erik Røsæg [erik.rosag@jus.uio.no]  
**Sent:** 4. mars 2011 09:15  
**Subject:** Correspondence group on the implementation of the Rotterdam Rules

Dear Colleague,

1 This is the first submission of the correspondence group on the relationship between the Rotterdam Rules and unimodal conventions, such as the CMR. The group is the result of the initiative of the Norwegian Ministry of Justice. My task – as the chairman of the Norwegian Maritime Law Commission – is to draft implementation legislation for the Rotterdam Rules. I hope that the exchanges in the correspondence group can provide some clarity in respect of issues that now seem rather obscure to me, and that the correspondence group can be of similar help to others.

2 The relationship between the Rotterdam Rules and unimodal conventions, such as the CMR, is dealt with in articles 26 and 82 of the Rotterdam Rules. For my part, I see no noteworthy problem with these provisions as far as they go. On certain conditions, article 26 allows provisions of other international instruments in respect of carrier's liability, limitation of liability and time for suit to prevail except on the sea leg of the transport. And if the unimodal convention applies on the sea leg by virtue of rules such as article 2 of the CMR, then article 82 of the Rotterdam Rules will still to some extent let the unimodal convention prevail. The unimodal convention may, however, refer back to the Rotterdam Rules. This is to some extent the case with article 2 of the CMR.

3 The texts of these conventions can be found, inter alia, at <http://folk.uio.no/erikro/WWW/cog/cog.html>.

4 The problem I experience when drafting implementation legislation concerns the relationship between the Rotterdam Rules and unimodal conventions, such as the CMR, when there is no guidance in articles 26 and 82 of the Rotterdam Rules. How should such situations be dealt with?

5 One example is the following:

6 Problem 1: There is a transport from Norway by truck via Sweden and then via ferry to Denmark. The truck is carried on board, and the goods are not unloaded from it. The Rotterdam Rules clearly apply (RR article 6). But also the CMR applies by explicit provisions (CMR articles 1 and 2), even if one generally should hold that CMR does not apply to multimodal transports. Which convention should then govern which transport documents can and should be issued? Should article 35 of the Rotterdam Rules apply, which allows negotiable transport documents? Or should article 1(5) of the CMR prevail, which disallows them? Both provisions cannot apply, and it is at least not very clear from article 82 of the Rotterdam Rules that the CMR should prevail. Also, if article 82 had such a wide scope, that would render the confinement of article 26 to carrier's liability, limitation of liability and time for suit rather meaningless.

7 I would be very grateful if someone please could explain to me how the Rotterdam Rules deal with this issue.

Yours sincerely,  
Erik Røsæg

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