

THE 2001 CAPE TOWN CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT



INSIDE TRACK



“Inside Track” keeps RWG members and colleagues up to date on the progress of the Luxembourg Protocol. You can be added onto the mailing list by clicking on “subscribe” at the bottom of the newsletter.

- [The Protocol in Budapest](#)
- [African Transport Ministers consider the Luxembourg Rail Protocol](#)
- [Breakfast Seminar in Prague](#)
- [Spanish Stakeholder Briefing on the Protocol in Madrid](#)
- [Topic of the month: The Interaction between the Luxembourg Rail Protocol and the Official Commentary](#)
- [Save the date – AFSIC Investing in Africa](#)
- [Save the date - AfricaRail 2019](#)
- [Save the date – Cape Town Convention Academic Project Conference 2019](#)
- [Subscription discount for RWG members for “Railways Africa”](#)
- [“The Railway Market in Africa and the Middle East” - special offer for members](#)
- [Official Commentary - consultation](#)
- [Official Commentary - special deal for RWG members](#)

[The Protocol in Budapest](#)

RWG Chairman Howard Rosen and Dr. József Vági, chair of the RWG Hungary Contact Group have been invited to give a presentation on the Luxembourg Rail Protocol at the Hungrail Railway Academy Conference 2019 on 8th May in Budapest.

African Transport Ministers consider the Luxembourg Rail Protocol

The Ministerial meeting of the African Union Specialised Technical Committee on Transport, Transcontinental and Interregional Infrastructure, Energy and Tourism, took place in Cairo, Egypt from 16th-17th April 2019. It was attended by delegations from 38 African States and many regional institutions. Government experts and ministers discussed the Luxembourg Rail Protocol and the official reports of the meetings of both government experts and ministers contained a recommendation that a resolution should be considered to support the adoption of the Luxembourg Rail Protocol by African Member States.

Breakfast Seminar in Prague

On Monday, 13th May 2019, the RWG will be running a rail stakeholders' breakfast seminar on the Luxembourg Protocol (08.30 – 10.00 am) at the offices of PricewaterhouseCoppers Česká republika s.r.o., in Prague. To receive an invitation, please contact us at info@railworkinggroup.org

Spanish Stakeholder Briefing on the Protocol in Madrid

On 14th May, our Spanish Contact Group will be hosting an exclusive briefing on the Luxembourg Rail Protocol from 9:30 to 11:30 a.m. in the Madrid offices of Watson Farley & Williams (María de Molina, 4 28006 Madrid). The Group will present a detailed overview of the Protocol focused on the economic benefits for Spanish operators, potential financiers and other stakeholders in the rail sector once it is applicable in Spain. [More information](#).

The briefing will be in Spanish and English. Admission is free. To register, contact: FCochet-Grasset@wfw.com.

Topic of the month: The Interaction between the Luxembourg Rail Protocol and the Official Commentary

While the text of the Rail Protocol to the Convention on International Interests in Mobile Equipment at all times remains the primary source of reference when dealing with this international treaty, Resolution No. 4 of the Final Act of the Diplomatic Conference to Adopt the Rail Protocol, which was held under the joint auspices of the International Institute for the Unification of Private Law (UNIDROIT) and the Intergovernmental Organization for International Carriage by Rail (OTIF) in Luxembourg in February 2007, requested the preparation of an official commentary on the Rail Protocol. This text was prepared by Prof. Sir Roy Goode (as the Rapporteur of the Commission of the Whole), in close co-operation with OTIF and UNIDROIT and in co-ordination with the Chairman of the Commission of the Whole, the Chairman of the Final Clauses Committee, the Chairman of the Registry Committee and the Chairman and members of the Drafting Committee. Prior to its publication in 2008, the Official Commentary on the Rail Protocol was also circulated for comment in draft form among the States and observers that participated in the Diplomatic Conference in Luxembourg. The Rail Working Group was heavily involved in this process.

Meanwhile, the Official Commentary on the Rail Protocol is available in its second edition published in 2014.

Although the Official Commentary, unlike the Rail Protocol itself, is not binding on national courts, it is expected that they will have due regard to it, particularly since it results from in-depth consultation with negotiating governments and participating observer organizations. This assumption is supported by the rules of interpretation under the 1969 Vienna Convention on the law of treaties, which provide that recourse may be had to supplementary means of interpretation, including the preparatory work of a treaty and the circumstances of its conclusion. Such supplementary means of interpretation may be drawn upon in order to determine the meaning of a treaty when its interpretation in accordance with the ordinary meaning of its terms in their context and in the light of its object and purpose leaves the meaning ambiguous or obscure or even leads to a result which is manifestly absurd or unreasonable.

By way of an example, as per Article XI (1) of the Rail Protocol, the debtor who is not in breach of its obligations shall be entitled to the quiet possession and use of the rolling stock. However, the Protocol does not define the term “quiet possession” or stipulate what exactly amounts to an infringement of the right of quiet possession. This may cause difficulties for those called upon to work with the Rail Protocol in jurisdictions where no concept of quiet possession has been established by legislation or shaped by corresponding case law. Here, the Official Commentary may prove very helpful insofar as it explains in greater detail that “the concept of quiet possession denotes freedom from interference with the debtor’s possession, use or enjoyment of the railway rolling stock” (Official Commentary, 2nd edition (2014), para. 3.60). Such guidance may be particularly helpful in States that do not belong to the Anglo-American legal system, which was particularly influential in the drafting of the Convention and the accompanying Protocols. This is just one example of how the Official Commentary will no doubt serve as an indispensable authoritative guide and reference point for the users of the Rail Protocol, governments and courts.

Save the date – AFSIC Investing in Africa

This conference is taking place 8th to 10th May 2019 in London. AFSIC is a highly focused investment event and is believed to be the largest Africa investment event taking place annually in Europe and one of the most important Africa investor events globally. If you are interested and would like to attend this event you can do this at <https://www.afsic.net/delgeate-registraiont/>. *The RWG has negotiated a 20% discount for readers. When you sign up for the event use the code AFSICSP19.*

Save the date – AfricaRail 2019

Africa’s largest rail exhibition & conference will be taking place at the Sandton Convention Centre in Johannesburg, South Africa on 19th/20th June 2019. *The RWG is an official media*

partner and RWG Chairman Howard Rosen will chair, and present a paper at, one of the streams at the conference. The RWG has negotiated a 15% discount for its members and RWG members should mention their membership when applying for tickets.

For more information click [here](#).



Save the date – Cape Town Convention Academic Project Conference 2019

This year's conference will be held in Oxford on 10th/11th September 2019. As will be seen from the [draft programme](#), there will be a major discussion of the Oceanair litigation in Brazil. Fundamental Cape Town Conventions issues are present in that case, including the interpretation and application of its substantive and cross border insolvency provisions. Oceanair is the first large scale insolvency in which the treaty plays a central role. With the Diplomatic Conference coming up in November this year, there will be two sessions on the MAC protocol: one looking critically at provisions in that protocol that are based on those in the other protocols, and the other looking at the relationship between the MAC protocol and domestic secured transactions law. There will also be a session on the interpretation of the Cape Town Convention in the various language versions, and a discussion of the CTC Compliance Index.



FACULTY OF LAW

Subscription discount for RWG members for “Railways Africa”

Rail Working Group members are entitled to purchase the South African online publication “[Railways Africa](#)” at 25% discount off R6500 - place promo code *railworkinggroup2019* when checking out. The code expires at the end of 2019.

“The Railway Market in Africa and the Middle East” – special offer for members

SCI Verkehr, has just published a new study on the market for railway technology products and services in Africa and the Middle East. Rail Working Group members are entitled to purchase the study at a 10% discount if you announce your membership during the order process. To place an order click [here](#).

Official Commentary – consultation

The next edition of Professor Goode's official commentary on the Luxembourg Protocol is already being prepared. The RWG has been invited to submit comments. If you would like

to suggest changes or additions to the commentary or, as an RWG member, would like to be part of our team evaluating the commentary, please contact [Professor Benjamin von Bodungen](#).

[Official Commentary - special deal for RWG members](#)

Rail Working Group members are entitled to purchase Professor Goode's official commentary on the Luxembourg Protocol at a 15% discount. If you wish to use this facility, please use the official form which you can find [here](#).

For copies of past newsletters click [here](#).

For information about membership of the RWG click [here](#).

Our next issue will be published towards the end of June.

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