

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.

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The European Bank for Reconstruction and Development (EBRD) has just published its annual magazine *Law in Transition* containing an article, written jointly by EBRD's Chief Counsel, Jelena Madir and RWG Chairman Howard Rosen, on how the Luxembourg Rail Protocol provides important legal support for the rail "Silk Routes". You can see the article [here](#).

Luxembourg Protocol introduced to African Finance Ministers

RWG Chairman Howard Rosen presented the Luxembourg Rail Protocol to the 51st Session of the UN Economic Commission for Africa Conference of African Ministers of Finance, Planning and Economic Development in Addis Ababa on 14th May. Howard was taking part in one of the Round table meetings entitled “Private sector and the implementation of the African Continental Free Trade Area”. The Round table was moderated by Minister of Economy and Finance for the Islamic Republic of Mauritania, Moctar Ould Djay.

The general theme of the conference was the broadening and deepening of the African Continental Free Trade Area and Howard’s message to ministers and their delegations from over 50 countries across Africa, was that the railways will play a critical role in, quite literally, “delivering the goods” and ensuring the success of the free trade area. This would require a huge amount of investment in the future and, he urged African states to adopt the Luxembourg Rail Protocol as quickly as possible as this would be an important mechanism for encouraging private financing of railway equipment.

For Howard’s speech in full see [here](#)

For the video of the round table session see [here](#). Howard’s speech begins at 6:48.

Spanish Registrars consider the Protocol

On 18th May, the Spanish Registrars Association (Colegio de Registradores) organized a one-day Seminar on the Cape Town Convention at their offices in Madrid.

A session was dedicated to the Luxembourg Rail Protocol where the speakers included Elizabeth Hirst, the Registrar Designate for the Luxembourg International Registry, Jose Luis Lorente Howell, the Chairman of the RWG Spanish Contact Group and Professor Teresa Rodriguez de las Heras Ballel, Associate Professor of Commercial at the Universidad Carlos III de Madrid. The event was attended by government officials, lawyers, manufacturers and other stakeholders in the rail sector.

Topic of the month: Managing conflicts between Protocols

When the Cape Town Convention was being set up, it was always intended that there would be a family of Protocols that related to different types of mobile assets. Although each Protocol would be similar, the Protocol for each asset type could be adapted to recognise the different specific characteristics of that asset type and make that Protocol more relevant.

For the first three Protocols (Aircraft Equipment, Railway Rolling Stock and Space Assets) the assets in question have been quite different. The definitions of the assets have been such that a party wishing to register a security interest can be fairly clear about the identity of the asset and which registry it should be making its registration within. However, with the draft fourth Protocol on matters specific to Agricultural, Construction and Mining equipment (known as the “MAC Protocol”) there is the first real opportunity for a moveable asset to fall within the relevant definition of two protocols. This is primarily because the definition of railway rolling stock is so wide, being simply a vehicle movable on a fixed railway track or directly on, above or below a guideway.

In order to clarify the position, the draft text for the MAC Protocol has a specific sub-clause in Article II which covers the application of the Convention to agricultural, construction and mining equipment. The sub-clause states:

“4. This Protocol does not apply to objects falling within the definition of “aircraft objects” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, “railway rolling stock” under the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock or “space assets” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets.”

The result of this sub-clause is that equipment which is used in the agricultural, construction or mining sectors but runs on a fixed railway track or directly on, above or below a guideway, such as tunnel boring machines or straddle cranes running on short tracks will need to be registered under the Rail Protocol. Registration under the MAC Protocol will not be effective. As the MAC Protocol is still in its draft state it is not yet clear whether an incorrect registration of an asset in the MAC Protocol Registry, which should properly be registered in the International Registry under the Rail Protocol, will leave the party incorrectly registering the security interest without any protection under the Convention. Given that the Convention works on a self-certification basis without the registry checking the claim behind the registration, this is likely to be the case. Advisers and practitioners will need to be aware of what asset is being registered where!

The clarification in the draft MAC Protocol confirms the broad reach of the Rail Protocol and starts to give an indication of just how many items of equipment may end up being registered at the International Registry. Although there will be a significant number of different asset types identified at the International Registry, the system for searches is expected to allow for relevant asset types to be identified within the search criteria.

Finally, it should be noted that the Rail Protocol has proposed the use of the URVIS numbering system as the equipment identifier, rather than using a manufacturer's serial number, to ensure that there is a single, unique identifier for each item of equipment. This will avoid any problems caused by two manufacturer's serial numbers, where the manufacturers operate in completely different markets, being the same.

RWG supporting AfricaRail 2018 - special rates for RWG members

The 21st AfricaRail 2018 conference will take place on 12th/13th June 2018 in Johannesburg, South Africa. *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.*



See programme [here](#).

Save the date – Hungary stakeholder seminar

A stakeholder seminar on the Luxembourg Rail Protocol will take place in Budapest at 9 a.m. on 6th September. To pre-register please write to us [here](#).

Cape Town Convention Conference 2018

The annual conference in Oxford on the Cape Town Convention will take place on 12th and 13th September. RWG members regularly attend this conference. For further information contact info@railworkinggroup.org.

Save the date - Madrid stakeholder seminar

The RWG Spanish Contact Group will be running a special seminar on the Luxembourg Rail Protocol in Madrid on Wednesday 17th October between 4 and 7 p.m. More details will be distributed nearer the time with registration information but please put the date and time in your diary now if you can attend. To pre-register please write to us [here](#).

Save the date – East AfricaRail 2018

The East Africa Rail Conference will be taking place this year in Nairobi 21st/22nd November 2018. The RWG will again be negotiating a special deal for its members. More information [here](#).



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](#).

Published by the Rail Working Group, a not for profit Association established under Swiss law.

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